1164
S. C.

(18,924.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 277.

THE NORTHERN SECURITIES COMPANY, THE GREAT NORTHERN RAILWAY COMPANY, THE NORTHERN PACIFIC RAILWAY COMPANY, JAMES J. HILL, WILLIAM P. CLOUGH, D. WILLIS JAMES, JOHN S. KENNEDY, J. PIERPONT MORGAN, ROBERT BACON, GEORGE F. BAKER, AND DANIEL S. LAMONT, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 4, 1903.

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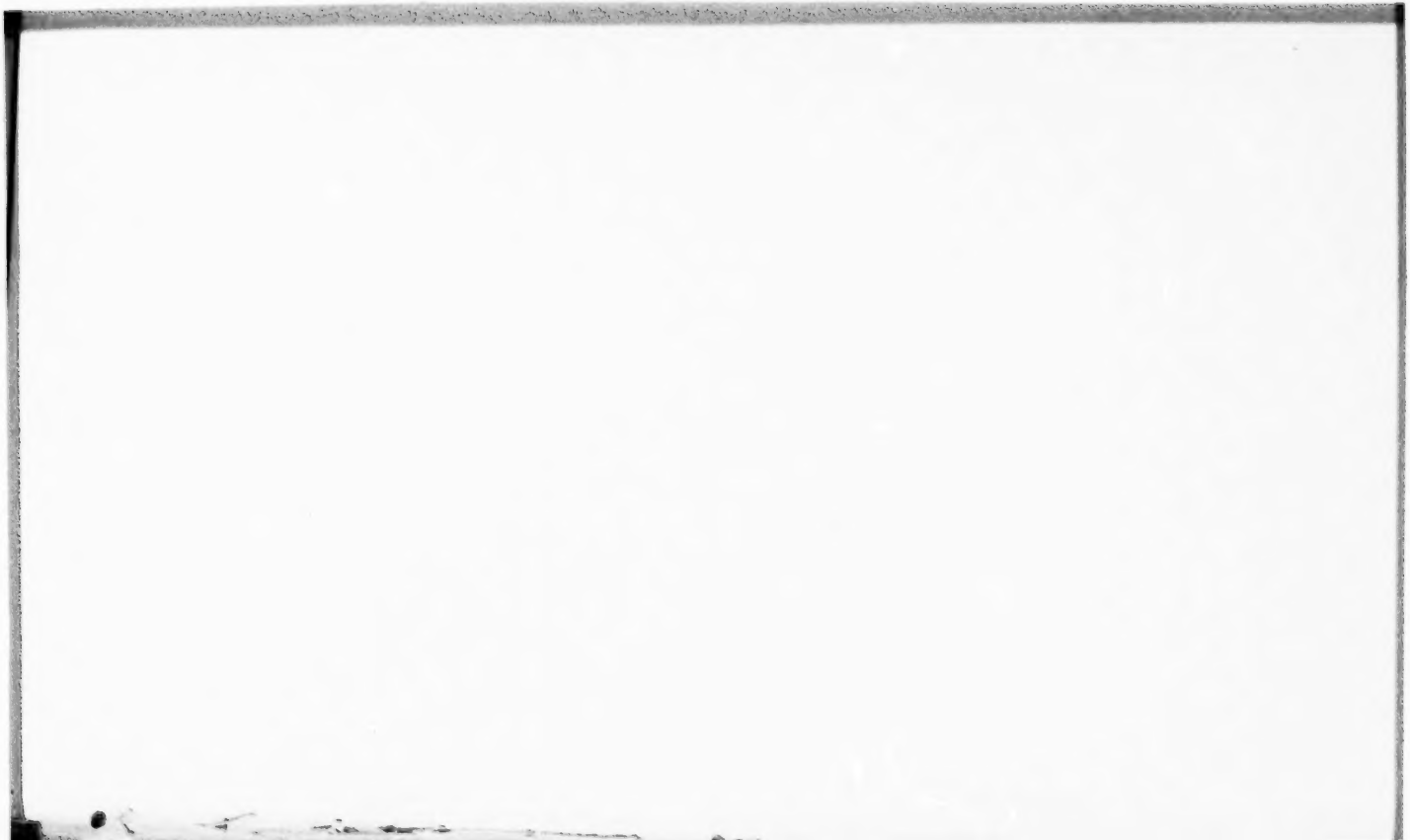

UNITED STATES OF AMERICA:

UNITED STATES OF AMERICA
vs.
NORTHERN SECURITIES COMPANY ET AL. } C. Equity. No. 789.

Pleas before the honorable the judges of the circuit court of the United States of America for the third division of the district of Minnesota, of the January, A. D. 1903, term of said court, held in the city of Saint Paul, Minnesota, in said district, in the year 1903.

DISTRICT OF MINNESOTA, *ss*:

Be it remembered that on the 9th day of March A. D. 1903, came the complain-t and filed in the clerk's office its record for hearing in equity, which is in the words and figures following, to-wit:

Circuit Court of the United States for the District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Complainant,
vs.
THE NORTHERN SECURITIES COMPANY, THE Great Northern Railway Company, The Northern Pacific Railway Company, and Others, Defendants. } No. 789. C. Equity.

Transcript of Record.

Pleadings, etc.

(Endorsed:) Filed March 9th, 1903 Henry D. Lang, clerk.

Circuit court of the United States, district of Minnesota, third division. 1

THE UNITED STATES OF AMERICA, complainant,
v.
NORTHERN SECURITIES COMPANY, THE Great Northern Railway Company, The Northern Pacific Railway Company et al., defendants.
} Appearance.

The clerk will enter our appearance for the complainants in the above-entitled cause. 2

MILTON D. PURDY,
Attorney of the United States for the District of Minnesota.
PHILANDER C. KNOX,
Attorney-General of the United States.
JOHN K. RICHARDS,
Solicitor-General of the United States.

Dated March 10, 1902.

(Indorsed:) United States circuit court, district of Minnesota, third division. The United States of America, complainant, *v.* Northern Securities Company and others. Appearance of M. D. Purdy, P. C. Knox, and J. K. Richards, for complainant. Ent'd C. R. B. page 84. Filed March 10, 1902. Henry D. Lang, clerk. 3

United States circuit court, district of Minnesota, chancery rule register.

1902. March 10.

4

THE UNITED STATES OF AMERICA, complainant,
v.
NORTHERN SECURITIES COMPANY AND others, defendants.
} C. Equity, No. 789.

Pursuant to a præcipe this day filed in this cause, it is ordered that the appearance of Milton D. Purdy, Philander C. Knox,

and John K. Richards as solicitors of said complainant be, and the same hereby is, entered.

HENRY D. LANG, *Clerk.*

(C. R. "B," page 84.)

Entered 789, C. E.

In the circuit court of the United States for the district of Minnesota, third division.

THE UNITED STATES OF AMERICA, complainant,
v.
NORTHERN SECURITIES COMPANY, THE Great Northern Railway Company, The Northern Pacific Railway Company, and others, defendants.
No. 789, C. E. Petition.

(Indorsed:) Filed March 10, 1902. Henry D. Lang, clerk.

In the circuit court of the United States for the district of Minnesota, third division.

THE UNITED STATES OF AMERICA, complainant,
v.
NORTHERN SECURITIES COMPANY, THE Great Northern Railway Company, The Northern Pacific Railway Company, and others, defendants.
No. 789, C. E.

PETITION.

To the judges of the circuit court of the United States for the district of Minnesota:

Now comes the United States of America, by Milton D. Purdy, the United States attorney for the district of Minnesota, acting under direction of the Attorney-General of the United States, and brings this its proceeding by way of petition against the Northern Securities Company, a corporation organized and existing under the laws of the State of New Jersey; the Great

Northern Railway Company, a corporation organized and existing under the laws of the State of Minnesota; the Northern Pacific Railway Company, a corporation organized and existing under the laws of the State of Wisconsin; James J. Hill, a citizen of the State of Minnesota and a resident of St. Paul, and William P. Clough, D. Willis James, John S. Kennedy, J. Pierpont Morgan, Robert Bacon, George F. Baker, and Daniel Lamont, citizens of the State of New York and residents of New York City, and, on information and belief, complains and says: 9

I. 10

The defendants, the Northern Pacific Railway Company and the Great Northern Railway Company, were, at the times hereinafter mentioned, and now are, common carriers, employed in the transportation of freight and passengers among the several States of the United States and between such States and foreign nations, and, as such carriers so employed, were and are engaged in trade and commerce among the several States and with foreign nations.

II.

On and prior to the 13th day of November, 1901, the defendants, James J. Hill, William P. Clough, D. Willis James, and John S. Kennedy, and certain other persons whose names are unknown to the complainant, but whom it prays to have made parties to this action when ascertained (hereinafter referred to as James J. Hill and his associate stockholders), owned or controlled a majority of the capital stock of the defendant, the Great Northern Railway Company, and the defendants, J. Pierpont Morgan and Robert Bacon (members of and representing the banking firm of J. P. Morgan & Co., of New York City), George F. Baker and Daniel S. Lamont, and certain other persons whose names are unknown to the complainant, but whom it prays to have made parties to this action when ascertained (hereinafter referred to as J. Pierpont Morgan and his associate stockholders), owned or controlled a majority of the capital stock of the defendant, the Northern Pacific Railway Company. 11 12

III.

The Northern Pacific Railway Company and the Great Northern Railway Company, at and prior to the doing of the acts

hereinafter complained of, owned or controlled and operated two separate, independent, parallel, and competing lines of railway running east and west into or across the States of Wisconsin, Minnesota, North Dakota, Montana, Idaho, Washington, and Oregon, the Northern Pacific system, extending from Ashland, in the State of Wisconsin, and from Duluth and St. Paul, in the State of Minnesota, through Helena, in the State of Montana, and Spokane, in the State of Washington, to Seattle and Tacoma, in the State of Washington, and Portland, in the State of Oregon, and the Great Northern system, extending from Superior, in the State of Wisconsin, and from Duluth and St. Paul, in the State of Minnesota, through Spokane, in the State of Washington, to Everett and Seattle, in the State of Washington, and to Portland, in the State of Oregon, with a branch line to Helena, in the State of Montana, thus furnishing to the public two parallel and competing transcontinental lines connecting the Great Lakes and the Mississippi River with Puget Sound and the Pacific Ocean. At the times mentioned, these two railway systems, which will hereafter be referred to respectively as the Northern Pacific system and the Great Northern system, each of which, with its leased and controlled lines, main and branch, aggregates over 5,500 miles in length, were the only transcontinental lines of railway extending across the northern tier of States west of the Great Lakes, from the Great Lakes and the Mississippi River to the Pacific Ocean, and were then engaged in active competition with one another for freight and passenger traffic among the several States of the United States and between such States and foreign countries, each system connecting at its eastern terminals, not only with lines of railway, but with lake and river steamers to other States and to foreign countries, and at its western terminals with sea-going vessels to other States, Territories, and possessions of the United States and to foreign countries.

IV.

Prior to the year 1893 the Northern Pacific system was owned or controlled and operated by the Northern Pacific Railroad Company, a corporation organized and existing under certain acts and resolutions of Congress. During that year the company became insolvent, and the line was placed it the hands

of receivers by the proper courts of the United States. While 17
in this condition, awaiting foreclosure and sale, an arrangement was entered into between a majority of the bondholders of the Northern Pacific Railroad Company and the defendant, the Great Northern Railway Company, for a virtual consolidation of the Northern Pacific and Great Northern systems and the placing of the practical control of the Northern Pacific system in the hands of the defendant, the Great Northern Railway Company. This arrangement contemplated the sale, under foreclosure, of the property and franchises of the Northern Pacific Railroad Company to a committee of the bondholders, 18
who should organize a new corporation, to be known as the Northern Pacific Railway Company, which was to become the successor of the Northern Pacific Railroad Company; one-half of the capital stock of the new company was to be turned over to the shareholders of the defendant, the Great Northern Railway Company, which in turn was to guarantee the payment of the bonds of the Northern Pacific Railway Company. An agreement was to be entered into for the exchange of traffic at intersecting and connecting points and for the division of earnings therefrom. The carrying out of this arrangement was de- 19
feated by the decision of the Supreme Court of the United States in the case of *Pearsall* v. *The Great Northern Railway Company* (which was decided March 30, 1896, and is reported in the one hundred and sixty-first volume of the reports of said court, beginning on page 646, to which reference is made), in which it was held that the practical effect would be the consolidation of two parallel and competing lines of railway, and the giving to the defendant, the Great Northern Railway Company, a monopoly of all traffic in the northern half of the State of Minnesota, as well as of all transcontinental traffic north of 20
the line of the Union Pacific, to the detriment of the public and in violation of the laws of the State of Minnesota.

V.

Early in the year 1901 the defendants, the Great Northern and Northern Pacific railway companies, acting for the purpose of promoting their joint interests, and in contemplation of the ultimate placing of the Great Northern and Northern Pacific

systems under a common source of control, united in the purchase of the total capital stock of the Chicago, Burlington and Quincy Railway Company, of Illinois, giving the joint bonds of the Great Northern and Northern Pacific railway companies, payable in twenty years from date, with interest at 4 per cent per annum, for such stock, at the rate of $200 in bonds in exchange for each $100 in stock, and in this manner purchased and acquired about $107,000,000 of the $112,000,000 total capital stock of the Chicago, Burlington and Quincy Railway Company, or about 98 per cent thereof. In this manner, at the time stated, the defendants, the Great Northern and Northern Pacific railway companies, secured control of the vast system of railway lines known as the Burlington system, about 8,000 miles in length, extending from St. Paul, in the State of Minnesota, where it connects with the Great Northern and Northern Pacific railway systems, through the States of Minnesota, Wisconsin, and Illinois, to Chicago, in the State of Illinois, and from these two cities through said States and through the States of Iowa, Missouri, Nebraska, Colorado, South Dakota, Wyoming, and Montana, to Quincy, in the State of Illinois; to Burlington and Des Moines, in the State of Iowa; to St. Louis, Kansas City, and St. Joseph, in the State of Missouri; to Omaha and Lincoln, in the State of Nebraska; to Denver, in the State of Colorado; to Cheyenne, in the State of Wyoming, and to Billings, in the State of Montana, where it again connects with the Northern Pacific Railway system, these States lying west of Chicago and south of the States crossed by the Great Northern and Northern Pacific systems, and constituting the territory occupied in part by what is known as the Union Pacific Railway system, which has been and is a parallel and competing system within said territory with the said Burlington system.

VI.

The attempt to turn over a controlling interest in the stock of the Northern Pacific Railway Company to the Great Northern Railway Company and thus effect a virtual consolidation of the two railway systems. having thus, in the year 1896, been defeated by a decision of the Supreme Court of the United States, the defendants James J. Hill and his associate stock-

holders of the defendant, the Great Northern Railway Company, owning or controlling a majority of the stock of that corporation, and the defendants J. Pierpont Morgan and his associate stockholders of the defendant, the Northern Pacific Railway Company, owning or controlling a majority of the stock of that corporation, acting for themselves as such stockholders and on behalf of the said railway companies in which they owned or held a controlling interest, on and prior to the 13th day day of November, 1901, contriving and intending unlawfully to restrain the trade or commerce among the several States and between said States and foreign countries carried on by the Northern Pacific and Great Northern systems, and contriving and intending unlawfully to monopolize or attempt to monopolize such trade or commerce, and contriving and intending unlawfully to restrain and prevent competition among said railway systems in respect to such interstate and foreign trade or commerce, and contriving and intending unlawfully to deprive the public of the facilities and advantages in the carrying on of such interstate and foreign trade or commerce theretofore enjoyed through the independent competition of said railway systems, entered into an unlawful combination or conspiracy to effect a virtual consolidation of the Northern Pacific and Great Northern systems, and to place restraint upon all competitive interstate and foreign trade or commerce carried on by them, and to monopolize or attempt to monopolize the same, and to suppress the competition theretofore existing between said railway systems in said interstate and foreign trade or commerce, through the instrumentality and by the means following, to wit: A holding corporation, to be called the Northern Secureties Company, was to be formed under the laws of New Jersey, with a capital stock of $400,000,000, to which, in exchange for its own capital stock upon a certain basis and at a certain rate, was to be turned over and transferred the capital stock, or a controlling interest in the capital stock, of each of the defendant railway companies, with power in the holding corporation to vote such stock and in all respects to act as the owner thereof, and to do whatever it might deem necessary to aid in any manner such railway companies or enhance the value of their stocks. In this manner, the individual stockholders of these two independent and competing railway companies were to be eliminated and a single common

stockholder, the Northern Securities Company, was to be substituted; the interest of the individual stockholders in the property and franchises of the two railway companies was to terminate, being thus converted into an interest in the property and franchises of the Northern Securities Company. The individual stockholders of the Northern Pacific Railway Company were no longer to hold an interest in the property or draw their dividends from the earnings of the Northern Pacific system, and the individual stockholders of the Great Northern Railway Company were no longer to hold an interest in the property or draw their dividends from the earnings of the Great Northern system, but having ceased to be stockholders in the railway companies and having become stockholders in the holding corporation, both were to draw their dividends from the earnings of both systems, collected and distributed by the holding corporation. In this manner, by making the stockholders of each system jointly interested in both systems, and by practically pooling the earnings of both systems for the benefit of the former stockholders of each, and by vesting the selection of the directors and officers of each system in a common body, to wit, the holding corporation, with not only the power but the duty to pursue a policy which would promote the interests, not of one system at the expense of the other, but of both at the expense of the public, all inducement for competition between the two systems was to be removed, a virtual consolidation effected, and a monopoly of the interstate and foreign commerce formerly carried on by the two systems as independent competitors established.

VII.

In pursuance of the unlawful combination or conspiracy aforesaid, and solely as an instrumentality through which to effect the purposes thereof, on the 13th day of November, 1901, the defendant, the Northern Securities Company, was organized under the general laws of the State of New Jersey, with its principal office in Hoboken, in said State, and with an authorized capital stock of $400,000,000. A copy of the articles of incorporation of such company is attached to and made a part of this petition. Among the purposes and powers designedly inserted in said articles is the purpose and power, not only to "purchase" and "hold" "shares of the capital stock of any other

corporation or corporations," under which said company wrongfully claims and is exercising the power to acquire by exchange and hold the stock of the Northern Pacific and the Great Northern Railway companies, but the purpose and power, while owner thereof, "to exercise all the rights, powers, and privileges of ownership;" that is, to vote such stock, collect the dividends thereon, and in all respects act as a stockholder of such railway companies; and the purpose and power "to aid in any manner any corporation * * * of which any bonds * * * or stock are held, * * * and to do any acts or things designed to protect, preserve, improve, or enhance the value of any such bonds * * * or stock," meaning thereby to do whatever it may deem necessary to aid in any manner the Northern Pacific and the Great Northern Railway companies, or to preserve or enhance the value of their stocks or bonds.

VIII.

In further pursuance of the unlawful combination or conspiracy aforesaid, and solely as an instrumentality through which to effect the purposes thereof, on or about the 14th day of November, 1901, the defendant the Northern Securities Company was organized by the election of a board of directors and the selection of a president and other officers, the defendant James J. Hill, the president and controlling power in the management of the defendant the Great Northern Railway Company, being chosen a director and president thereof; and thereupon, in further pursuance of the unlawful combination or conspiracy aforesaid, the defendants James J. Hill and his associate stockholders of the defendant the Great Northern Railway Company assigned and transferred to the defendant the Northern Securities Company a large amount of the capital stock of the Great Northern Railway Company, the exact amount being unknown to complainant, but constituting a controlling interest therein, and complainant believes a majority thereof, upon the agreed basis of exchange of $180, par value, of the capital stock of the said Northern Securities Company for each share of the capital stock of the Great Northern Railway Company; and the defendants J. Pierpont Morgan and his associate stockholders of the Northern Pacific Railway Company assigned and transferred to the defendant the Northern Securities Company a large ma-

37 jority of the capital stock of the defendant the Northern Pacific Railway Company, the exact amount being unknown to complainant, upon the agreed basis of exchange of $115, par value, of the capital stock of the said Northern Securities Company for each share of the capital stock of the Northern Pacific Railway Company; and thereafter, in further pursuance of the unlawful combination or conspiracy aforesaid, the defendant the Northern Securities Company offered to the stockholders of the defendant railway companies to issue and exchange its capital stock for the capital stock of such railway companies, upon the
38 basis of exchange aforesaid, no other consideration being required. In further pursuance of the unlawful combination or conspiracy aforesaid the defendant the Northern Securities Company has acquired an additional amount of the stock of the defendant railway companies, issuing in lieu thereof its own stock upon the basis of exchange aforesaid, and is now holding, as owner and proprietor, substantially all of the capital stock of the Northern Pacific Railway Company and, as complainant believes and charges, a majority of the capital stock of the Great Northern Railway Company, but if not a majority, at least a controlling
39 interest therein, and is voting the same and is collecting the dividends thereon, and in all respects is acting as the owner thereof in the organization, management, and operation of said railway companies, and in the receipt and control of their earnings, and will continue to do so, unless restrained by the order of this court. By reason whereof a virtual consolidation under one ownership and source of control of the Great Northern and Northern Pacific Railway systems has been effected, a combination or conspiracy in restraint of the trade or commerce among the several States and with foreign nations formerly carried on
40 by the defendant railway companies independently and in free competition one with the other has been formed and is in operation, and the defendants are thereby attempting to monopolize, and have monopolized, such interstate and foreign trade or commerce, to the great and irreparable damage of the people of the United States, in derogation of their common rights, and in violation of the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies."

IX. 41

If the defendant the Northern Securities Company has not acquired a large majority of the capital stock of the defendant the Great Northern Railway Company, it is because the individual defendants named, and their associates in the combination or conspiracy charged in this petition, or some of them, since it became apparent that the legality of their corporate device for the merger of the stock of competing railway companies, through the instrumentality of a central or holding corporation, would be assailed in the courts, have purposely withheld, or caused to be 42
withheld, a large amount of the capital stock of said railway company from transfer for the stock of the Northern Securities Company, and have purposely discouraged and prevented the transfer and exchange of such stock for the stock of the Northern Securities Company, all for the purpose of concealing the real scope and object of the unlawful combination or conspiracy aforesaid, and of deceiving and misleading the State and Federal authorities, and of furnishing a ground for the defense that the Northern Securities Company does not hold a clear majority of the stock of the Great Northern Railway Company. The 43
complainant avers that such stock, so withheld or not transferred to the Northern Securities Company, is now in the hands of some person or persons (unknown to the complainant) friendly to and under the influence of the individual defendants named and their associates aforesaid, or some of them, and will either not be voted, or be voted in harmony with the Great Northern stock held by the Northern Securities Company, until the question of the legality of this corporate device for merging competing railway lines shall be finally and judicially determined, when such stock will either be turned over to the Northern 44
Securities Company or continue to be held and voted outside said company but in harmony with the Great Northern stock held and voted by it, as may at the time seem advisable.

X.

In further pursuance of the unlawful combination or conspiracy aforesaid, the Northern Securities Company (subject, it may be, to the condition stated in the next preceding paragraph) is about to and will, unless restrained by the order of

45 this court, receive and acquire, and hereafter hold and control as owner and proprietor, substantially all of the capital stock of the defendant railway companies, issuing in lieu thereof its own capital stock to the full extent of the authorized issue, of which, upon the basis of exchange aforesaid, the former stockholders of the Great Northern Railway Company have received or will receive and hold about 55 per cent thereof, the balance going to the former stockholders of the Northern Pacific Railway Company.

XI.

46 No consideration whatever has existed, or will exist, for the transfer as aforesaid of the stock of the defendant railway companies from their stockholders to the Northern Securities Company, other than the issue of the stock of the Northern Securities Company to them in exchange therefor, for the purpose, after the manner, and upon the basis aforesaid.

The defendant, the Northern Securities Company, was not organized in good faith to purchase and pay for the stocks of the Great Northern and the Northern Pacific Railway com-
47 panies. It was organized solely to incorporate the pooling of the stocks of said companies and to carry into effect the unlawful combination or conspiracy aforesaid. The Northern Securities Company is a mere depositary, custodian, holder, and trustee of the stocks of the Great Northern and the Northern Pacific Railway companies, and its shares of stock are but beneficial certificates issued against said railroad stocks to designate the interest of the holders in the pool. The Northern Securities Company does not have and never had any capital sufficient to warrant such a stupendous operation. Its subscribed capital
48 was but $30,000, and its authorized capital stock of $400,000,000 is just sufficient, when all issued, to represent and cover the exchange value of substantially the entire stock of the Great Northern and Northern Pacific Railway companies, upon the basis and at the rate agreed upon, which is about $122,000,000 in excess of the combined capital stock of the two railway companies taken at par.

XII.

If the Government fails to prevent the carrying out of the combination or conspiracy aforesaid, and the defendant, the North-

ern Securities Company, is permitted to receive and hold and 49
act as owner of the stock of the Northern Pacific and Great Northern Railway companies as aforesaid, not only will a virtual consolidation of two competing transcontinental lines, with the practical pooling of their earnings, be effected, and a monopoly of the interstate and foreign commerce formerly carried on by them as competitors be created, and all effective competition between such lines in the carrying of interstate and foreign traffic be destroyed, but thereafter, to all desiring to use it, an available method will be presented, whereby, through the corporate scheme or device aforesaid, the act of Congress of 50
July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," may be circumvented and set at naught, and all transcontinental lines, indeed the entire railway systems of the country, may be absorbed, merged, and consolidated, thus placing the public at the absolute mercy of the holding corporation.

XIII.

In furtherance of the purpose and object of the unlawful combination or conspiracy aforesaid to monopolize or attempt to 51
monopolize the trade or commerce among the several States, and between such States and foreign countries, formerly carried on in free competition by the defendants, the Northern Pacific and Great Northern Railway companies, and to place a restraint thereon, the individual defendants named and their associate stockholders of the defendant railway companies, have combined or conspired with one another and with other persons (whose names are unknown to the complainant, but whom it prays to have made parties to this action when ascertained) to use and employ, in addition to the corporate scheme or device aforesaid, 52
and in aid thereof, various other schemes, devices, and instrumentalities, the precise details of which are at present unknown to the complainant but will be laid before the court when ascertained, by means of which, unless prevented by the order of this court, the object and purpose of the unlawful combination or conspiracy aforesaid may and will be accomplished.

PRAYER.

In consideration whereof, and inasmuch as adequate relief in the premises can only be obtained in this court, the United

States of America prays your honors to order, adjudge, and decree that the combination or conspiracy hereinbefore described is unlawful, and that all acts done or to be done in carrying it out are in derogation of the common rights of all the people of the United States and in violation of the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and that the defendants and each and every one of them, and their officers, directors, stockholders, agents, and servants, and each and every one of them, be perpetually enjoined from doing any act in pursuance of or for the purpose of carrying out the same, and, in addition, that the several defendants be respectively enjoined as follows:

First. That the defendant, the Northern Securities Company, its stockholders, officers, directors, executive committee, and its agents and servants, and each and every one of them, be perpetually enjoined from purchasing, acquiring, receiving, holding, voting (whether by proxy or otherwise), or in any manner acting as the owner of any of the shares of the capital stock of either the Northern Pacific Railway Company or the Great Northern Railway Company; and that a mandatory injunction may issue requiring the Northern Securities Company to recall and cancel any certificates of stock issued by it in purchase of or in exchange for any of the shares of the capital stock of either of said railway companies, surrendering in return therefor to the holders thereof the certificates of stock in the respective railway companies in lieu of which they were issued.

Second. That the defendant, the Northern Pacific Railway Company, its stockholders, officers, directors, agents, and servants, and each and every one of them, be perpetually enjoined from in any manner recognizing or accepting the Northern Securities Company as the owner or holder of any shares of its capital stock, and from permitting such company to vote such stock, whether by proxy or otherwise, and from paying any dividends upon such stock to said company or its assigns, unless authorized by this court, and from recognizing as valid any transfer, mortgage, pledge, or assignment by such company of such stock, unless authorized by this court.

Third. That the defendant, the Great Northern Railway Company, its stockholders, officers, directors, agents, and servants, and each and every one of them, be perpetually enjoined

from in any manner recognizing or accepting the Northern Securities Company as the owner or holder of any shares of its capital stock, and from permitting such company to vote such stock, whether by proxy or otherwise, and from paying any dividends upon such stock to said company or its assigns, unless authorized by this court, and from recognizing as valid any transfer, mortgage, pledge, or assignment by such company of such stock unless authorized by this court. 57

Fourth. That the individual defendants named, and their associate stockholders, and each and every stockholder of either of said railway companies who has exchanged his stock therein for the stock of the Northern Securities Company, be each, respectively, perpetually enjoined from in any manner holding, voting, or acting as the owner of any of the stock of the Northern Securities Company, issued in exchange for the stock of either of the said railway companies, unless authorized by this court; and that a mandatory injunction may issue requiring each of the said defendants to surrender any stock of the Northern Securities Company so acquired and held by him, and accept therefor the stock of the defendant railway company in exchange for which the same was issued. 58 59

Fifth. That the individual defendants named, and their associate stockholders, and each and every person combining or conspiring with them, as charged in Paragraph XIII hereof, and their trustees, agents, and assigns, present or future, and each and every one of them, be perpetually enjoined from doing any and every act or thing mentioned in said paragraph, or in furtherance of the combination or conspiracy described therein, or intended or tending to place the capital stock of the defendant railway companies, or the competing railway systems operated by them, or the competitive interstate or foreign trade or commerce carried on by them, under the control, legal or practical, of the defendant, the Northern Securities Company, or of any person or persons, or association or corporation, acting for or in lieu of said company, in the carrying out of the unlawful combination or conspiracy described in said paragraph. 60

The United States prays for such other and further relief as the nature of the case may require and the court may deem proper in the premises.

To the end, therefore, that the United States of America may

61 obtain the relief to which it is justly entitled in the premises, may it please your honors to grant unto it writs of subpœna directed to the said defendants, the Northern Securities Company, the Northern Pacific Railway Company, the Great Northern Railway Company, James J. Hill, William P. Clough, D. Willis James, and John S. Kennedy, and their associate stockholders of the Great Northern Railway Company, as their names may become known to complainant and the court be advised thereof, J. Pierpont Morgan, Robert Bacon, George F. Baker, and Daniel S. Lamont, and their associate stockholders
62 of the Northern Pacific Railway Company, as their names may become known to complainant and the court be advised thereof, and the persons referred to in Paragraph XIII hereof, as their names may become known to complainant and the court be advised thereof, and to each of them, commanding them, and each of them, to appear herein and answer (but not under oath) the allegations contained in the foregoing petition, and abide by and perform such order or decree as the court may make in the premises; and that, pending the final hearing of this case, a temporary restraining order may issue enjoining the defendants and
63 their associates, and each of them, and their stockholders, directors, officers, agents, and servants as hereinbefore prayed.

MILTON D. PURDY,
Attorney of the United States
for the District of Minnesota.
PHILANDER C. KNOX,
Attorney-General of the United States.
JOHN K. RICHARDS,
Solicitor-General of the United States.

64 UNITED STATES OF AMERICA,
District of Minnesota, Third Division, ss:

Milton D. Purdy, being duly sworn, says that he is the United States attorney for the district of Minnesota, and that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge except as to those matters therein stated on his information and belief, and as to those matters he believes them to be true. He further states that he is authorized to sign the said bill of com-

plaint for the United States of America, the complainant therein by the Attorney-General of the United States. 65

MILTON D. PURDY,
Attorney of the United States
for the District of Minnesota.

Subscribed in my presence and sworn to before me this 10th day of March, A. D. 1902.

[SEAL OF COURT.] HENRY D. LANG,
Clerk of the United States Circuit Court
for the District of Minnesota. 66

CERTIFICATE OF INCORPORATION OF NORTHERN SECURITIES COMPANY.

STATE OF NEW JERSEY, *ss:*

We, the undersigned, in order to form a corporation for the purposes hereinafter stated, under and pursuant to the provisions of the act of the legislature of the State of New Jersey entitled "An act concerning corporations" (revision of 1896), and the acts amendatory thereof and supplemental thereto, do hereby certify as follows: 67

First. The name of the corporation is Northern Securities Company.

Second. The location of its principal office in the State of New Jersey is at No. 51 Newark street, in the city of Hoboken, county of Hudson. The name of the agent therein, and in charge thereof, upon whom process against the corporation may be served, is Hudson Trust Company. Such office is to be the registered office of the corporation.

Third. The objects for which the corporation is formed are: 68

(1) To acquire by purchase, subscription, or otherwise, and to hold as investment, any bonds or other securities or evidences of indebtedness, or any shares of capital stock created or issued by any other corporation or corporations, association or associations, of the State of New Jersey, or of any other State, Territory, or country.

(2) To purchase, hold, sell, assign, transfer, mortgage, pledge,

or otherwise dispose of any bonds or other securities or evidences of indebtedness created or issued by any other corporation or corporations, association or associations, of the State of New Jersey, or of any other State, Territory, or country, and while owner thereof to exercise all the rights, powers, and privileges of ownership.

(3) To purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of shares of the capital stock of any other corporation or corporations, association or associations, of the State of New Jersey, or of any other State, Territory, or country, and while owner of such stock to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon.

(4) To aid in any manner any corporation or association of which any bonds or other securities or evidences of indebtedness or stock are held by the corporation, and to do any acts or things designed to protect, preserve, improve, or enhance the value of any such bonds or other securities or evidences of indebtedness or stock.

(5) To acquire, own, and hold such real and personal property as may be necessary or convenient for the transaction of its business.

The business or purpose of the corporation is from time to time to do any one or more of the acts and things herein set forth.

The corporation shall have power to conduct its business in other States and in foreign countries, and to have one or more offices out of this State, and to hold, purchase, mortgage, and convey real and personal property out of this State.

Fourth. The total authorized capital stock of the corporation is four hundred million dollars ($400,000,000), divided into four million (4,000,000) shares of the par value of one hundred dollars ($100) each. The amount of the capital stock with which the corporation will commence business is thirty thousand dollars.

Fifth. The names and post-office addresses of the incorporators, and the number of shares of stock subscribed for by each (the aggregate of such subscriptions being the amount of capital stock with which this company will commence business), are as follows:

Name and post-office address.	Number of shares.
George F. Baker, jr., 258 Madison avenue, New York, N. Y	100
Abram M. Hyatt, 214 Allen avenue, Allenhurst, N. J	100
Richard Trimble, 53 East Twenty-fifth street, New York, N. Y	100

Sixth. The duration of the corporation shall be perpetual.

Seventh. The number of directors of the corporation shall be fixed from time to time by the by-laws; but the number, if fixed at more than three, shall be some multiple of three. The directors shall be classified with respect to the time for which they shall severally hold office by dividing them into three classes, each consisting of one-third of the whole number of the board of directors. The directors of the first class shall be elected for a term of one year, the directors of the second class for a term of two years, and the directors of the third class for a term of three years; and at each annual election the successors to the class of directors whose term shall expire in that year shall be elected to hold office for the term of three years, so that the term of office of one class of directors shall expire in each year.

In case of any increase of the number of the directors the additional directors shall be elected as may be provided in the by-laws, by the directors or by the stockholders at an annual or special meeting, and one-third of their number shall be elected for the then unexpired portion of the term of the directors of the first class, one-third of their number for the unexpired portion of the term of the directors of the second class, and one-third of their number for the unexpired portion of the term of the directors of the third class, so that each class of directors shall be increased equally.

In case of any vacancy in any class of directors through death, resignation, disqualification, or other cause, the remaining directors, by affirmative vote of a majority of the board of directors, may elect a successor to hold office for the unexpired portion of the term of the director whose place shall be vacant, and until the election of a successor.

The board of directors shall have power to hold their meetings outside the State of New Jersey at such places as from time to time may be designated by the by-laws, or by resolution

of the board. The by-laws may prescribe the number of directors necessary to constitute a quorum of the board of directors, which number may be less than a majority of the whole number of the directors.

As authorized by the act of the legislature of the State of New Jersey passed March 22, 1901, amending the seventeenth section of the act concerning corporations (revision of 1896), any action which theretofore required the consent of the holders of two-thirds of the stock at any meeting after notice to them given, or required their consent in writing to be filed, may be taken upon the consent of, and the consent given and filed by, the holders of two-thirds of the stock of each class represented at such meeting in person or by proxy.

Any officer elected or appointed by the board of directors may be removed at any time by the affirmative vote of a majority of the whole board of directors. Any other officer or employee of the corporation may be removed at any time by vote of the board of directors, or by any committee or superior officer upon whom such power of removal may be conferred by the by-laws or by vote of the board of directors.

The board of directors, by the affirmative vote of a majority of the whole board, may appoint from the directors an executive committee, of which a majority shall constitute a quorum, and to such extent as shall be provided in the by-laws such committee shall have and may exercise all or any of the powers of board of directors, including power to cause the seal of the corporation to be affixed to all papers that may require it.

The board of directors may appoint one or more vice-presidents, one or more assistant treasurers, and one or more assistant secretaries, and, to the extent provided in the by-laws, the persons so appointed, respectively, shall have and may exercise all the powers of the president, of the treasurer, and of the secretary, respectively.

The board of directors shall have power from time to time to fix and determine and to vary the amount of the working capital of the corporation; to determine whether any, and if any, what part of any accumulated profits shall be declared in dividends and paid to the stockholders; to determine the time or times for the declaration and the payment of dividends, and to direct and to determine the use and disposition of any surplus

or net profits over and above the capital stock paid in; and in its discretion the board of directors may use and apply any such surplus or accumulated profits in purchasing or acquiring its bonds or other obligations, or shares of the capital stock of the corporation to such extent and in such manner and upon such terms as the board of directors shall deem expedient; but shares of such capital stock so purchased or acquired may be resold, unless such shares shall have been retired for the purpose of decreasing the capital stock of the corporation to the extent authorized by law. 81

The board of directors from time to time shall determine whether and to what extent, and at what times and places and under what conditions and regulations, the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders, and no stockholder shall have any right to inspect any account or book or document of the corporation except as conferred by statute of the State of New Jersey, or authorized by the board of directors or by a resolution of the stockholders. 82

The board of directors may make by-laws, and from time to time may alter, amend, or repeal any by-laws; but any by-laws made by the board of directors may be altered or repealed by the stockholders at any annual meeting or at any special meeting, provided notice of such proposed alteration or repeal be included in the notice of the meeting. 83

In witness whereof we have hereunto set our hands and seals the 12th day of November, 1901.

GEO. F. BAKER, JR. [L. S.]
ABRAM M. HYATT. [L. S.]
RICHARD TRIMBLE. [L. S.]

Signed, sealed, and delivered in presence of— 84
GEO. HOLMES.

STATE OF NEW YORK,
County of New York, Manhattan, ss:

Be it remembered, that on this twelfth day of November, 1901, before the undersigned, personally appeared George F. Baker, junior, Abram M. Hyatt, Richard Trimble, who, I am satisfied, are the persons named in and who executed the foregoing certificate; and I having first made known to them, and

85 to each of them, the contents thereof, they did each acknowledge that they signed, sealed, and delivered the same as their voluntary act and deed.

GEO. HOLMES,
Master in Chancery of New Jersey.

[Endorsed.]

"Received in the Hudson Co., N. J., clerk's office, Nov. 15, A. D. 1901, and recorded in clerk's record No. ——, on page ——.

86 "MAURICE J. STACK, *Clerk.*"

"Filed Nov. 13, 1901.

"GEORGE WURTS, *Secretary of State.*"

Circuit court of the United States, district of Minnesota, third division.

THE UNITED STATES OF AMERICA
vs.
87 NORTHERN SECURITIES COMPANY, THE Great Northern Railway Company, The Northern Pacific Railway Company, and others, defendants. } Prœcipe for chancery subpœna.

To the clerk of above-named court:

Please issue chancery subpœna in the above-entitled case. Dated March 10, 1902.

M. D. PURDY,
Attorney for the United States.

88

(Indorsed:) United States circuit court, district of Minnesota. 3rd division. The United States vs. Northern Securities Co. and others. Prœcipe for chancery subpœna. Ent'd C. R., "B," page 84. Filed March 10, 1902. Henry D. Lang, clerk.

United States circuit court, district of Minnesota, chancery rule 89 register.

THE UNITED STATES OF AMERICA
vs.
NORTHERN SECURITIES COMPANY AND others.
} C. equity No. 789. March 10, 1902.

The complainant having filed a bill of complaint in this cause on application of Milton D. Purdy, U. S. dist. atty., dist. of Minn., P. C. Knox, Atty. Gen'l, and J. K. Richards, Sol. Gen'l of U. S., solicitors, ordered that a writ of subpœna issue 90 as herein prayed.

HENRY D. LANG, *Clerk.*

(C. R., "B," page 84.)

[Original.]

United States of America, district of Minnesota, third division.

The President of the United States of America to Northern Securities Company, Great Northern Railway Company, 91 Northern Pacific Railway Company, James J. Hill, William P. Clough, D. Willis James, John S. Kennedy, J. Pierpont Morgan, Robert Bacon, George F. Baker, and Daniel Lamont.

You are hereby commanded to be and appear at rules, to be held at the office of the clerk of the circuit court of the United States for the district of Minnesota, on the first Monday of April next, at the city of St. Paul, then and there to answer the bill of complaint of the United States of America, filed against you on the 10th day of March, A. D. 1902; hence, 92 fail not.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 10th day of March, 1902.

Issued at my office in the city of St. Paul, under the seal of said circuit court, the day and year last aforesaid.

[SEAL OF COURT.] HENRY D. LANG, *Clerk.*

93 Memorandum: The above-named defendants to enter their appearance in this suit in the clerk's office aforesaid, on or before the day at which this writ is returnable; otherwise the bill may be taken pro confesso.

HENRY D. LANG, *Clerk.*

Milton D. Purdy, attorney of the U. S. for the district of Minnesota; Philander C. Knox, Attorney-General of the U. S.; John K. Richards, Solicitor-General of the U. S., complainant's solicitors.

94 (Endorsed:) Chancery subpœna. Returnable to April rules, 1902. Filed March 10th, 1902. Henry D. Lang, clerk.

In the circuit court of the United States for the district of Minnesota.

THE UNITED STATES OF AMERICA, complainant,
v.
NORTHERN SECURITIES COMPANY, THE
95 Great Northern Railway Company, The Northern Pacific Railway Company, and others, defendants.

To HENRY D. LANG, Esq., *Clerk of said Court:*

You will please enter the appearance, in this cause, of the defendants, the Northern Securities Company, James J. Hill, William P. Clough, D. Willis James, John S. Kennedy, and George F. Baker, by the undersigned, their solicitors and counsel.

96 Yours, respectfully, JOHN W. GRIGGS.
GEORGE B. YOUNG.

Dated St. Paul, Minn., April 4, 1902.

(Endorsed:) Praecipe for appearance for certain defendant. Ent'd. C. R. "B," page 85. Filed April 7th, 1902. Henry D. Lang, clerk.

United States circuit court, district of Minnesota, chancery-rule register. 97

April 7th, 1902.

THE UNITED STATES OF AMERICA, complainant,
vs.
NORTHEN SECURITIES COMPANY, GREAT Northern Railway Company, The Northern Pacific Railway Company, and others, defendants.
} C. Equity, No. 789.

98

Pursuant to a præcipe this day filed in this cause, it is ordered that the appearance of the defendants, The Northern Securities Company, James J. Hill, William P. Clough, D. Willis James, John S. Kennedy, and George F. Baker, by John W. Griggs and George B. Young, their solicitors, be, and the same hereby is, entered.

HENRY D. LANG, *Clerk.*

(C. R. "B," page 85.)

99

Circuit court of the United States, district of Minnesota, third division.

UNITED STATES OF AMERICA
vs.
NORTHERN SECURITIES COMPANY, GREAT Northern Railway Company, et al.
} Appearance.

The clerk will enter my appearance for the defendant, Great Northern Railway Company.

100

M. D. GROVER,
St. Paul, Minn.

(Indorsed:) Appearance of M. D. Grover for Great Northern Railway Company. Ent. C. R. "B," page 86. Filed April 7th, 1902. Henry D. Lang, clerk.

101 United States of America, district of Minnesota, chancery-rule register.

April 7th, 1902.

THE UNITED STATES OF AMERICA, complainant,
vs.
NORTHERN SECURITIES COMPANY, GREAT Northern Railway Company, et al.
} C. Equity, No 789.

102 Pursuant to a præcipe this day filed in this cause, it is ordered that the appearance of the defendant Great Northern Railway Company, one of the above-named defendants, by M. D. Grover, its solicitor, be, and the same hereby is, entered.

HENRY D. LANG, *Clerk.*

(C. R. "B," page 86.)

Circuit court of the United States, district of Minnesota, third division.

103 THE UNITED STATES OF AMERICA, complainant,
vs.
NORTHERN SECURITIES COMPANY, THE Great Northern Railway Company, The Northern Pacific Railway Company, and others, defendants.
} Appearance.

The clerk will enter my appearance for the Northern Pacific Railway Company, one of the defendants.

104 C. W. BUNN,
St. Paul, Minn.

(Endorsed:) Appearance of C. W. Bunn for the Northern Pacific Railway Co., defendant. Filed April 7th, 1902. C. R. "B," page 85. Henry D. Lang, clerk.

United States circuit court, district of Minnesota, chancery rule register. 105

April 7th, 1902.

THE UNITED STATES OF AMERICA, complainant,
vs.
NORTHERN SECURITIES COMPANY, THE Great Northern Railway Company, The Northern Pacific Railway Company, and others, defendants. } C. Equity, No. 789.

106

Pursuant to a præcipe this day filed in this cause, it is ordered that the appearance of the defendant, The Northern Pacific Railway Company, by C. W. Bunn, its solicitor, be, and the same hereby is, entered.

HENRY D. LANG, *Clerk.*

(C. R. "B," page 85.)

Circuit court of the United States, district of Minnesota, third division. 107

THE UNITED STATES OF AMERICA, complainant,
vs.
NORTHERN SECURITIES COMPANY, THE Great Northern Railway Company, The Northern Pacific Railway Company, and others, defendants. } Appearance.

The clerk will enter my appearance for the defendants, J. Pierpont Morgan and Robert Bacon. 108

FRANCIS LYNDE STETSON,
15 Broad St., New York.

(Endorsed:) Appearance of Francis Lynde Stetson for J. Pierpont Morgan and Robert Bacon, defendants. Ent. C. R. "B," page 86. Filed April 7th, 1902. Henry D. Lang, clerk.

109 United States circuit court, district of Minnesota, chancery rule register.

April 7th, 1902.

THE UNITED STATES OF AMERICA,
vs.
THE NORTHERN SECURITIES COMPANY, The Great Northern Railway Company, The Northern Pacific Railway Company, and others, defendants.
C. Equity, No. 789.

110

Pursuant to a præcipe this day filed in this cause, it is ordered that the appearance of J. Pierpont Morgan and Robert Bacon, two of the defendants in this cause, by Francis Lynde Stetson, their solicitor, be, and the same hereby is, entered.

HENRY D. LANG, *Clerk.*

(C. R. "B," page 86.)

United States of America, district of Minnesota, third division.

111 UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE NORTHERN SECURITIES COMPANY, The Great Northern Railway Company, The Northern Pacific Railway Company, et al., defendants.

To the Clerk of the Above-named Court:

You will please enter my appearance in the above-entitled suit as solicitor for Daniel S. Lamont, one of the defendauts.

112

DAVID WILCOX.

(Endorsed:) Appearance of David Wilcox. Ent. C. R. "B," page 86. Filed April 7th, 1902. Henry D. Lang, clerk.

United States circuit court, district of Minnesota. Chancery rule register. 113

April 7th, 1902.

THE UNITED STATES OF AMERICA, complainant,
vs.
THE NORTHERN SECURITIES COMPANY, Northern Pacific Railway Company, Great Northern Railway Company, et al., defendants. } C. equity No. 789.

114

Pursuant to a præcipe this day filed in this cause, it is ordered that the appearance of the defendant Daniel S. Lamont, one of the defendants, by David Wilcox, his solicitor, be and the same hereby is entered.

HENRY D. LANG, *Clerk.*

(C. R. "B," page 86.)

Entered 789, C. E.

Circuit court of the United States for the district of Minnesota. 115

THE UNITED STATES OF AMERICA, complainants,
against
NORTHERN SECURITIES COMPANY, THE Great Northern Railway Company, The Northern Pacific Railway Company, and others, defendants. } May, 1902.

ANSWER OF THE DEFENDANT NORTHERN SECURITIES COMPANY. 116

JOHN W. GRIGGS,
GEORGE B. YOUNG,
Solicitors for the Defendant.

(Endorsed): Filed May 5th, 1902. Henry D. Lang, clerk.

117 In the circuit court of the United States for the district of Minnesota.

THE UNITED STATES OF AMERICA, complainants,
vs.
NORTHERN SECURITIES COMPANY, THE Great Northern Railway Company, The Northern Pacific Railway Company, and others, defendants.

118 THE ANSWER OF THE NORTHERN SECURITIES COMPANY TO THE PETITION OF THE UNITED STATES OF AMERICA.

I.

This defendant admits and avers that the defendant railway companies were, at the time mentioned in the petition, and are now common carriers employed in transportation of freight and passengers within and among those States of the United States in which the railways operated by them are situated, and not further or otherwise, but were and are engaged in commerce
119 among the several States and with foreign nations.

II.

This defendant admits that, on and prior to November 13, 1901, the capital stock of the defendant railway companies was owned and controlled by their respective shareholders, and it avers, on information and belief, that the outstanding capital stock of the Great Northern Railway Company was owned by more than eighteen hundred (1,800) separate owners, and the
120 outstanding capital stock of the Northern Pacific Railway Company was owned by more than thirty-five hundred (3,500) separate owners; and that among the shareholders of the Great Northern Railway Company (hereinafter called the Great Northern Company) were the defendants Hill, Clough, James, Morgan, and Kennedy; and that among the shareholders of the Northern Pacific Railway Company (hereinafter called the Northern Pacific Company) were the defendants Morgan, Bacon, Baker, Hill, Kennedy, James, and Lamont. It avers that the persons named and meant to be designated in the peti-

tion as owning, controlling, or as being associated in the owner- 121
ship and control of a majority of the stock of the Great Northern Company, did not at any time, nor in any manner, own or control a majority of said stock, nor as much as one-third (⅓) part thereof. Their holdings in said stock were at all times separate and individual, and not in association with each other, or with any other person or persons, and neither of them was under any obligation or promise to any of the others, or to any other person, to hold, use, or vote his stock otherwise than as he should, from time to time, determine to be best for his own individual interest. The persons named 122
and meant to be designated in the petition as owning, controlling, or as being associated in the ownership and control of a majority of the stock of the Northern Pacific Company, did not, at the date named, nor at any time, or in any manner, own or control a majority of such stock, nor as much as one-third (⅓) part thereof. Their holdings in said stock were at all times separate and individual, and neither of them had any control of the holdings of the other, or of any other person or persons, and neither of them was under any promise or obligation to the other, or to any person, to hold, 123
use, or vote his stock otherwise than as he should, from time to time, determine to be best for his own individual interest.

Except as herein admitted and averred, this defendant denies each and every allegation of subdivision II of the petition.

III.

This defendant admits that the Northern Pacific Company owned and operated a railway from Ashland, in Wisconsin, via Duluth, and from St. Paul, across Minnesota, North Dakota, Montana, Idaho, and Washington, and into Oregon, passing 124
through Helena, in the State of Montana, and Spokane, in the State of Washington, and extending to Tacoma and Seattle in Washington, and to Portland in Oregon; and that the Great Northern Company operated lines of railway extending from St. Paul, in the State of Minnesota, across said State and North Dakota, Montana, Idaho, and Washington to Everett and Seattle in Washington, passing through Spokane in that State.

It admits that the said lines so operated by said companies connected with other railway lines, and that, either directly or

125 by means of such other railway lines, they connected with lines of steamships on the Great Lakes and the ocean; and that the mileage operated by said companies aggregated about fifty-five hundred (5,500) miles for the Northern Pacific Company and about forty-one hundred and twenty-eight (4,128) miles for the Great Northern Company.

It denies that the lines operated by said companies are parallel or competing, except for the short distances and to the limited extent hereinafter mentioned, and denies that said companies were engaged in active competition with each other, ex-
126 cept in the manner and to the extent hereinafter stated.

Except as hereinabove and hereinafter stated, it denies each and every allegation in subdivision III of said petition.

IV.

This defendant admits and avers that prior to 1893 those portions, and those portions only, of the lines of the Northern Pacific Company which had been built and were operated by virtue of the act of Congress incorporating the Northern Pacific Railroad Company, approved July 2, 1864, were owned
127 and operated by the last-named company, and that in the year 1893 that company became insolvent and its lines passed into the hands of receivers appointed by various Federal courts.

It admits that while in this condition a contract was made, as set forth in the report of the Pearsall case, referred to in the petition. It avers that said contract was made under and in conformity with the provisions of the act of incorporation of the Great Northern Company, and that the only objection made to the validity of the contract was that the provisions in said charter under which it was made had been repealed by subse-
128 quent general laws of the State. It denies that the case, or that the decision therein, is correctly stated in the petition. And it avers that neither the said contract nor the issues raised and decided in the said case have any relevancy to the matters in controversy in this case.

V.

This defendant admits and avers that in the winter and spring of 1901 the defendant railway companies, for the purpose of promoting their several interests and the interests of

the country traversed by their lines and by those of the Chicago, 129
Burlington and Quincy Railroad Company, purchased in equal parts the stock of the last-named company to the amount and at the price and upon the terms of payment stated in the petition. It admits that the lines operated by the Chicago, Burlington and Quincy Railroad Company and its connections are substantially as stated in the petition. It denies that what is called in the petition the Burlington System was or is parallel to or competing with what is therein called the Union Pacific System, but admits that some of the lines of each system compete with some lines of the other. 130

It denies that said purchase of stock was made in contemplation of the ultimate placing of the Great Northern and Northern Pacific systems under a common source of control, or that it was made for any other motive or with any other purpose than as hereinafter stated.

Except as herein admitted, it denies each and every allegation in subdivision V of the petition.

VI.

This defendant denies that prior to its organization the defend- 131
ants James J. Hill or J. Pierpont Morgan, or said Hill and Morgan, or any persons associated with them, or either of them, owned or controlled a majority of, or held a controlling interest in, the stock of either of said railway companies.

It denies that said persons, or that any of the persons concerned in its organization, contrived or intended any of the things alleged in subdivision VI of the petition or entered into any agreement or conspiracy to do any of the things charged in said subdivision.

It admits and avers that said James J. Hill and other holders 132
(not exceeding ten in number) of the stock of the Great Northern Company, but not including the defendants Morgan, Bacon, or Lamont, did plan its organization with an authorized capital of four hundred million dollars ($400,000,000) for the purposes, and those only, set forth in its certificate of incorporation. It denies that James J. Hill and J. P. Morgan agreed between themselves, or with other stockholders of either of the defendant railway companies, or with either of said railway companies, or

133 with anyone whomsoever, that a controlling interest of the stock of either of said railway companies should be turned over or transferred to this defendant, whether in exchange for its stock or otherwise.

It denies that any of the matters stated in said subdivision VI of the petition were contemplated or intended, or have resulted, or will result, from its formation and operation. And it denies the allegation that it is the duty of the directors of said railway companies to pursue a policy which will promote the interest of both systems at the expense of the public.

134 It alleges that the motives and intentions of the persons so forming this defendant were and are such, and such only, as are in this answer stated, and it denies each and every allegation in subdivision VI of the petition not herein expressly admitted or specifically denied.

VII.

This defendant admits its formation under the laws of New Jersey, with the articles, a copy of which is attached to the petition, and that the provisions of said articles were designedly inserted therein and were fully authorized by the general corporation laws of that State. And it says that the exercise of the powers of a stockholder provided for in said articles was not, as wrongly stated in the petition, confined to the stock of the defendant railway companies which this defendant might hold. It avers that the clause in said articles, partially quoted in paragraph VII of the petition, was not intended to, and does not, enlarge its powers, as the same are set forth in the preceding clauses of said articles, but makes clear its power to do such acts as making or procuring advances of money to any corporation whose securities are held by it, the indorsement or guaranty by it of the obligations of such corporation, becoming surety therefor, or in any lawful manner using its name or resources in aid of such corporation.

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VIII.

This defendant admits and avers that on or about the 14th day of November, 1901, its directors and officers were elected, and among them the defendant James J. Hill as a director and president, but denies that he was or is the controlling power in the management of the Great Northern Company.

It admits and avers that thereafter the defendant James J. 137
Hill and other stockholders of the Great Northern Company, severally and each acting for himself alone, and without any agreement to that effect with any other stockholder, sold to this defendant a large amount of Great Northern stock at one hundred and eighty dollars ($180) per share in exchange for stock of this defendant at par, but it avers that the stock so sold was not within twenty-six million dollars ($26,000,000) of a majority of the stock of the Great Northern Company.

It admits and avers that thereafter and about November 22, 1901, it offered like terms of purchase to the other shareholders 138
of the Great Northern Company, the offer to hold good for sixty days from its date, and that many of the shareholders of that company, each acting for himself alone, accepted such offer and made such sale.

It admits and avers that the defendant J. P. Morgan and other shareholders of the Northern Pacific Company sold to the defendant a majority of the stock of the Northern Pacific Company; and that this defendant has received such dividends as have been paid on the shares held by it, in the same manner and at the same rate as other shareholders; but it denies that 139
it has acted, whether as owner of stock or otherwise, in the management or direction of either of said railway companies or in receipt or control of the earnings of either of them, and it avers that no change whatever has taken place in the management of the said railway companies, or either of them, and that each of them is managed by the same board of directors and officers as existed before the organization of this defendant.

It denies that any of the things done by the defendants James J. Hill and J. Pierpont Morgan, or by either of them, or by this defendant or its promoters, directors, officers, or stock- 140
holders, or any of them, were done in pursuance of the pretended combination or conspiracy alleged in subdivision VIII of the petition, or as an instrumentality to effect the purposes thereof, and it denies that by reason of the matters or any of them in the petition alleged a virtual or any consolidation of said defendant railway companies or their business has been effected or intended; and it denies any conspiracy or combination in restraint of trade or commerce among the States, or with foreign nations, or that the defendants or any of them are

141 attempting or intending to monopolize or restrain any such trade or commerce.

IX.

It denies each and every allegation in subdivision IX of the petition.

X.

This defendant says that it does not know and can not set forth how much additional stock of either defendant railway
142 company it is likely to acquire, since each acquisition of shares by it depends, among other contingencies, on the willingness of the holders of the said stock to sell it upon terms which this defendant may be willing to accept.

XI.

This defendant says it has bought and paid for and has caused to be transferred to it upon the records of the Great Northern Company, in accordance with the by-laws of that company, about five-twelfths ($\frac{5}{12}$) of the shares of that com-
143 pany's stock; and has also negotiated for, but has not yet caused to be presented to the Great Northern Company for transfer upon its records, other shares of the stock of that company aggregating about four-twelfths ($\frac{4}{12}$) of the total amount of its stock, but has not acquired a right to vote as stockholder of the Great Northern Company on stock not so transferred. This defendant, in acquiring shares of the Great Northern Company and of the Northern Pacific Company, dealt solely with the separate owners of the said shares in their respective individual capacities. It has no knowledge of any agreement, prom-
144 ise, or understanding between any of the holders of said stock concerning the sale thereof to it, and it denies that any such agreement, promise, or understanding was ever made. All the sales and transfers of the said stock to this defendant were absolute and without any reservation of any right or interest in any share thereof to the seller or to any other person.

This defendant has not paid for all the stock of the Great Northern Company and of the Northern Pacific Company acquired by it in shares of its own stock, but, on the contrary, has expended upward of forty million dollars ($40,000,000)

cash in the making of such purchases. Every share of the 145
Great Northern Company and the Northern Pacific Company acquired by this defendant has been, and so long as it remains the property of this defendant will continue to be, held and owned by it in its own right, and not under any agreement, promise, or understanding on its part, or on the part of its stockholders or officers, that the same shall be held, owned, or kept by it for any period of time whatever, or under any agreement that in any manner restricts its right and power immediately to sell or otherwise dispose of the same, or that restricts or controls to any extent any use of the same, which might lawfully 146
be exercised by any other owner of said stocks. There has been and is no agreement, promise, or understanding between any of the holders of said stock so acquired by this defendant, or between any of them and any other person or corporation, that any of said shares should at any time be held, used, or voted by this defendant for the purpose of combining or consolidating or placing under one common management or control the railways of the Great Northern Company and of the Northern Pacific Company, or the business thereof, or for the purpose of monopolizing or restraining traffic or competition between 147
the said railways. Many stockholders of the said companies have not sold, and may never sell, their shares to this defendant; and the said railway companies have not nor have any of the directors of either of them, by any act, formal or informal, or by suggestion, ever solicited any of their respective shareholders to sell their shares to this defendant. This defendant was organized in good faith, and it denies all the allegations in subdivision XI of the petition.

XII.

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This defendant denies each and every allegation in subdivision XII of the petition.

XIII.

This defendant denies each and every allegation in subdivision XIII of the petition.

SECOND.

Further answering the petition, this defendant, upon information and belief, says that the facts as to the purchase of the

149 shares of the Chicago, Burlington and Quincy Railroad Company (hereinafter called the Burlington Company) and the planning and forming of this defendant and the motives, intentions, and purposes of the persons and corporations concerned in these enterprises, or either of them, were not as erroneously stated in the petition, but were and are as follows:

I.

When projecting the line of the Great Northern Company to the Pacific coast, that company and its directors contemplated
150 the necessity of creating for the line not merely State and interstate, but an international commerce. Nearly all the country traversed or reached by the line was then but sparsely settled or not settled at all. It was principally agricultural, grazing, or timber land, with mineral deposits in the mountain ranges believed to be large and valuable, but not developed or explored. Whatever commodities the region might furnish for carriage would be raw material, of great weight and bulk in proportion to its value, which would not bear transportation to market except at a low mileage rate, such as could be made possible
151 only by every practicable reduction in the cost of transportation. The available market for all such products was far from the places of production.

In Washington and Oregon are the largest and finest bodies of standing timber in the United States, the best market for which is in the prairie States of the Mississippi Valley east of the Rocky Mountains; but the lumber and shingles from the Pacific coast would not bear the cost of transportation to those States if the cars carrying them had to be hauled back empty, or nearly so, for a distance of from 1,500 to 2,000 miles. And
152 the same is true of the other products. On the other hand, the unoccupied or sparsely populated country along the line, or reached by it, could not furnish a market for commodities enough to load the returning cars; the result being that unless the company could secure traffic for carriage beyond the Pacific coast no great traffic either way could exist or be created.

To meet these conditions the Great Northern Company not only went to great additional expense in the construction of its line to obtain gradients lower than those of any other line to the Pacific coast, but also made great efforts to create and

increase in the countries of eastern Asia a demand for the 153
products of this country; and soon after the completion of its railway in 1893 it induced a Japanese company to run a line of steamships, connecting with its railway, on the route between Seattle and ports of Japan, China, and Russian Siberia, and succeeded in creating and has since been actively engaged in building up a commerce in which the flour manufactured along its line, cotton (both raw and manufactured), iron and steel (especially steel rails and plates), machinery, and such other manufactures of this country as a market could be found or made for in eastern Asia, have been carried to oriental ports, 154
and return cargoes of such oriental products as are consumed in this country have been brought back. A large west-bound, as well as an increased east-bound, traffic has thus been secured by the company, enabling it to make such rates on lumber and other products of the country served by it as permit them to be shipped to Eastern markets with a profit to the shippers.

One year before the Burlington purchase, this oriental traffic had reached such proportions that the Great Northern Company caused to be begun the construction of steamships to run from Seattle to ports in Japan, China, and the Philippines, which, 155
from their great carrying capacity (being the largest in the world), will be able to carry at very low rates (if full cargoes can be secured), and thus enable the company to move the largest volume of west-bound traffic (and also of east-bound traffic) at the lowest cost.

In the interstate and international commerce which the Great Northern Company has thus built up, it competes both in this country and on the ocean with the other transcontinental lines (including the Canadian Pacific), and at the oriental ports it competes for commerce of the world. Its rates are and must 156
be made in competition with the rates of ocean carriers and by way of the Suez Canal.

The policy thus followed by the Great Northern Company in building up an international, and thereby interstate, commerce has been followed by the Northern Pacific Company since its reorganization in 1896.

In creating and maintaining this competitive interstate and international commerce both the Great Northern Company and the Northern Pacific Company were hampered and placed at a

157 disadvantage with the other transcontinental railways, as well as with European competitors, by the want of sufficient direct connection with the territory offering the best markets for the products of the country along their lines, and with the places of production and great centers of distribution from which their traffic must be supplied. For many months before the purchase of the Burlington shares they had considered the best means of getting closer to such markets and sources of supply. The lines of the Burlington, better than those of any other company, ful-
158 filled the requirements of both the Great Northern Company and the Northern Pacific Company in respect of markets for east-bound and freight for west-bound traffic. The Burlington lines traverse the treeless States of Illinois, Iowa, Missouri, Nebraska, Wyoming, Kansas, and Colorado, which afford the best markets for the lumber of the Pacific coast. They reach Denver, Kansas City, Omaha, and Aurora, where are located the principal smelters of silver-lead ores, such as are mined near the lines of the defendant railway companies.

They reach Omaha, Kansas City, and Chicago, where are the great packing houses and the great markets for the cattle and
159 sheep of the ranges of North Dakota, Montana, Wyoming, Idaho, Oregon, and Washington.

They reach St. Louis and Kansas City, connecting there with lines traversing the cotton States, from which come raw and manufactured cotton required for shipment to China and Japan.

At Chicago and St. Louis they connect with the lines which reach the points of supply of manufactured iron, steel, machinery, and other manufactured articles that find a market in Japan and China.

The Burlington line southward from Minneapolis and St. Paul
160 along the Mississippi River reaches the great coal deposits of southern Illinois, the largest west of Pennsylvania and West Virginia; and its light gradients and consequent low cost of transportation make it possible to supply such coal to points on the lines of each defendant railway company east of the Missouri River, relieving the people and the railways of that territory from entire dependence upon the Pennsylvania and West Virginia mines, the supply from which is yearly becoming more costly and less certain.

The price paid for said Burlington stock was lower per mile

of main track covered by the stock than that for which the 161
stock of any other large and well established system in the same general territory could then have been bought.

The purchase of the Burlington stock by the Northern Pacific and Great Northern companies in equal parts served each company as well as if it were the sole owner of such stock, while such purchase might have been beyond the financial means of either company by itself.

The Great Northern and Northern Pacific companies therefore each purchased an equal number of shares of the Burlington stock as the best means and for the sole purpose of reaching 162
the best markets for the products of the territory along their lines, and of securing connections which would furnish the largest amount of traffic for their respective roads, increase the trade and interchange of commodities between the regions traversed by the Burlington lines and their connections and the regions traversed or reached by the Great Northern and Northern Pacific lines, and by their connecting lines of shipping on the Pacific coast. These connections and such interchange of traffic were deemed to be and are indispensable to the maintenance of their business, local as well as interstate, and to the 163
development of the country served by their respective lines, and of like advantage to the Burlington lines and the country served by them, and strengthen each company in the competition with the more southerly lines to the Pacific coast, with the Canadian Pacific Railway, and with European carriers, for the trade and commerce of the Orient.

In such purchase there was no purpose to lessen any competition of the Burlington lines with those of either of the purchasers, for they are not competitive, or to lessen any competition between the purchasers. Such purchase was not intended to 164
have, and it can not have, any such effect.

The purchase of the Burlington stock was not made in view of the formation of this defendant, but solely from the motives and with the purposes already stated.

II.

The project of forming a holding company of any kind was not the result, in any way, of the failure of the plan which was

165 defeated by the decision of the Supreme Court in the Pearsall case. There was no connection whatever between the two.

The project of a holding company which finally developed into the formation of this defendant had its inception years before that date, among several gentlemen, not exceeding ten in number, who had been large shareholders in the Great Northern Company and its predecessor, the St. Paul, Minneapolis and Manitoba Railway Company; some of them from the original organization of the latter company in 1879, and others from dates not long after that time. They have never held a major-
166 ity of the stock of the Great Northern Company, but have taken an active interest in its policy and administration; have aided it when necessary in financing its operations; have acted together in promoting its interests; have, with some exceptions, served from time to time as directors and officers (Mr. Hill having been president of the successive companies since 1882); and by reason of their active interest in the company and services to it have influenced to a large degree its policy and management. As far back as 1893, most of these gentlemen being well advanced and some far advanced in years, they
167 began to discuss together what would be the effect upon the policy which under their influence the company had pursued with great benefit to its shareholders and the public, should their holdings by death or otherwise become scattered, and by what means their holdings could be kept together, so as to secure the continuance of such policy in the management of the company. It was considered that if a company should be formed to which they might transfer their individual holdings, their shares were likely to be held together, so long as the majority in the holding company should so wish, and this would
168 tend to give stability to the policy of the Great Northern Company, be of aid to it in financial operations, and maintain the value of their investments. These conclusions were the result of various consultations among the persons mentioned, or some of them, but no definite agreement was made for forming such a company or binding anyone to transfer his shares to it if formed.

From time to time, beginning with the reorganization of the Northern Pacific Company in 1896, Mr. Hill and said other Great Northern shareholders who had discussed with him

the plan of forming a holding company, had made large pur- 169
chases of Northern Pacific shares, individually, each for himself, without any concerted action, and solely as investments. About May 1, 1901, their aggregate holdings of the common stock of the Northern Pacific Company amounted to nearly twenty million dollars ($20,000,000) of the eighty million dollars ($80,000,000) common stock of the company, which also had a preferred stock, amounting to seventy-five million dollars ($75,000,000), with the same voting power as the common stock. At this time the firm of J. P. Morgan & Co. held about six million dollars ($6,000,000) of the common stock. In the 170
fall of 1900 Mr. Hill and said Great Northern shareholders discussed the question of putting their holdings of Northern Pacific stock into the proposed holding company, as well as the suggestion that all the other stockholders of the Great Northern Company should be given the opportunity of selling and transferring their shares to the holding company, and that its capital stock should be made large enough to enable it to buy such holdings, though it was not known that the holders of any considerable amount of Great Northern stock, other than those above named, would desire to make such transfer. 171

At the time of the purchase of the Burlington shares it was not contemplated by either purchasing company or its shareholders that any alliance between the purchasing companies, or among their shareholders, was needed to preserve to each company its fair share of the advantages secured by the purchase. It was thought that the manifest interest of each company rendered any further guaranty or security needless. But pending or just after the conclusion of the negotiations for the Burlington stock, parties acting in the interest of the Union Pacific Railway System did purchase Northern Pacific shares, both 172
common and preferred, to the amount of about seventy-eight million dollars ($78,000,000), being a clear majority of the entire capital stock of that company. The apparent intent of such purchase was to defeat and, if successful, it would have defeated, the carrying out of the purposes for which the Burlington shares had been bought by the Great Northern and Northern Pacific companies, and the development of the interstate and international commerce of each of them, and would have subordinated the policy of each to an interest adverse to

173 both the Great Northern and Northern Pacific companies, and to the public served by their lines.

To protect the interests of the shareholders of the Northern Pacific Company, J. P. Morgan & Co. made additional purchases of Northern Pacific common stock, which, with the holdings in said stock of Mr. Hill and other Great Northern shareholders who had discussed with him the plan of forming a holding company, constituted about forty-two million dollars ($42,000,000), being a majority of the common stock. In view of the injury apprehended to both companies, and to their
174 shareholders, and the better to protect their interests in the future, the Great Northern shareholders holding Northern Pacific shares, deemed it advisable that the projected holding company should have power to purchase not only their own Great Northern and Northern Pacific shares, but also the shares of such other Great Northern and Northern Pacific shareholders as might wish to sell their stock to said holding company, and the shares of companies already formed, and others that might be formed, for the purpose of aiding the traffic or operations of the Great Northern and Northern Pacific companies, respec-
175 tively. At this time it was not expected by any of the persons concerned that any Northern Pacific shares except the said forty-two million dollars ($42,000,000) would be acquired by the proposed holding company. The organization of such company was not dependent on any agreement that it should acquire a majority of the shares of either defendant railway company. It would have been organized if the Burlington purchase had not been made, and if its promoters had had no other shares to transfer to it than the thirty-four million dollars ($34,000,000) Great Northern stock and the twenty million
176 dollars ($20,000,000) Northern Pacific stock held by them on May 1, 1901. It was not known that all or how many of the shareholders of either of the railway companies would be likely to transfer their shares to this defendant when formed. After its organization this defendant bought and still holds about one hundred and fifty million dollars ($150,000,000) of the stock of the Northern Pacific Company; and it has also purchased and negotiated for the purchase of the stock of the Great Northern Company, as hereinbefore stated. Neither the said persons who were concerned in the formation of this defendant, nor the

said persons from whom it has acquired the stocks of said rail- 177
way companies, nor this defendant itself since its formation, nor its stockholders, directors, or officers, have planned or intended that the stock of said railway companies acquired by this defendant, or any part thereof, should be held, used, or voted by it, or by its officers, agents or proxies, for the purpose of combining, consolidating or placing under one common management or control the railways of the Great Northern and Northern Pacific companies, or the business thereof; or for the purpose of monopolizing or restraining competition between the said railway companies; or for any other purpose than the election by each of 178
said railway companies of a competent and distinct board of directors, able and intending to manage each of them independently of the other, and for the benefit of their shareholders and of the public. By the acts of the legislature of the State of Minnesota incorporating the Great Northern Railway Company, and by the acts of the legislature of the State of Wisconsin incorporating the Northern Pacific Railway Company, it is, in substance, provided that the business and affairs of each railway company shall be managed by a board of directors to be elected by the stockholders, and that all the powers of each corporation 179
relating to said matters shall be vested in such board.

Every share of stock issued by this defendant has been issued to the persons and corporations receiving the same in good faith, for full value paid to it, either in cash or its equivalent, and in accordance with the provisions of its articles of incorporation and with the laws of the State of New Jersey. No agreement, promise, or understanding has been made between this defendant and any of its stockholders, or between its stockholders themselves or any of them, or between said stockholders or any other persons or corporations, that the stock of this defendant 180
should be held, used, or voted other than by each stockholder, separately and individually, and in such way as he should see fit; and there has been no agreement, promise, or understanding between said stockholders themselves, or any of them, or between said stockholders and any other person or corporation, that they or any of them should use, hold, or vote their stock in this defendant in association or for any common purpose or object. The owners and holders of stock of this defendant are

more than thirteen hundred (1,300) in number, and the ownership of the stock is being changed from day to day by sales and transfers in the usual course of dealing. The said persons who formed or were otherwise concerned in the formation of this defendant have never, all together, held, owned or otherwise controlled an amount of stock of the said company equal to so much as one-third of the whole amount thereof now outstanding. This defendant has no contract or obligation to purchase or acquire any shares whatever in either railway company, in addition to those which it has purchased or negotiated to purchase, as above stated. Its authorized capital was fixed by persons who planned its organization to enable it to give to each stockholder in each of the defendant railway companies an opportunity to sell his stock to it, should he see fit to do so, and should this defendant desire to acquire it. The sum fixed was deemed ample by those who planned the formation of this defendant to furnish the means to pay for all such shares as would likely be acquired by it, and to leave remaining a large amount to be used for the purchase of stock in other corporations, not common carriers, which this defendant might consider beneficial to acquire. This defendant was not formed as a scheme or a device to evade the act of Congress known as the "antitrust act," or any other law whatever, but solely for the purposes hereinbefore stated.

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III.

This defendant was not formed, nor did any of those concerned in its formation, nor any of those who sold their shares of stock to it, have any purpose or intention, to restrain trade or commerce, or to lessen competition between said railway companies, or to monopolize traffic in any manner whatever; nor can any such results follow from the formation or operation of this defendant. In point of fact, since the organization of this defendant rates on the defendant railway companies' lines, including rates to and from points common to both, have voluntarily been so reduced as to decrease their earnings by upwards of a million of dollars annually. For all interstate commerce on the lines of either the defendant railway companies, except traffic beginning and ending on their own lines respectively, the rates are fixed by joint tariffs with connecting lines.

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In respect to all such traffic neither of the defendant companies 185
has ever had, or can have, any independent rate-making power or control of traffic or rates. All joint tariffs with other companies to or from points common to the lines of the defendant railway companies have always been, and necessarily must be, the same, whether the traffic is carried by one or the other of said companies. The total amount of all other interstate traffic, that is, traffic between common points on the two roads, which is not competitive both as to rates and quality of service with other carriers having equal rate-making power with them, is less than 2 per cent of the total interstate traffic of the two 186
companies.

IV.

The sale and transfer of property, whether in the form of shares of corporate stock or otherwise, has never been adjudged to be, and is not, in violation of the act of Congress of July 2, 1890, known as the "antitrust act."

This defendant is not a railroad company, and it has no power to operate or manage railways or make or control rates of transportation, nor to monopolize or restrain traffic of any kind. So far from intending to violate any provision of said 187
act of Congress, the persons who were concerned in organizing this defendant and those who have sold their shares to it had every reason to believe and did believe that such sales were not in any way in contravention of that act. In common with the general public, they were aware that during the eleven years since the passage of that act in many instances the stock of a competing railway company has been acquired by its competitor or the shareholders thereof, such acquisition including many of the principal railways doing business throughout the country. This has been done without objection from any 188
branch of the Government of the United States, and has invariably proven beneficial to the railway companies concerned and to the public, and those making sales of stocks to this defendant had no reason to believe that such sales were open to any legal objection or question whatever.

V.

This defendant was not organized for the purpose of acquiring a majority of the stock of either the Great Northern or the

189 Northern Pacific Company, but merely to purchase the stock of those who wished to sell, as above stated, and was not organized for the purpose of controlling railway rates in the slightest degree, and has not had and can not have any such effect. The transactions referred to in the petition have consisted in the organization of a lawful corporation and the purchase of property by it. All acts done in relation to the organization of this defendant and in the conduct of its business have been expressly authorized by law, and have had no effect whatever to restrain trade or commerce among the several States or with foreign
190 nations. If these lawful transactions should hereafter have any effect to restrain trade or commerce among the several States or with foreign nations (which is hereby denied), that effect would be merely indirect, remote, incidental, and collateral, and not intended, and as nothing compared with the great expansion of the volume of interstate and international commerce which was intended, and which this defendant believes is destined to result from the enterprise of the two railway companies, that culminated in the purchase of the Burlington stock.

And this defendant says:

191 1. The "antitrust act" was not intended to prevent or defeat an enterprise in aid of a great competitive interstate and international commerce merely because such enterprise may carry with it the possibility of incidental restraint upon some commerce, trifling both as respects territory and volume.

2. Nor was the act intended to limit the power of the several States to create corporations, define their purposes, fix the amount of their capital, and determine who may buy, own, and sell their stock.

3. Otherwise construed, the act would be unconstitutional,
192 because:

The power to regulate commerce with foreign nations and among the States does not give Congress the power to regulate any of the matters above mentioned in respect to corporations created by the States; and because

Persons may not be deprived of their property without due process of law, by taking from them the right to sell it as their interest may suggest.

VI.

There is a defect of necessary parties defendant, because, as already set forth, the persons who made sales of stock of the said railway companies to this defendant were numerous, exceeding more than 1,300 in number, and few of them had any connection whatever in the planning or forming of this defendant, and in their absence from this litigation no decree can be made affecting their rights in the premises.

VII.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by the said petition charged, without this, that if there is any other matter, cause, or thing in the petition contained material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, the same is not true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

THE NORTHERN SECURITIES COMPANY,
By JOHN W. GRIGGS,
GEO. B. YOUNG,
Solicitors and Counsel.

14414—03——4

196 Entered 789 C. E.

Circuit court of the United States for the district of Minnesota.

THE UNITED STATES OF AMERICA, complainants,
against
NORTHERN SECURITIES COMPANY, THE Great Northern Railway Company, The Northern Pacific Railway Company, and others, defendants. } May, 1902.

197 ANSWER OF THE DEFENDANTS JAMES J. HILL, WILLIAM P. CLOUGH, D. WILLIS JAMES, JOHN S. KENNEDY, AND GEORGE F. BAKER.

GEORGE B. YOUNG,
Solicitor for the Defendants.

(Endorsed:) Filed May 5th, 1902. Henry D. Lang, clerk.

In the circuit court of the United States for the district of Minnesota.

198 THE UNITED STATES OF AMERICA, complainants,
vs.
NORTHERN SECURITIES COMPANY, THE Great Northern Railway Company, The Northern Pacific Railway Company, and others, defendants.

THE ANSWER OF DEFENDANTS JAMES J. HILL, WILLIAM P. CLOUGH, D. WILLIS JAMES, JOHN S. KENNEDY, AND GEORGE F. BAKER TO THE PETITION OF THE UNITED
199 STATES OF AMERICA.

I.

They admit and aver that the defendant railway companies were at the time mentioned in the petition and are now common carriers employed in transportation of freight and passengers within and among those States of the United States in which the railways operated by them are situated, and not further or otherwise, but were and are engaged in commerce among the several States and with foreign nations.

II. 200

They admit and aver that prior to November 13, 1901, the outstanding capital stock of the Great Northern Railway Company was owned by more than eighteen hundred (1,800) separate owners, and the outstanding capital stock of the Northern Pacific Railway Company was owned by more than thirty-five hundred (3,500) separate owners; and that among the shareholders of the Great Northern Railway Company (hereinafter called the Great Northern Company) were the defendants Hill, Clough, James, Morgan, and Kennedy; and that among the shareholders of the Northern Pacific Railway Company (hereinafter called 201 the Northern Pacific Company) were the defendants Morgan, Bacon, Baker, Hill, Kennedy, James, and Lamont. They aver that the persons named and meant to be designated as owning, controlling, or as being associated in the ownership and control of a majority of the stock of the Great Northern Company did not at any time, nor in any manner, own or control a majority of said stock, nor as much as one-third (⅓) part thereof. Their holdings in said stock were at all times separate and individual, and not in association with each other, or with any other person or persons, and neither of them was under any obligation or 202 promise to any of the others, or to any other person, to hold, use, or vote his stock otherwise than as he should from time to time determine to be best for his own individual interest. The persons named and meant to be designated as owning, controlling, or as being associated in the ownership and control of a majority of the stock of the Northern Pacific Company did not, at the date named, nor at any time, or in any manner, own or control a majority of such stock, nor as much as one-third (⅓) part thereof. Their holdings in said stock were at all times separate and individual, and neither of them had any control of 202 the holdings of the other, or of any other person or persons, and neither of them was under any promise or obligation to the other, or to any person, to hold, use, or vote his stock otherwise than as he should from time to time determine to be best for his own individual interest.

Except as herein admitted and averred, they deny each and every allegation of subdivision II of the petition.

204 III.

They admit that the Northern Pacific Company owned and operated a railway from Ashland, in Wisconsin, via Duluth, and from St. Paul, across Minnesota, North Dakota, Montana, Idaho, and Washington, and into Oregon, passing through Helena, in the State of Montana, and Spokane, in the State of Washington, and extending to Tacoma and Seattle, in Washington, and to Portland, in Oregon; and the Great Northern Company operated lines of railway extending from St. Paul, in the State of Min-
205 nesota, across said State and North Dakota, Montana, Idaho, and Washington to Everett and Seattle, in Washington, passing through Spokane, in that State.

They admit that the said lines so operated by said companies connected with other railway lines, and that, either directly or by means of such other railway lines, they connected with lines of steamships on the Great Lakes and the ocean; and that the mileage operated by said companies aggregated about fifty-five hundred (5,500) miles for the Northern Pacific Company and about forty-one hundred and twenty-eight (4,128) miles for the
206 Great Northern Company.

They deny that the lines operated by said companies are parallel or competing, except for the short distances and to the limited extent hereinafter mentioned, and deny that said companies were engaged in active competition with each other, except in the manner and to the extent hereinafter stated.

And except as hereinabove and hereinafter stated, they deny each and every allegation in subdivision III of said petition.

IV.

207 They admit and ever that prior to 1893 those portions, and and those portions only, of the lines of the Northern Pacific Company which had been built and were operated by virtue of the act of Congress incorporating the Northern Pacific Railroad Company, approved July 2, 1864, were owned and operated by the last-named company, and in the year 1893 that company became insolvent and its lines passed into the hands of receivers appointed by various Federal courts.

They admit that while in this condition a contract was made, as set forth in the report of the Pearsall case, referred to in the

petition. They aver that said contract was made under and in 208
conformity with the provisions of the act of incorporation of the Great Northern Company, and that the only objection made to the validity of the contract was that the provisions in said charter under which it was made had been repealed by subsequent general laws of the State. For the terms of the decision of the Supreme Court of the United States, they refer to the report of the case. They deny that the case, or that the decision therein, is correctly stated in the petition. And they aver that neither the said contract nor the issues raised and decided in the said Pearsall case have any relevancy to the matters in contro- 209
versy in this case.

V.

They admit and aver that in the winter and spring of 1901 the defendant railway companies, for the purpose of promoting their several interests and the interests of the country traversed by their lines and by those of the Chicago, Burlington and Quincy Railroad Company, purchased in equal parts the stock of the last-named company to the amount and at the price and upon the terms of payment stated in the petition. They admit 210
that the lines operated by the Chicago, Burlington and Quincy Railroad Company and its connections are substantially as stated in the petition. They deny that what is called in the petition the Burlington System was or is parallel to or competing with what is therein called the Union Pacific System, but admit that some of the lines of each system compete with some lines of the other.

They deny that said purchase of stock was made in contemplation of the ultimate placing of the Great Northern and Northern Pacific Systems under a common source of control, or 211
that it was made for any other motive or with any other purpose than is hereinafter stated.

Except as herein admitted, they deny each and every allegation in subdivision V of the petition.

VI.

They deny that prior to the organization of the Northern Securities Company (hereinafter called the Securities Company)

212 the defendants James J. Hill or J. Pierpont Morgan, or said Hill and Morgan, or any persons associated with them, or either of them, owned or controlled a majority of, or held a controlling interest in, the stock of either of said railway companies.

They deny that said persons, or that any of the persons concerned in the formation of the Securities Company, contrived or intended any of the things alleged in subdivision VI of the petition or entered into any agreement or conspiracy to do any of the things charged in said subdivision.

They admit and aver that said James J. Hill and other hold-
213 ers (not exceeding ten in number) of the stock of the Great Northern Company, but not including the defendants Morgan, Bacon, and Lamont, did plan the formation of the Northern Securities Company, with an authorized capital of four hundred million dollars ($400,000,000), for the purposes, and those only, set forth in its certificate of incorporation. They deny that James J. Hill and J. P. Morgan agreed between themselves, or with other stockholders of either of the defendant railway companies, or with either of said railway companies, or with the Securities Company, or with any one whomsoever, that a con-
214 trolling interest of the stock of either of said railway companies should be turned over or transferred to the Securities Company, whether in exchange for its stock or otherwise.

They deny that any of the matters stated in subdivision VI of the petition were contemplated or intended in the formation of the Securities Company, or have resulted or will result from its formation and operation. And they deny the allegation that it is the duty of the directors of said railway companies to pursue a policy which will promote the interests of both systems at the expense of the public.

215

VII.

They admit the organization of the Securities Company on November 13, 1901, under the laws of New Jersey, with the articles a copy of which is attached to the petition, and that the provisions of said articles were designedly inserted therein and were fully authorized by the general corporation laws of that State. And they say that the exercise of the powers of a stockholder provided for in said articles was not, as wrongly

stated in the petition, confined to the stock of the defendant railway companies which the Securities Company might hold. 216

They aver that the clause in said articles partially quoted in paragraph VII of the petition was not intended to and does not enlarge the powers of said corporation as the same are set forth in the preceding clauses of said articles, but makes clear the power of the company to do such acts as making or procuring advances of money to any corporation whose securities are held by it, the indorsement or guaranty by it of the obligations of such corporation, becoming surety therefor, or in any lawful manner using its name or resources in aid of such corporation. 217

VIII.

They admit and aver that on or about the 14th of November, 1901, the Securities Company was organized by electing directors and officers, and among them the defendant, James J. Hill, as a director and president, but deny that he was or is the controlling power in the management of the Great Northern Company.

They admit that thereafter the defendant, James J. Hill, and certain other stockholders of the Great Northern Company, severally and each acting for himself alone, and without any agreement to that effect with any other stockholder, sold to the Securities Company a large amount of Great Northern stock at one hundred and eighty dollars ($180) per share in exchange for stock of the Securities Company at par, but they aver that the stock so sold was not within twenty-six million dollars ($26,000,000) of a majority of the stock of the Great Northern Company. 218

They admit that thereafter and about November 22, 1901, the Securities Company offered like terms of purchase to the other shareholders of the Great Northern Company, the offer to hold good for sixty days from its date, and that many of the shareholders of that company, each acting for himself alone, accepted such offer and made such sale. 219

They admit that the defendant, J. P. Morgan, and other shareholders of the Northern Pacific Company, sold to the Securities Company a majority of the stock of the Northern Pacific Company, and that the Securities Company has received such dividends as have been paid on the shares held by it in the the same manner and at the same rate as other shareholders; but they

220 deny that the Securities Company has acted, whether as owner of stock or otherwise, in the management or direction of either of said railway companies or in receipt or control of the earnings of either of them, and they aver that no change whatever has taken place in the management of the said railway companies or either of them, and that each of them is managed by the same board of directors and officers as existed before the organization of the Securities Company.

They deny that any of the things done by the defendants, James J. Hill and J. Pierpont Morgan, or by either of them, or
221 by the Securities Company or its promoters, directors, officers, or stockholders, or any of them, were done in pursuance of the pretended combination or conspiracy alleged in subdivision VIII of the petition, or as an instrumentality to effect the purposes thereof, and they deny that by reason of the matters or any of them in the petition alleged a virtual or any consolidation of said defendant railway companies or their business has been effected or intended, and they deny any conspiracy or combination in restraint of trade or commerce among the States or with foreign nations, or that the defendants or any of them are attempting or intending to
222 monopolize or restrain any such trade or commerce.

IX.

They deny each and every allegation in subdivision IX of the petition.

X.

The defendants say that they do not know and can not set forth how much additional stock of either defendant railway company the Securities Company is likely to acquire, since each ac-
223 quisition of shares by it depends, among other contingencies, on the willingness of the holders of the said stock to sell it to the Securities Company upon terms which the latter shall be willing to accept.

XI.

These defendants say that the securities company, in acquiring shares of the Great Northern Company and of the Northern Pacific Company, dealt solely with the separate owners of the said shares in their respective individual capacities. They have

no knowledge of any agreement, promise, or understanding between any of the holders of said stock concerning the sale thereof to the Securities Company, and deny that any such agreement, promise, or understanding was ever made. All the sales and transfers of the said stock to the Securities Company were absolute and without any reservation of any right or interest in any share thereof to the seller or to any other person. 224

There has been and is no agreement, promise, or understanding between any of the holders of said stock so acquired by the Securities Company, or between any of them and any other person or corporation, that any of said shares should at any time be held, used, or voted by the Securities Company for the purpose of combining or consolidating or placing under one common management or control the railways of the Great Northern Company and of the Northern Pacific Company, or the business thereof, or for the purpose of monopolizing or restraining traffic or competition between the said railways. Many stockholders of the said companies have not sold, and may never sell, their shares to the Securities Company; and the said railway companies have not nor have any of the directors of either of them, by any act, either formal or informal, or by suggestion, ever solicited any of their respective shareholders to sell their shares to the Securities Company. They say that the Securities Company was organized in good faith, and they deny all the allegations in subdivision XI of the petition. 225 226

XII.

They deny each and every allegation in subdivision XII of the petition.

XIII.

They deny each and every allegation in subdivision XIII of the petition. 227

SECOND.

Further answering the petition, these defendants say that the facts as to the purchase of the shares of the Chicago, Burlington and Quincy Railroad Company (hereinafter called the Burlington Company) and the projecting and forming of the Securities Company, and the motives, intentions, and purposes

228 of the persons and corporations concerned in these enterprises, or either of them, are not as erroneously stated in the petition, but were and are as follows:

I.

When projecting the line of the Great Northern Company to the Pacific coast that company and its directors contemplated the necessity of creating for the line not merely State and interstate, but an international, commerce. Nearly all the country traversed or reached by the line was then but sparsely
229 settled or not settled at all. It was principally agricultural, grazing, or timber land, with mineral deposits in the mountain ranges believed to be large and valuable, but not developed or explored. Whatever commodities the region might furnish for carriage would be raw material, of great weight and bulk in proportion to its value, which would not bear transportation to market except at a low mileage rate, such as could be made possible only by every practical reduction in the cost of transportation. The available market for all such products was far from the places of production.

230 In Washington and Oregon are the largest and finest bodies of standing timber in the United States, the best market for which is in the prairie States of the Mississippi Valley east of the Rocky Mountains; but the lumber and shingles from the Pacific coast would not bear the cost of transportation to those States if the cars carrying them had to be hauled back empty, or nearly so, for a distance of from 1,500 to 2,000 miles. And the same is true of the other products. On the other hand, the unoccupied or sparsely populated country along the line or reached by it could not furnish a market for commodities
231 enough to load the returning cars; the result being that unless the company could secure traffic for carriage beyond the Pacific coast no great traffic either way could exist or be created.

To meet these conditions the Great Northern Company not only went to great additional expense in the construction of its line to obtain gradients lower than those of any other line to the Pacific coast, but also made great efforts to create and increase in the countries of eastern Asia a demand for the products of this country; and soon after the completion of its railway in

1893 it induced a Japanese company to run a line of steamships, 232
connecting with its railway, on the route between Seattle and ports of Japan, China, and Russian Siberia, and succeeded in creating, and has since been actively engaged in building up, a commerce in which the flour manufactured along its line, cotton (both raw and manufactured), iron and steel (especially steel rails and plates), machinery, and such other manufactures of this country as a market could be found or made for in eastern Asia, have been carried to oriental ports, and return cargoes of such oriental products as are consumed in this country have been brought back. A large westbound, as well as an increased 233
eastbound, traffic has thus been secured by the company, enabling it to make such rates on lumber and other products of the country served by it as permit them to be shipped to Eastern markets with profit to the shipper.

One year before the Burlington purchase this oriental traffic had reached such proportions that the Great Northern Company caused to be begun the construction of steamships to run from Seattle to ports in Japan, China, and the Philippines, which, from their great carrying capacity (being the largest in the world), will be able to carry at very low rates (if full cargoes 234
can be secured), and thus enable the company to move the largest volume of westbound traffic (and also of eastbound traffic) at the lowest cost.

In the interstate and international commerce which the Great Northern Company has thus built up it competes both in this country and on the ocean with the other transcontinental lines (including the Canadian Pacific) and at the oriental ports it competes for commerce of the world. Its rates are, and must be, made in competition with the rates of ocean carriers and by way of the Suez Canal.

235

The policy thus followed by the Great Northern Company in building up an international, and thereby interstate, commerce has been followed by the Northern Pacific Company since its reorganization in 1896.

In creating and maintaining this competitive interstate and international commerce both the Great Northern Company and the Northern Pacific Company were hampered and placed at a disadvantage with the other transcontinental railways, as well as with European competitors, by the want of sufficient direct

236 connection with the territory offering the best markets for the products of the country along their lines, and with the places of production and great centers of distribution from which their traffic must be supplied. And for many months before the purchase of the Burlington shares they had considered the best means of getting closer to such markets and sources of supply. The lines of the Burlington, better than those of any other company, fulfilled the requirements of both the Great Northern Company and the Northern Pacific Company in respect of markets for eastbound and freight for westbound traffic. The
237 Burlington lines traverse the treeless States of Illinois, Iowa, Missouri, Nebraska, Wyoming, Kansas, and Colorado, which afford the best markets for the lumber of the Pacific coast. They reach Denver, Kansas City, Omaha, and Aurora, where are located the principal smelters of silver-lead ores, such as are mined near the lines of the defendant railway companies.

They reach Omaha, Kansas City, and Chicago, where are the great packing houses and the great markets for the cattle and sheep of the ranges of North Dakota, Montana, Wyoming, Idaho, Oregon, and Washington.

238 They reach St. Louis and Kansas City, connecting there with lines traversing the cotton States, from which come raw and manufactured cotton required for shipment to China and Japan.

At Chicago and St. Louis they connect with the lines which reach the points of supply of manufactured iron, steel, machinery, and other manufactured articles that find a market in Japan and China.

The Burlington line southward from Minneapolis and St. Paul along the Mississippi River reaches the great coal deposits of southern Illinois, the largest west of Pennsylvania and West
239 Virginia; and its light gradients and consequent low cost of transportation make it possible to supply such coal to points on the lines of each defendant railway company east of the Missouri River, relieving the people and the railways of that great territory from entire dependence upon the Pennsylvania and West Virginia mines, the supply from which is yearly becoming more costly and less certain.

The price paid for said Burlington stock was lower per mile of main track covered by the stock than that for which the

stock of any other large and well-established system, in the same general territory, could then have been bought. 240

The purchase of the Burlington stock by the Northern Pacific Company and the Great Northern companies in equal parts served each company as well as if it were the sole owner of such stock, while such purchase might have been beyond the financial means of either company by itself.

The Great Northern and Northern Pacific Companies therefore each purchased an equal number of shares of the Burlington stock as the best means and for the sole purpose of reaching the best markets for the products of the territory along their lines and of securing connections which would furnish the largest amount of traffic for their respective roads, increase the trade and interchange of commodities between the regions traversed by the Burlington lines and their connections and the region traversed or reached by the Great Northern and Northern Pacific lines, and by their connecting lines of shipping on the Pacific coast. These connections and such interchange of traffic were deemed to be and are indispensable to the maintenance of their business, local as well as interstate, and to the development of the country served by their respective lines, and of like advantage to the Burlington lines and the country served by them, and strengthen each company in the competition with the more southerly lines to the Pacific coast, with the Canadian Pacific Railway, and with European carriers for the trade and commerce of the Orient. 241 242

In such purchase there was no purpose to lessen any competition of the Burlington lines with those of either of the purchasers, for they are not competitive, or to lessen any competition between the purchasers. Such purchase was not intended to have, and it can not have, any such effect. 243

The purchase of the Burlington stock was not made in view of the formation of the Securities Company, but solely from the motives and with the purposes already stated.

II.

The project of forming a holding company of any kind was not the result, in any way, of the failure of the plan which was defeated by the decision of the Supreme Court in the Pearsall case. There was no connection whatever between the two.

244 The project of a holding company which finally developed into the formation of the company incorporated November 13, 1901, had its inception years before that date, among several gentlemen, to wit, Mr. James J. Hill, Mr. John S. Kennedy, Mr. Samuel Thorne, Mr. D. Willis James, and others, not exceeding ten in number altogether, who had been large shareholders in the Great Northern Company and its predecessor, the St. Paul, Minneapolis and Manitoba Railway Company, some of them from the original organization of the latter company in 1879 and others from dates not long after that time. They
245 have never held a majority of the stock of the Great Northern Company, but have taken an active interest in its policy and administration; have aided it when necessary in financing its operations; have acted together in promoting its interests; have, with some exceptions, served from time to time as directors and officers (Mr. Hill having been president of the successive companies since 1882), and by reason of their active interest in the company and services to it have influenced to a large degree its policy and management. As far back as 1893, most of these gentlemen being well advanced and some far advanced
246 in years, they began to discuss together what would be the effect upon the policy which under their influence the company had pursued with great benefit to its shareholders and the public should their holdings by death or otherwise become scattered, and by what means their holdings could be kept together, so as to secure the continuance of such policy in the management of the company. It was considered that if a company should be formed to which they might transfer their individual holdings their shares were likely to be held together so long as the majority in the holding company should so wish, and this would
247 tend to give stability to the policy of the Great Northern Company, be of aid to it in financial operations, and maintain the value of their investments. These conclusions were the result of various consultations among the persons mentioned, or some of them, but no definite agreement was made for forming such a company or binding anyone to transfer his shares to it if formed.

From time to time, beginning with the reorganization of the Northern Pacific Company in 1896, Mr. Hill and said other Great Northern shareholders who had discussed with him the

plan of forming a holding company had made large purchases 248
of Northern Pacific shares individually, each for himself, without any concerted action and solely as investments. About May 1, 1901, their aggregate holdings of the common stock of the Northern Pacific Company amounted to nearly twenty million dollars ($20,000,000) of the eighty million dollars ($80,000,000) common stock of the company, which also had a preferred stock amounting to seventy-five million dollars ($75,000,000), with the same voting power as the common stock. At this time the firm of J. P. Morgan & Co. held about six million dollars ($6,000,000) of the common stock. In the fall 249
of 1900 Mr. Hill and said Great Northern shareholders discussed the question of putting their holdings of Northern Pacific stock into the proposed holding company, as well as the suggestion that all the other stockholders of the Great Northern Company should be given the opportunity of selling and transferring their shares to the holding company, and that its capital stock should be made large enough to enable it to buy such holdings, though it was not known that the holders of any considerable amount of Great Northern stock, other than those above named, would desire to make such transfer, but no agreement of 250
any kind was entered into.

At the time of the purchase of the Burlington shares it was not contemplated by either purchasing company or its shareholders that any alliance between the purchasing companies or among their shareholders was needed to preserve to each company its fair share of the advantages secured by the purchase. It was thought that the manifest interest of each company rendered any further guaranty or security needless. But pending or just after the conclusion of the negotiations for the Burlington stock parties acting in the interest of the Union Pacific Rail- 251
way system did purchase Northern Pacific shares, both common and preferred, to the amount of about seventy-eight million dollars ($78,000,000), being a clear majority of the entire capital stock of that company. The apparent intent of such purchase was to defeat, and if successful it would have defeated, the carrying out of the purposes for which the Burlington shares had been bought by the Great Northern and Northern Pacific companies and the development of the interstate and international commerce of each of them, and would have subordi-

252 nated the policy of each to an interest adverse to both the Great Northern and Northern Pacific companies and to the public served by their lines.

To protect the interests of the shareholders of the Northern Pacific Company, J. P. Morgan & Co. made additional purchases of Northern Pacific common stock, which, with the holdings in said stock of Mr. Hill and other Great Northern shareholders who had discussed with him the plan of forming a holding company, constituted about forty-two million dollars ($42,000,000), being a majority of the common stock. In view of the injury
253 apprehended to both companies, and to their shareholders, and the better to protect their interests in the future, the Great Northern shareholders holding Northern Pacific shares deemed it advisable that the projected holding company should have power to purchase not only their own Great Northern and Northern Pacific shares, but also the shares of such other Great Northern and Northern Pacific shareholders as might wish to sell their stock to said holding company, and the shares of companies already formed, and others that might be formed, for the purpose of aiding the traffic or operations of the Great Northern
254 and Northern Pacific companies, respectively. At this time it was not expected by any of the persons concerned that any Northern Pacific shares except the said forty-two million dollars ($42,000,000) would be acquired by the proposed holding company. The organization of that company was not dependent on any agreement that it should acquire a majority of the shares of either defendant railway company. It would have been organized if the Burlington purchase had not been made, and if its promoters had had no other shares to transfer to it than the thirty-four million dollars ($34,000,000) Great Northern stock
255 and the twenty million dollars ($20,000,000) Northern Pacific stock, held by them on May 1, 1901. It was not known that all or how many of the shareholders of either of the railway companies would be likely to transfer their shares to the Securities Company. After its organization that company bought and still holds about one hundred and fifty million dollars ($150,000,000) of the stock of the Northern Pacific Company; and it has also purchased and negotiated for the purchase of the stock of the Great Northern Company, as hereinbefore stated. Neither the said persons who were concerned in the formation of the

Securities Company, nor the said persons from whom the Securities Company has acquired the stocks of said railway companies, nor the Securities Company itself since its formation, nor its stockholders, directors, or officers, have planned or intended that the stock of said railway companies acquired by the Securities Company, or any part thereof, should be held, used, or voted by the Securities Company, or by its officers, agents, or proxies, for the purpose of combining, consolidating, or placing under one common management or control the railways of the Great Northern and Northern Pacific companies or the business thereof; or for the purpose of monopolizing or restraining competition between the said railway companies; or for any other purpose than the election by each of said railway companies of a competent and distinct board of directors, able and intending to manage each of them independently of the other, and for the benefit of their shareholders and of the public. By the acts of the legislature of the State of Minnesota incorporating the Great Northern Railway Company, and by the acts of the legislature of the State of Wisconsin incorporating the Northern Pacific Railway Company, it is, in substance, provided that the business and affairs of each railway company shall be managed by a board of directors to be elected by the stockholders, and that all the powers of each corporation relating to said matters shall be vested in such board.

256 257 258

Every share of stock issued by the Northern Securities Company has been issued to the persons and corporations receiving the same in good faith, for full value paid to the Securities Company, either in cash or its equivalent, and in accordance with the provisions of its articles of incorporation and with the laws of the State of New Jersey. No agreement, promise, or understanding has been made between the Securities Company and any of its stockholders, or between its stockholders themselves, or any of them, or between said stockholders or any other persons or corporations, that the stock of the Securities Company should be held, used, or voted other than by each stockholder, separately and individually, and in such way as he should see fit, and there has been no agreement, promise, or understanding between said stockholders themselves, or any of them, or between said stockholders and any other person or corporation,

259

260 that they, or any of them, should use, hold, or vote their stock in the Securities Company in association or for any common purpose or object. The owners and holders of stock of the Securities Company are more than thirteen hundred (1,300) in number, and the ownership of the stock is being changed from day to day, by sales and transfers, in the usual course of dealing. The said persons who formed or were otherwise concerned in the formation of the said Securities Company have never, all together, held, owned, or otherwise controlled an amount of stock of the said company equal to so much as one-third of the whole
261 amount thereof now outstanding. The authorized capital of the Securities Company was deemed by those who planned its formation ample to furnish the means to pay for all such shares of the defendant railway companies as would likely be acquired by it, and to leave remaining a large amount to be used for the purchase of stock in other corporations not common carriers which the Securities Company might consider beneficial to acquire. The Securities Company was not formed as a scheme or a device to evade the act of Congress known as the "antitrust act," or any other law whatever, but solely for the purposes
262 hereinbefore stated.

III.

The Securities Company was not formed, nor did any of the projectors of such company, nor any of those who sold their shares of stock to it, have any purpose or intention to restrain trade or commerce, or to lessen competition between said railway companies, or to monopolize traffic in any manner whatever; nor can any such results follow from the organization or operation of that company. In point of fact, since the organization
263 of the Securities Company rates on the defendant railway companies' lines, including rates to and from points common to both, have voluntarily been so reduced as to decrease their earnings by upward of a million of dollars annually. For all interstate commerce on the lines of either the defendant railway companies, except traffic beginning and ending on their own lines, respectively, the rates are fixed by joint tariffs with connecting lines. In respect to all such traffic neither of the defendant companies has ever had, or can have, any independent rate-making power or control of traffic or rates. All joint

tariffs with other companies to or from points common to the 264
lines of the defendant railway companies have always been, and necessarily must be, the same, whether the traffic is carried by one or the other of said companies. The total amount of all other interstate traffic—that is, traffic between common points on the two roads, which is not competitive both as to rates and quality of service with other carriers having equal rate-making power with them—is less than 2 per cent of the total interstate traffic of the two companies.

IV.

265

These defendants say that the Securities Company was not organized for the purpose of acquiring a majority of the stock of either the Northern Pacific or Great Northern Company, but merely to purchase the stock of those who wished to sell, as above stated, and was not organized for the purpose of controlling railway rates in the slightest degree, and has not had and can not have such effect.

The transactions referred to in the petition have consisted in the organization of a lawful corporation and the purchase of property by it, and the persons who were concerned in the 266
organization of the Securities Company, and those who have sold their shares to it, had every reason to believe, and did believe, that such sales were not in contravention of the act of Congress known as the "antitrust act."

In common with the general public they were aware that during the eleven years since the passage of that act in many instances the stock of a competing railway has been acquired by its competitor, or the shareholders thereof, such acquisitions including many of the principal railways doing business throughout the country. This has been done without objection 267
from any branch of the Government of the United States, and has in every instance proved beneficial to the railways concerned and to the public. The Securities Company, as now existing, became and is necessary as a defensive measure against attempts of rival interests to gain control of the direction of one or both of defendant railway companies and defeat the great enterprise they had undertaken of establishing a large international and interstate traffic, and the effect of its organization

upon interstate commerce must be determined upon consideration of the enterprise as a whole. If these lawful transactions, consisting of the purchase and sale of property, should hereafter have any effect in restraint of trade or commerce among the States or with foreign nations (which is hereby denied), that effect would be indirect, remote, incidental, not intended, and as nothing compared with the great expansion of the volume of interstate and international commerce which was intended, and which the defendants believe is destined, to result from the enterprise of the two railway companies that culminated in the purchase of the Burlington stock.

And these defendants say:

1. The "antitrust act" was not intended to prevent or defeat an enterprise in aid of a great competitive interstate and international commerce merely because such enterprise may carry with it the possibility of incidental restraint upon some commerce, trifling both as respects territory and volume.

2. Nor was the act intended to limit the power of the several States to create corporations, define their purposes, fix the amount of their capital, and determine who may buy, own, and sell their stock.

3. Otherwise construed, the act would be unconstitutional, because—

The power to regulate commerce with foreign nations and among the States does not give Congress the power to regulate any of the matters above mentioned in respect to corporations created by the States; and because—

Persons may not be deprived of their property without due process of law, by taking from them the right to sell it as their interest may suggest.

V.

There is a defect of necessary parties defendant herein, because, as already set forth, the persons who made sales of stock of the said railway companies to the Securities Company were numerous, exceeding more than 1,300 in number, and few of them had any connection whatever in the planning or forming of that company, and in their absence from this litigation no decree can be made affecting their rights in the premises.

VI. 272

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said petition charged, without this, that if there is any other matter, cause, or thing in the petition contained material or necessary for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, the same is not true to the knowledge or belief of these defendants; all of which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained. 273

JAMES J. HILL.
WILLIAM P. CLOUGH.
D. WILLIS JAMES.
JOHN S. KENNEDY.
GEORGE F. BAKER.
By GEO. B. YOUNG,
Solicitor and Counsel. 274

Entered 789, C. Eq.

Circuit court of the United States for the district of Minnesota.

THE UNITED STATES OF AMERICA, complainants, *against* NORTHERN SECURITIES COMPANY, THE Great Northern Railway Company, The Northern Pacific Railway Company, and others, defendants. } May, 1902. 275

ANSWER OF THE DEFENDANT GREAT NORTHERN RAILWAY COMPANY.

M. D. GROVER,
Solicitor for the Defendant.

(Indorsed:) Filed May 5, 1902. Henry D. Lang, clerk.

276 In the circuit court of the United States for the district of Minnesota.

THE UNITED STATES OF AMERICA, complainants,
v.
NORTHERN SECURITIES COMPANY, THE Great Northern Railway Company, The Northern Pacific Railway Company, and others, defendants.

277 THE ANSWER OF THE GREAT NORTHERN RAILWAY COMPANY TO THE PETITION OF THE UNITED STATES OF AMERICA.

I.

This defendant admits and avers that the defendant railway companies were, at the time mentioned in the petition and are now, common carriers employed in transportation of freight and passengers within and among those States of the United States in which the railways operated by them are situated, and not further or otherwise, but were and are engaged in commerce
278 among the several States and with foreign nations.

II.

This defendant admits that on and prior to November 13, 1901, the capital stock of the defendant railway companies was owned and controlled by their respective shareholders, and it avers that the outstanding capital stock of this defendant was owned by more than eighteen hundred (1,800) separate owners, and that among its shareholders were the defendants Hill,
279 Clough, James, Morgan, and Kennedy. It avers that the persons named and meant to be designated in the petition as owning, controlling, or as being associated in the ownership and control of a majority of the stock of this defendant, did not at any time nor in any manner own or control a majority of said stock, nor as much as one-third ($\frac{1}{3}$) part thereof. Their holdings in said stock were at all times separate and individual, and not in association with each other, or with any other person or persons.

Except as herein admitted and averred, the defendant denies each and every allegation of subdivision II of the petition.

III. 280

This defendant admits that the Northern Pacific Company owned and operated a railway from Ashland, in Wisconsin, via Duluth, and from St. Paul, across Minnesota, North Dakota, Montana, Idaho, and Washington, and into Oregon, passing through Helena, in the State of Montana, and Spokane, in the State of Washington, and extending to Tacoma and Seattle in Washington, and to Portland in Oregon; and that this defendant operated lines of railway extending from St. Paul, in the State of Minnesota, across said State and North Dakota, Montana, Idaho, and Washington to Everett and Seattle in Washington, passing through Spokane in that State. 281

It admits that the said lines connected with other railway lines, and that, either directly or by means of such other railway lines, they connected with lines of steamships on the Great Lakes and the ocean; and that the mileage operated by said companies aggregated about fifty-five hundred (5,500) miles for the Northern Pacific Company and about forty-one hundred and twenty-eight (4,128) miles for this defendant.

It denies that said lines are parallel or competing, except for the short distances and to the limited extent hereinafter mentioned, and denies that this defendant and the Northern Pacific Company were engaged in active competition with each other, except in the manner and to the extent hereinafter stated. Except as hereinabove and hereinafter stated, it denies each and every allegation in subdivision III of said petition. 282

IV.

The defendant admits and avers that prior to 1893 those portions, and those portions only, of the lines of the Northern Pacific Company which had been built and were operated by virtue of the act of Congress incorporating the Northern Pacific Railroad Company, approved July 2, 1864, were owned and operated by the last-named company, and that in the year 1893 that company became insolvent and its lines passed into the hands of receivers appointed by various Federal courts. 283

It admits that while in this condition a contract was made, as set forth in the report of the Pearsall case, referred to in the petition. It avers that said contract was made under and in

284 conformity with the provisions of the act of incorporation of this defendant, and that the only objection made to the validity of the contract was that the provisions in said charter under which it was made had been repealed by subsequent general laws of the State. It denies that the case or that the decision therein is correctly stated in the petition. And it avers that neither the said contract nor the issues raised and decided in the said case have any relevancy to the matters in controversy in this case.

V.

285 This defendant admits and avers that in the winter and spring of 1901, it and the Northern Pacific Company, for the purpose of promoting their several interests and the interests of the country traversed by their lines and by those of the Chicago, Burlington and Quincy Railroad Company, purchased in equal parts the stock of the last named company to the amount and at the price and upon the terms of payment stated in the petition. It admits that the lines operated by the Chicago, Burlington and Quincy Railroad Company and its connections are substantially as stated in the petition. It denies that what is called in the 286 petition the Burlington System was or is parallel to or competing with what is therein called the Union Pacific System, but admits that some of the lines of each system compete with some lines of the other.

It denies that said purchase of stock was made in contemplation of the ultimate placing of the system of this defendant and that of the Northern Pacific Company under a common source of control, or that it was made for any other motive or with any other purpose than as hereinafter stated.

Except as herein admitted, it denies each and every allegation 287 in subdivision V of the petition.

VI.

This defendant says that it knows not and has not been informed, save by the petition, and can not set forth its belief or otherwise as to any of the matters or things alleged or charged in subdivisions VI and VII of the petition as having been done, contrived, or attempted by the parties in said subdivision named or any of them.

VII. 288

This defendant further says it knows not and has not been informed, save by the petition, and can not set forth its belief, or otherwise, in respect to any of the matters charged in subdivisions VIII, IX, X, XI, XII, and XIII of the petition, except that it admits the organization of the Northern Securities Company, with the articles of incorporation, of which a copy is annexed to the petition.

VIII.

Further answering the petition, this defendant says that the 289
facts as to the purchase of the shares of the Chicago, Burlington and Quincy Railroad Company (hereinafter called the Burlington Company) were and are as follows:

When projecting the line of this defendant to the Pacific coast, its directors contemplated the necessity of creating for the line not merely State and interstate, but an international commerce. Nearly all the country traversed or reached by the line was then but sparsely settled or not settled at all. It was principally agricultural, grazing, or timber land, with mineral deposits
in the mountain ranges believed to be large and valuable, but 290
not developed or explored. Whatever commodities the region might furnish for carriage would be raw material, of great weight and bulk in proportion to its value, which would not bear transportation to market except at low mileage rate, such as could be made possible only by every practicable reduction in the cost of transportation. The available market for all such products was far from the places of production.

In Washington and Oregon are the largest and finest bodies of standing timber in the United States, the best market for
which is in the prairie States of the Mississippi Valley east of 291
the Rocky Mountains, but the lumber and shingles from the Pacific coast would not bear the cost of transportation to those States if the cars carrying them had to be hauled back empty, or nearly so, for a distance of from 1,500 to 2,000 miles. And the same is true of the other products. On the other hand, the unoccupied or sparsely populated country along the line, or reached by it, could not furnish a market for commodities enough to load the returning cars; the result being that unless

292 the company could secure traffic for carriage beyond the Pacific coast no great traffic either way could exist or be created.

To meet these conditions this defendant company not only went to great additional expense in the construction of its line to obtain gradients lower than those of any other line to the Pacific coast, but also made great efforts to create and increase in the countries of Eastern Asia a demand for the products of this country; and soon after the completion of its railway in 1893 it induced a Japanese company to run a line of steamships, connecting with its railway, on the route between Seattle and
293 ports of Japan, China, and Russian Siberia, and succeeded in creating and has since been actively engaged in building up a commerce in which the flour manufactured along its line, cotton (both raw and manufactured), iron and steel (especially steel rails and plates), machinery, and such other manufactures of this country as a market could be found or made for in Eastern Asia have been carried to oriental ports, and return cargoes of such oriental products as are consumed in this country have been brought back. A large westbound, as well as an increased eastbound, traffic has thus been secured by the company, enabling
294 it to make such rates on lumber and other products of the country served by it as permit them to be shipped to eastern markets with a profit to the shippers.

One year before the Burlington purchase, this oriental traffic had reached such proportions that this defendant caused to be begun the construction of steamships to run from Seattle to ports in Japan, China, and the Philippines, which, from their great carrying capacity (being the largest in the world), will be able to carry at very low rates (if full cargoes can be secured), and thus enable the company to move the largest volume of west-
295 bound traffic (and also of eastbound traffic) at the lowest cost.

In the interstate and international commerce which this defendant has thus built up, it competes both in this country and on the ocean with the other transcontinental lines (including the Canadian Pacific), and at the oriental ports it competes for commerce of the world. Its rates are and must be made in competition with the rates of ocean carriers and by way of the Suez Canal.

The policy thus followed by this defendant in building up an international, and thereby interstate, commerce has been fol-

lowed by the Northern Pacific Company since its reorganization in 1896. 296

In creating and maintaining this competitive interstate and international commerce, both this defendant and the Northern Pacific Company were hampered and placed at a disadvantage with the other transcontinental railways, as well as with European competitors, by the want of sufficient direct connection with the territory offering the best markets for the products of the country along their lines, and with the places of production and great centers of distribution from which their traffic must be supplied. And for many months before the purchase of the 297
Burlington shares they had considered the best means of getting closer to such markets and sources of supply. The lines of the Burlington, better than those of any other company, fulfilled the requirements of both this defendant and the Northern Pacific Company in respect of markets for eastbound and freight for westbound traffic. The Burlington lines traverse the treeless States of Illinois, Iowa, Missouri, Nebraska, Wyoming, Kansas, and Colorado, which afford the best markets for the lumber of the Pacific coast. They reach Denver, Kansas City, Omaha, and Aurora, where are located the principal 298
smelters of silver-lead ores, such as are mined near the lines of the defendant railway companies.

They reach Omaha, Kansas City, and Chicago, where are the great packing houses and the great markets for the cattle and sheep of the ranges of North Dakota, Montana, Wyoming, Idaho, Oregon, and Washington.

They reach St. Louis and Kansas City, connecting there with lines traversing the cotton States, from which come raw and manufactured cotton required for shipment to China and Japan. 299

At Chicago and St. Louis they connect with the lines which reach the points of supply of manufactured iron, steel, machinery, and other manufactured articles that find a market in Japan and China.

The Burlington line southward from Minneapolis and St. Paul along the Mississippi River reaches the great coal deposits of southern Illinois, the largest west of Pennsylvania and West Virginia; and its light gradients and consequent low cost of transportation make it possible to supply such coal to points on

the lines of each defendant railway company east of the Missouri River, relieving the people and the railways of that great territory from entire dependence upon the Pennsylvania and West Virginia mines, the supply from which is yearly becoming more costly and less certain.

The price paid for said Burlington stock was lower per mile of main track covered by the stock than that for which the stock of any other large and well-established system in the same general territory could then have been bought.

The purchase of the Burlington stock by the Northern Pacific Company and this defendant in equal parts served each company as well as if it were the sole owner of such stock, while such purchase might have been beyond the financial means of either company by itself.

This defendant and the Northern Pacific Company therefore each purchased an equal number of shares of the Burlington stock as the best means and for the sole purpose of reaching the best markets for the products of the territory along their lines, and of securing connections which would furnish the largest amount of traffic for their respective roads, increase the trade and interchange of commodities between the regions traversed by the Burlington lines and their connections and the regions traversed or reached by the lines of this defendant and those of the Northern Pacific Company and by their connecting lines of shipping on the Pacific coast. These connections and such interchange of traffic were deemed to be and are indispensable to the maintenance of their business, local as well as interstate, and to the development of the country served by their respective lines, and of like advantage to the Burlington lines and the country served by them, and strengthen each company in the competition with the more southerly lines to the Pacific coast, with the Canadian Pacific Railway, and with European carriers, for the trade and commerce of the Orient.

In such purchase there was no purpose to lessen any competition of the Burlington lines with those of either of the purchasers, for they are not competitive, or to lessen any competition between the purchasers. Such purchase was not intended to have, and it can not have, any such effect.

The purchase of the Burlington stock was not made in view

of the formation of the Northern Securities Company, but solely 304
from the motives and with the purposes already stated.

This defendant says, for all interstate commerce on the lines of either of the defendant railway companies, except traffic beginning and ending on their own lines respectively, the rates are fixed by joint tariffs with connecting lines. In respect to all such traffic neither of the defendant companies has ever had, or can have, any independent rate-making power or control of traffic or rates. All joint tariffs with other companies to or from points common to the lines of the defendant railway companies have always been, and necessarily must be, the same, 305
whether the traffic is carried by one or the other of said companies. The total amount of all other interstate traffic—that is, traffic between common points on the two roads—which is not competitive both as to rates and quality of service with other carriers having equal rate-making power with them, is less than 2 per cent of the total interstate traffic of the two companies.

And this defendant says, that the control of the direction of one of the defendant railway companies, by a rival interest, might defeat the great enterprise they had undertaken of establishing a large international and interstate traffic, and impose 306
upon the other all the burdens of the joint obligations incurred, amounting to more than $220,000,000, while taking from it all the benefits of the purchase of the Burlington shares.

IX.

And this defendant says, that its acts of incorporation provide that the shares of its capital stock shall be deemed personal property, and shall be transferable in such manner as its regulations or by-laws shall prescribe. The by-laws of this defend- 307
ant, made pursuant to the said acts, direct that transfers of shares of its stock may be made by the surrender of the certificate issued therefor, and a written assignment thereof, signed by the owner, or his duly authorized attorney in fact, upon a book, to be called the "Register of transfers," and that without such surrender and assignment no transfer of stock will be recognized by this defendant.

Prior to the filing of the petition herein, holders of regular certificates for this defendant's stock, individually and separately, and in the usual course of dealing, surrendered such certificates

308 to this defendant, and at the same time duly assigned, in writing, upon the said register of transfers, the shares covered thereby to the defendant, the Northern Securities Company, and thereupon, in each of such instances, this defendant recognized such transfer, and issued to the Securities Company its certificate therefor, as by law it was required to do.

The said transfers covered, in the aggregate, not to exceed five-twelfths ($\frac{5}{12}$) of the total number of shares of this defendant's stock now outstanding.

And this defendant says:

309 1. The "antitrust act" was not intended to prevent or defeat an enterprise, in aid of a great competitive interstate and international commerce, merely because such enterprise may carry with it the possibility of incidental restraint upon some commerce, trifling both as respects territory and volume.

2. Nor was the act intended to limit the power of the several States to create corporations, define their purposes, fix the amount of their capital, and determine who may buy, own, and sell their stock.

3. Otherwise construed, the act would be unconstitutional,

310 because:

The power to regulate commerce with foreign nations and among the States does not give Congress the power to regulate any of the matters above mentioned in respect to corporations created by the States; and because

Persons may not be deprived of their property, without due process of law, by taking from them the right to sell it, as their interest may suggest.

X.

311 There is a defect of necessary parties defendant, because, as already set forth, the persons who made sales of stock of the defendant railway companies to the defendant the Northern Securities Company were numerous, exceeding more than 1,300 in number, and few of them had any connection whatever in the planning or forming of the said Securities Company, and in their absence from this litigation no decree can be made affecting their rights in the premises.

XI. 312

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by the said petition charged, without this, that if there is any other matter, cause, or thing in the petition contained material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, the same is not true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained. 313

GREAT NORTHERN RAILWAY COMPANY,
By M. D. GROVER, *Solicitor and Counsel.*

Entered 789, C. Eq.

In the circuit court of the United States for the district of Minnesota. 314

THE UNITED STATES OF AMERICA, complainant,
against
NORTHERN SECURITIES COMPANY, THE Great Northern Railway Company, The Northern Pacific Railway Company, and others, defendants. } May, 1902.

ANSWER OF THE DEFENDANT THE NORTHERN PACFIC RAILWAY COMPANY. 315

C. W. BUNN,
Solicitor for the Defendant.

(Endorsed:) Filed May 5th, 1902. Henry D. Lang, clerk.

316 In the circuit court of the United States for the district of Minnesota.

THE UNITED STATES OF AMERICA, complainant,
against
NORTHERN SECURITIES COMPANY, THE Great Northern Railway Company, The Northern Pacific Railway Company, and others, defendants.
} May, 1902.

317 THE ANSWER OF THE DEFENDANT THE NORTHERN PACIFIC RAILWAY COMPANY TO THE PETITION OF THE UNITED STATES OF AMERICA.

I. This defendant admits the allegations of paragraph I of the petition that this defendant and the Great Northern Railway Company were at the times mentioned in said petition and now are common carriers employed in the transportation of freight and passengers among the several States of the United States within which the railways operated by them are situated.

318 This defendant denies each and every other allegation of paragraph I of the petition.

II. This defendant admits the allegations of paragraph II of the petition that prior to November 13, 1901, the stock of this defendant was owned and controlled by its shareholders, and that among them were the parties in that behalf alleged.

This defendant denies any knowledge or information sufficient to form a belief of each and every other allegation of paragraph II of the petition.

III. This defendant admits the allegations of paragraph III

319 of the petition that this defendant at the times mentioned owned and operated a railway extending from Ashland in Wisconsin via Duluth, Minnesota, and from St. Paul, Minnesota, across Minnesota, North Dakota, Montana, Idaho, and Washington, passing through Helena, in the State of Montana, and Spokane, in the State of Washington, and extending to Tacoma and Seattle, in Washington, and to Portland, in Oregon; that the Great Northern Company operated lines of railway extending from St. Paul aforesaid across Minnesota, North Dakota, Montana, Idaho, and Washington, passing through Spokane and extend-

ing to Everett and Seattle, in the State last aforesaid; that the 320
said lines connected with other railway lines, and either directly or by means of such other railway lines connected with lines of steamships on the Great Lakes and the ocean, and that the mileage operated by said companies aggregated about five thousand five hundred miles for this defendant and about four thousand one hundred and twenty-eight miles for the Great Northern Company.

This defendant denies each and every other allegation of paragraph III of the petition.

IV. This defendant admits the allegations of Paragraph IV 321
of the petition that, prior to the year 1893, a corporation known as the Northern Pacific Railroad Company, organized and existing under certain acts and resolutions of Congress, and which then operated some parts of the lines of this defendant, became insolvent and was placed in the hands of receivers appointed by various courts of the United States; that, while in this condition, a plan of reorganization was entered into by the bondholders of said company, and that an arrangement was proposed between the said bondholders and the Great Northern Company which was never carried out. This defendant admits that a case en- 322
titled Pearsall against the Great Northern Railway Company was decided by the Supreme Court of the United States on March 30, 1896, and is reported in volume 161 of the reports of said court, beginning on page 696.

This defendant denies any knowledge or information sufficient to form a belief of each and every other allegation of Paragraph IV of the petition. It is informed and believes that said paragraph is wholly irrelevant to the cause of action, if any, stated in the petition.

V. This defendant admits the allegations in Paragraph V of 323
the petition that early in the year 1901 this defendant and the Great Northern Company, acting for the purpose of promoting their several interests, each purchased shares of stock of the Chicago, Burlington and Quincy Railroad Company of Illinois, paying therefor with the joint bonds of the Great Northern Company and the Northern Pacific Company, payable in twenty years from date, with interest at 4 per cent per annum, at the rate of $200 in bonds for each $100 in stock, and in this manner the

said companies severally purchased and acquired each about 49 per cent of said stock; that the lines operated by said Burlington Company and its connections were geographically as stated in the petition, and that some of said lines compete with some lines of what is called in the petition the Union Pacific system.

This purchase was made by these defendants primarily in order to secure a terminus in Chicago and permanent connection with the Eastern and Southeastern markets, which are especially valuable to the agricultural and mineral products of the Northwest, and also because the Burlington system serves a large and growing territory, and the purchase was deemed desirable and profitable in itself. It had no connection with the future formation of any company whatsoever and was not made with intent to violate the statute or common law of any State or of the United States, and was not in violation of any such law.

This defendant denies each and every other allegation of Paragraph V of the petition. It is informed and believes that said paragraph is wholly irrelevant to the cause of action, if any, stated in the petition.

VI. This defendant denies any knowledge or information sufficient to form a belief of each and every allegation of Paragraph VI of the petition.

VII. This defendant admits the allegation of Paragraph VII of the petition, that the defendant Northern Securities Company was heretofore organized, as it is informed and believes, under the general laws of the State of New Jersey.

This defendant denies any knowledge or information sufficient to form a belief of each and every other allegation of Paragraph VII of the petition.

VIII. This defendant admits the allegations of Paragraph VIII of the petition that the defendant, Northern Securities Company, has purchased and now holds and owns a large majority of the capital stock of this defendant, and that the Securities Company has received such dividends as have been paid on any shares held by it.

This defendant denies any knowledge or information sufficient to form a belief of each and every other allegation of Paragraph VIII of the petition.

IX. This defendant denies any knowledge or information

sufficient to form a belief of each and every allegation of Para- 328
graph IX of the petition.

X. This defendant denies any knowledge or information sufficient to form a belief of each and every allegation of Paragraph X of the petition.

XI. This defendant denies each and every allegation of Paragraph XI of the petition.

XII. This defendant denies each and every allegation of Paragraph XII of the petition. It is informed and believes that said paragraph consists merely of expressions of opinion, and is, therefore, without weight in support of any cause of action. 329

XIII. This defendant denies any knowledge or information sufficient to form a belief of each and every allegation of Paragraph XIII of the petition.

XIV. As this defendant is informed and believes, the purchase by the Northern Securities Company of shares of stock of this defendant and the sale thereof by the owners have been expressly authorized by law. They have had no effect whatever, in law or in fact, in restraint or monopoly of trade or commerce among the several States or with foreign nations. The petition does not allege that at any place within the jurisdiction 330
of this court or elsewhere any such restraint or monopoly has been effected.

If these lawful transactions, consisting merely of the purchase and sale of property, should hereafter have any effect in restraint or monopoly of trade or commerce among the several States or with foreign nations, that would not be their direct effect, but would be merely indirect, remote, incidental, and collateral, and would, therefore, not bring said transactions within said act of Congress above mentioned. Any other construction would render the statute unconstitutional, as beyond the power 331
of Congress, and as depriving the sellers of the stock thus sold and also the stockholders of this defendant who have not sold their shares to the Securities Company, of liberty and property without due process of law, because, thus construed, it would be an inhibition upon their right to sell their property. If complainant's contention be sustained, the right of the owner of property to sell the same will be dependent upon what the courts at any future time may hold to have been the intention of the purchaser in buying such property. This result would

332 seriously impair the liberty of the owner and the value of his property, and is contrary to the constitutional guaranties thereof.

These transactions are, therefore, not within the act of Congress above mentioned; nor has Congress any constitutional power to annul or prohibit action thus expressly authorized by State statutes under which the same has been or may hereafter be taken.

XV. There is a defect of necessary parties defendant herein, because in this suit it is sought to annul all sales of shares made
333 by shareholders of this defendant to the Northern Securities Company and to cancel all certificates of stock of the latter company issued in purchase of the same. The parties making such sales are numerous, and many of them had no connection with the matter save to sell their shares to the Securities Company after its organization. It is obvious that in their absence no adjudication can be made annulling such sales to the Securities Company. A decree to such effect as prayed for by the petition necessarily would deprive such original sellers of their property without due process of law. All persons who sold
334 shares in this defendant to the Securities Company are, therefore, necessary parties, and the petition is bad by reason of their absence.

XVI. And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by the said petition charged, without this, that if there is any other matter, cause, or thing in the petition contained material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, the same is not true to the knowledge or
335 belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

THE NORTHERN PACIFIC RAILWAY COMPANY,
By C. W. BUNN, *Solicitor.*

C. W. BUNN, and
FRANCIS LYNDE STETSON,
Counsel for said Defendant.

Entered 789 C. Eq. 336

In the circuit court of the United States for the district of Minnesota.

THE UNITED STATES OF AMERICA, complainant,
against
NORTHERN SECURITIES COMPANY, THE Great Northern Railway Company, The Northern Pacific Railway Company, and others, defendants. } May, 1902. 337

ANSWER OF THE DEFENDANTS, J. PIERPONT MORGAN AND ROBERT BACON.

FRANCIS LYNDE STETSON,
Solicitor for said Defendants, Mills Building, New York City.

Endorsed: Filed May 5, 1902. Henry D. Lang, clerk.

In the circuit court of the United States for the district of Minnesota. 338

THE UNITED STATES OF AMERICA, complainant,
against
NORTHERN SECURITIES COMPANY, THE Great Northern Railway Company, The Northern Pacific Railway Company and others, defendants. } May, 1902.

THE ANSWER OF THE DEFENDANTS, J. PIERPONT MORGAN AND ROBERT BACON, TO THE PETITION OF THE UNITED STATES OF AMERICA. 339

I. These defendants admit the allegations of paragraph I of the petition that the Northern Pacific Railway Company and the Great Northern Railway Company were at the times mentioned in said petition and now are common carriers employed in the transportation of freight and passengers among the several States of the United States within which the railways operated by them are situated.

340 These defendants deny each and every other allegation of paragraph I of the petition.

II. These defendants admit the allegations of paragraph II of the petition that prior to November 13, 1901, the stock of the said railway companies was owned and controlled by their respective shareholders, and that among the shareholders of said companies, respectively, were the parties in that behalf alleged.

These defendants deny each and every other allegation of paragraph II of the petition.

341 III. These defendants admit the allegations of paragraph III of the petition that the Northern Pacific Company at the times mentioned owned and operated a railway extending from Ashland, in Wisconsin, via Duluth, Minn., and from St. Paul, Minn., across Minnesota, North Dakota, Montana, Idaho, and Washington, passing through Helena, in the State of Montana, and Spokane, in the State of Washington, and extending to Tacoma and Seattle, in Washington, and to Portland, in Oregon; that the Great Northern Company operated lines of railway extending from St. Paul aforesaid across Minnesota,
342 North Dakota, Montana, Idaho, and Washington, passing through Spokane and extending to Everett and Seattle, in the State last aforesaid; that the said lines connected with other railway lines, and either directly or by means of such other railway lines connected with lines of steamships on the Great Lakes and the ocean, and that the mileage operated by said companies aggregated about 5,500 miles for the Northern Pacific Company and about 4,128 miles for the Great Northern Company.

These defendants deny any knowledge or information sufficient
343 cient to form a belief of each and every other allegation of paragraph III of the petition.

IV. These defendants admit the allegations of paragraph IV of the petition that, prior to the year 1893, a corporation known as the Northern Pacific Railroad Company, organized and existing under certain acts and resolutions of Congress, and which then operated some parts of the lines of the present Northern Pacific Company, became insolvent and was placed in the hands of receivers appointed by various courts of the United States; that while in this condition a plan of reorganization

was entered into by the bondholders of said company and that 344
an arrangement was proposed between the said bondholders and the Great Northern Company, which was never carried out. These defendants admit that a case, entitled Pearsall against The Great Northern Railway Company, was decided by the Supreme Court of the United States on March 30, 1896, and is reported in volume 161 of the reports of said court, beginning on page 696.

These defendants deny any knowledge or information sufficient to form a belief of each and every other allegation of paragraph IV of the petition. They are informed and believe that said paragraph is wholly irrelevant to the cause of action, 345
if any, stated in the petition.

V. These defendants admit the allegations of paragraph V of the petition that early in the year 1901, the defendants the Great Northern Company and the Northern Pacific Company, acting for the purpose of promoting their several interests, each purchased shares of stock of the Chicago, Burlington and Quincy Railroad Company of Illinois, paying therefor with the joint bonds of the Great Northern Company and the Northern Pacific Company, payable in twenty years from date, with interest at 4 per cent per annum at the rate of $200 in bonds 346
for each $100 in stock, and in this manner the said companies severally purchased and acquired each about 49 per cent of said stock; that the lines operated by said Burlington Company and its connections were geographically as stated in the petition, and that some of said lines compete with some lines of what is called in the petition the Union Pacific system.

These defendants deny any knowledge or information sufficient to form a belief of each and every other allegation of paragraph V of the petition. They are informed and believe that said paragraph is wholly irrelevant to the cause of action, 347
if any, stated in the petition.

VI. These defendants admit that the defendant James J. Hill and certain other persons decided upon the formation of a securities company for the purposes set forth in the certificate of incorporation of the Northern Securities Company attached to the petition and in all respects as therein stated.

These defendants deny each and every other allegation of paragraph VI of the petition.

VII. These defendants admit the allegations of paragraph

348 VII of the petition that on November 13, 1901, the defendant Northern Securities Company was organized under the general laws of the State of New Jersey, with its principal office in Hoboken, in said State, and with an authorized capital stock of $400,000,000, and that a copy of the articles of incorporation of said company correctly stating its powers is attached to the petition.

These defendants deny each and every other allegation of paragraph VII of the petition.

VIII. These defendants admit the allegations of paragraph
349 VIII of the petition that on or about November 14, 1901, the defendant Northern Securities Company was organized by the election of directors and officers; that the defendant James J. Hill was chosen a director and president thereof; that thereupon the said James J. Hill and other stockholders of the Great Northern Company, each individually and separately from the others, sold to the Securities Company a large amount of the capital stock of the Great Northern Company for the price of $180 par value of the capital stock of the Securities Company for each share of the capital stock of the Great North-
350 ern Company; that these defendants and other stockholders of the Northern Pacific Company, each individually and separately from the others, sold to the Securities Company a large amount of the capital stock of the Northern Pacific Company; that the Securities Company also offered, for a limited period, like terms of purchase to the other shareholders of the Great Northern Company; that the Securities Company now holds and owns a large majority of the capital stock of the Northern Pacific Railway Company, and a large amount, though less than a controlling interest, of the stock of the Great Northern Company,
351 and has negotiated for the purchase of additional shares of that company, and that the Securities Company has received such dividends as have been paid on any shares held by it.

These defendants deny each and every other allegation of paragraph VIII of the petition.

IX. These defendants deny each and every allegation of paragraph IX of the petition.

X. These defendants deny any knowledge or information sufficient to form a belief of each and every allegation of paragraph X of the petition.

XI. These defendants deny each and every allegation of 352
paragraph XI of the petition.

XII. These defendants deny each and every allegation of paragraph XII of the petition. They are informed and believe that said paragraph consists merely of expressions of opinion, and is, therefore, without weight in support of any cause of action.

XIII. These defendants deny each and every allegation of paragraph XIII of the petition.

XIV. In July, 1896, the capital stock of the Northern Pacific Railway Company was fixed at $155,000,000, of which 353
$75,000,000 were preferred and $80,000,000 common stock. The preferred stock of the company was issued in exchange for various obligations of the former Northern Pacific Railroad Company because the holders thereof would not accept new common stock therefor. At the same time it was contemplated that the time would arrive when said preferred stock should properly be retired, and it was, accordingly, then provided that the preferred stock might be retired in whole or in part at par on any first day of January, up to and including January 1, 1917. Both classes of stock were made subject to a voting 354
trust in this defendant Morgan and others, continuing until November 1, 1901, but terminable by the trustees in their discretion at an earlier date.

The Northern Pacific Company shared in the recent prosperity of the country, and its common stock appreciated in value until it was deemed practicable to carry out the original intention of retiring the preferred stock and also to terminate the voting trust. Accordingly said trust was terminated by the trustees upon January 1, 1901, and the preferred stock was retired. Although the latter action was in contemplation and 355
was practically decided upon some time before the termination of the voting trust, it was not made the subject of formal action by the board of directors until November 13, 1901, and was completed upon January 1, 1902.

XV. As hereinbefore stated, early in 1901, the Northern Pacific Company, and the Great Northern Company, each purchased about 49 per cent of the capital stock of the Chicago, Burlington and Quincy Railroad Company. This purchase was mad by the Northern Pacific Company primarily in order to

356 secure a terminus at Chicago and permanent connection with the Eastern and Southeastern markets, which are especially valuable for the agricultural and mineral products of the Northwest, but also because the Burlington system serves a large and growing territory, and the purchase was deemed desirable and profitable in itself.

These purchases were not made, as the petition alleges, "in contemplation of the ultimate placing of the Great Northern and Northern Pacific system under a common source of control." They had no connection whatever with the future formation of
357 the Northern Securities Company, or any other company whatsoever, and had no connection with the fact alleged in the petition that the Union Pacific Railway system is to some extent a competing system with the Burlington system.

The said purchases were not made with intent to violate the statute or common law of any State or of the United States; were not in violation of any such law, and are not charged in the petition to have been in any respect unlawful.

XVI. During the reorganization of the Northern Pacific system the firm of J. P. Morgan & Co., of which these defend-
358 ants are members, acted as reorganization managers, and ever since the reorganization of the Northern Pacific Company has been its fiscal agent. Said firm has accordingly at all times desired to further the best interests of the company and all its stockholders, and especially to aid in steadily developing the business of the company and the prosperity of the country which it serves. Said firm considered that these results were accomplished, so far as possible, by the policy of the company during the existence of the voting trust, as above stated. Not long after the termination of the voting trust, however, and very
359 early in May, 1901, said firm became aware that unusually large purchases of both classes of stock were in progress in the stock market, apparently in a single interest. Said firm was apprehensive that these purchases were for the purpose of securing control of the direction of the Northern Pacific Company and thus managing it, not for what said firm conceived to be the best interest of the company, but for some ulterior purpose of which said firm was not informed.

Accordingly said firm, prior to May 7, 1901, purchased common stock of the Northern Pacific Company in considerable

amounts, and their holdings upon that day amounted to about 360
two hundred thousand shares. In making these purchases said
firm acted on its own account and in behalf of no other person
whomsoever, and was actuated by no motives save those above
stated.

The said purchases were not made with intent to violate the
statute or common law of any State or of the United States, and
were not in violation of any such law.

XVII. For some years the defendant Hill and others who
were interested in the Great Northern Company, but not in-
cluding these defendants, had in contemplation the formation of 361
a corporation for the purpose of purchasing their separate inter-
ests in that company, with the general object that said interests
should be held together and the policy and course of business of
the Great Northern Company should be continuous in develop-
ing the company's system and the territory served by it, and
not subject to radical change and possible inconsistency from
time to time. In or about August, 1901, as this plan was ap-
proaching maturity, said parties for similar reasons determined
that they would also sell to the new company, when formed,
their interests in the Northern Pacific Company, which were 362
considerable in amount, and that the capital of the new com-
pany should be made sufficiently large to enable it to purchase
all shares of the Great Northern and Northern Pacific com-
panies which the holders might desire to sell and any other
shares which the new company might deem it advisable to
acquire.

By this time it had become known that the purchases in the
market of shares of the Northern Pacific Company, to which
reference is made above, had been made in behalf of a corpora-
tion known as the Oregon Short Line Railroad Company, con- 363
trolled by the Union Pacific Railroad Company; that there
were held in that interest shares of the Northern Pacific Com-
pany to about the amount of $41,000,000 of preferred stock,
which, however, was to be retired on January 1, 1902, and
$37,000,000 of common stock, together making 780,000 shares
and constituting an absolute majority of the total capital stock
of the Northern Pacific Company. Thereupon and therefore,
with the view and for the purpose of protecting the Northern
Pacific Company and the holders of its common stock against

364 the possible control of the direction of said company in an adverse interest, these defendants determined and also advised their friends to sell their Northern Pacific stock to the new company.

As set forth in the petition, the Northern Securities Company was duly organized pursuant to the laws of New Jersey upon November 13, 1901. It was organized according to law, and possesses all the powers set forth in its certificate of incorporation, and has full power to do every act which it has in fact done, and the petition does not allege the contrary.

365 It having become known that the Oregon Short Line Company was not disinclined upon satisfactory terms to sell its holdings of the major part of the Northern Pacific stock, the firm of J. P. Morgan & Company, deeming such action for the best interest of the Northern Pacific Company, purchased from said Oregon Short Line Company all its holdings of the capital stock of the Northern Pacific Company.

After its organization the Northern Securities Company duly purchased all the shares of the Northern Pacific Company and of the Great Northern Company hereinbefore mentioned, ip-
366 cluding those purchased by the firm of J. P. Morgan & Company from the Oregon Short Line Company, for which it paid partly in cash and partly in its own shares. It also was willing to purchase the shares of any other shareholders of the Great Northern Company, who desired to sell the same, for the price of one hundred and eighty dollars for each share of the Great Northern Company, payable in its own shares, and did actually purchase and pay for considerable amounts of said stock at such price.

None of these purchases by the Northern Securities Company
367 were made with intent to violate the statute or common law of any State or of the United States, or were in violation of any such law.

XVIII. The foregoing is a correct statement of all the matters mentioned in the petition, omitting its many irrelevant adjectives, adverbs, and conclusions, and of some other facts in addition thereto. The transactions prior to the formation of the Northern Securities Company had no connection whatever with the formation thereof, save as above stated. That company

was organized, not for the purpose of acquiring a majority of 368
the stock of either the Great Northern or the Northern Pacific Company, but as above set forth. It was not organized for the purpose of affecting railway rates or competition in the slightest degree, and has not had any such effect. In the transactions above stated these defendants and, so far as they are aware, the other parties who have been engaged therein have never sought or intended to violate the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies" (26 Stat., 209, c. 647), or to enter into any contract, combination in the form of trust or otherwise, or 369
conspiracy in restraint of trade or commerce among the several States or with foreign nations, or to monopolize or attempt to monopolize, or combine or conspire with any other person or persons to monopolize, any part of the trade or commerce among the several States or with foreign nations.

The transactions have consisted merely in the organization of a lawful corporation of New Jersey and the sale to and purchase by it of property lawfully salable. All acts done in relation to the organization of the Securities Company and the purchase by it of shares of stock of the railway companies and 370
the sale thereof by the owners have been expressly authorized by law. They have had no effect whatever, in law or in fact, in restraint or monopoly of trade or commerce among the several States or with foreign nations. The petition does not allege that at any place within the jurisdiction of this court or elsewhere any such restraint or monopoly has been effected.

If these lawful transactions, consisting merely of the purchase and sale of property, should hereafter have any effect in restraint or monopoly of trade or commerce among the several States or with foreign nations, such effect would not be their 371
direct effect, but would be merely indirect, remote, incidental, and collateral, and aside from any intention of the parties, and therefore would not bring said transactions within said act of Congress. Any other construction would render the statute unconstitutional as beyond the power of Congress, and as depriving these defendants and the sellers generally of the stock thus sold, of liberty and property without due process of law, because, thus construed, it would be an inhibition upon their

372 right to sell their property. If complainant's contention be sustained, the right of the owner of property to sell the same will be dependent upon what the courts at any future time may hold to have been the intention of the purchaser in buying such property. Such a result would seriously impair the liberty of the owner and the value of his property, and is contrary to the constitutional guaranties thereof.

These transactions are, therefore, not within the act of Congress above mentioned; nor has Congress any constitutional power to annul or prohibit action thus expressly authorized by
373 State statutes under which the same has been taken.

XIX. There is a defect of necessary parties defendant herein because in this suit it is sought to annul all sales of shares made by shareholders of the Great Northern Company and the Northern Pacific Company to the Northern Securities Company, and to cancel all certificates of stock of the latter company issued in purchase of the same. As already set forth, the parties making such sales are numerous, and many of them had no connection with the matter save to sell their shares in the railway companies to the Securities Company after its organization.
374 It is obvious that in their absence no adjudication can be made annulling such sales to the Securities Company. A decree to such effect as prayed for by the petition necessarily would deprive such original sellers of their property without due process of law. All persons who sold shares in the railway companies to the Securities Company are, therefore, necessary parties, and the petition is bad by reason of their absence.

XX. And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said petition charged, without this, that if there is any
375 other matter, cause, or thing in the petition contained material or necessary for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, the same is not true to the knowledge or belief of these defendants; all of which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly

pray to be hence dismissed with their reasonable costs and 376
charges in this behalf most wrongfully sustained.

J. PIERPONT MORGAN,
ROBERT BACON,
By FRANCIS LYNDE STETSON,
Solicitor.

FRANCIS LYNDE STETSON,
DAVID WILLCOX,
Counsel for said Defendants.

377

Entered 789, C. Eq.

In the circuit court of the United States for the district of Minnesota.

THE UNITED STATES OF AMERICA, complainant,
against
NORTHERN SECURITIES COMPANY, THE Great Northern Railway Company, The Northern Pacific Railway Company, and others, defendants. } May, 1902.

378

ANSWER OF THE DEFENDANT DANIEL S. LAMONT.

DAVID WILLCOX,
Solicitor for said Defendant,
20 Nassau Street, New York City.

(Indorsed:) Filed May 5th, 1902. Henry D. Lang, clerk.

379 In the circuit court of the United States for the district of Minnesota.

THE UNITED STATES OF AMERICA, complainant,
against
NORTHERN SECURITIES COMPANY, THE Great Northern Railway Company, The Northern Pacific Railway Company, and others, defendants.
} May, 1902.

380 THE ANSWER OF THE DEFENDANT DANIEL S. LAMONT TO THE PETITION OF THE UNITED STATES OF AMERICA.

I. This defendant admits the allegations of Paragraph I of the petition that the Northern Pacific Railway Company and the Great Northern Railway Company were at the times mentioned in said petition and now are common carriers employed in the transportation of freight and passengers among the several States of the United States within which the railways operated by them are situated.

381 This defendant denies each and every other allegation of Paragraph I of the petition.

II. This defendant admits the allegations of Paragraph II of the petition that prior to November 13, 1901, the stock of the said railway companies was owned and controlled by their respective shareholders, and that among the shareholders of said companies respectively were the parties in that behalf alleged.

This defendant denies each and every other allegation of Paragraph II of the petition.

III. This defendant admits the allegations of Paragraph III
382 of the petition that the Northern Pacific Company at the times mentioned, owned and operated a railway extending from Ashland, in Wisconsin, via Duluth, Minnesota, and from St. Paul, Minnesota, across Minnesota, North Dakota, Montana, Idaho, and Washington, passing through Helena, in the State of Montana, and Spokane, in the State of Washington, and extending to Tacoma and Seattle, in Washington, and to Portland, in Oregon; that the Great Northern Company operated lines of railway extending from St. Paul aforesaid across Minnesota, North Dakota, Montana, Idaho, and Washington, passing through

Spokane, and extending to Everett and Seattle, in the State last 383
aforesaid; that the said lines connected with other railway lines, and either directly or by means of such other railway lines connected with lines of steamships on the Great Lakes and the ocean, and that the mileage operated by said companies aggregated about five thousand five hundred miles for the Northern Pacific Company and about four thousand one hundred and twenty-eight miles for the Great Northern Company.

This defendant denies any knowledge or information sufficient to form a belief of each and every other allegation of Paragraph III of the petition. 384

IV. This defendant admits the allegations of Paragraph IV of the petition that prior to the year 1893 a corporation known as the Northern Pacific Railroad Company, organized and existing under certain acts and resolutions of Congress, and which then operated some parts of the lines of the present Northern Pacific Company, became insolvent and was placed in the hands of receivers appointed by various courts of the United States; that while in this condition a plan of reorganization was entered into by the bondholders of said company, and that an arrangement was proposed between the said bondholders and the 385
Great Northern Company, which was never carried out. This defendant admits that a case entitled Pearsall against The Great Northern Railway Company was decided by the Supreme Court of the United States on March 30, 1896, and is reported in volume 161 of the reports of said court, beginning on page 696.

This defendant denies any knowledge or information sufficient to form a belief of each and every other allegation of paragraph IV of the petition. He is informed and believes that said paragraph is wholly irrelevant to the cause of action, if any, stated in the petition. 386

V. This defendant admits the allegations of paragraph V of the petition that early in the year 1901 the defendants the Great Northern Company and the Northern Pacific Company, acting for the purpose of promoting their several interests, each purchased shares of stock of the Chicago, Burlington and Quincy Railroad Company of Illinois, paying therefor with the joint bonds of the Great Northern Company and the Northern Pacific Company, payable in twenty years from date with interest at

387 four per cent per annum at the rate of two hundred dollars in bonds for each one hundred dollars in stock, and in this manner the said companies severally purchased and acquired each about forty-nine per cent of said stock; that the lines operated by said Burlington Company and its connections were geographically as stated in the petition, and that some of said lines compete with some lines of what is called in the petition the Union Pacific system.

This defendant denies any knowledge or information sufficient to form a belief of each and every other allegation of paragraph
388 V of the petition. He is informed and believes that said paragraph is wholly irrelevant to the cause of action, if any, stated in the petition.

VI. This defendant admits that the defendant James J. Hill and certain other persons decided upon the formation of a securities company for the purposes set forth in the certificate of incorporation of the Northern Securities Company attached to the petition and in all respects as therein stated.

This defendant denies each and every other allegation of paragraph VI of the petition.

389 VII. This defendant admits the allegations of paragraph VII of the petition that on November 13, 1901, the defendant Northern Securities Company was organized under the general laws of the State of New Jersey, with its principal office in Hoboken in said State and with an authorized capital stock of four hundred millions of dollars, and that a copy of the articles of incorporation of said company correctly stating its powers is attached to the petition.

This defendant denies each and every other allegation of paragraph VII of the petition.

390 VIII. This defendant admits the allegations of paragraph VIII of the petition that on or about November 14, 1901, the defendant Northern Securities Company was organized by the election of directors and officers; that the defendant James J. Hill was chosen a director and president thereof; that thereupon the said James J. Hill and other stockholders of the Great Northern Company, each individually and separately from the others, sold to the Securities Company a large amount of the capital stock of the Great Northern Company for the price of one hundred and eighty dollars par value of the capital stock of

the Securities Company for each share of the capital stock of the Great Northern Company; that this defendant and other stockholders of the Northern Pacific Company, each individually and separately from the others, sold to the Securities Company a large amount of the capital stock of the Northern Pacific Company; that the Securities Company also offered, for a limited period, like terms of purchase to the other shareholders of the Great Northern Company; that the Securities Company now holds and owns a large majority of the capital stock of the Northern Pacific Railway Company, and a large amount, though less than a controlling interest, of the stock of the Great Northern Company, and has negotiated for purchase of additional shares of that company, and that the Securities Company has received such dividends as have been paid on any shares held by it. 391 392

This defendant denies each and every other allegation of paragraph VIII of the petition.

IX. This defendant denies each and every allegation of paragraph IX of the petition.

X. This defendant denies any knowledge or information sufficient to form a belief of each and every allegation of paragraph X of the petition. 393

XI. This defendant denies each and every allegation of paragraph XI of the petition.

XII. This defendant denies each and every allegation of paragraph XII of the petition. He is informed and believes that said paragraph consists merely of expressions of opinion, and is, therefore, without weight in support of any cause of action.

XIII. This defendant denies each and every allegation of paragraph XIII of the petition.

XIV. In July, 1896, the capital stock of the Northern Pacific Railway Company was fixed at $155,000,000, of which $75,000,000 were preferred and $80,000,000 common stock. The preferred stock of the company was issued in exchange for various obligations of the former Northern Pacific Railroad Company because the holders thereof would not accept new common stock therefor. At the same time it was contemplated that the time would arrive when said preferred stock should properly be retired, and it was, accordingly, then provided that the preferred stock might be retired in whole or in part at par 394

395 on any first day of January, up to and including January 1, 1917. Both classes of stock were made subject to a voting trust in the defendant Morgan and others, continuing until November 1, 1901, but terminable by the trustees in their discretion at an earlier date.

The Northern Pacific Company shared in the recent prosperity of the country, and its common stock appreciated in value until it was deemed practicable to carry out the original intention of retiring the preferred stock and also to terminate the voting trust. Accordingly said trust was terminated by the trustees
396 upon January 1, 1901, and the preferred stock was retired. Although the latter action was in contemplation and was practically decided upon some time before the termination of the voting trust, it was not made the subject of formal action by the board of directors until November 13, 1901, and was completed upon January 1, 1902.

XV. As hereinbefore stated, early in 1901 the Northern Pacific Company and the Great Northern Company each purchased about forty-nine per cent of the capital stock of the Chicago, Burlington and Quincy Railroad Company. This
397 purchase was made by the Northern Pacific Company primarily in order to secure a terminus at Chicago and permanent connection with the Eastern and Southeastern markets, which are especially valuable for the agricultural and mineral products of the Northwest, but also because the Burlington system serves a large and growing territory, and the purchase was deemed desirable and profitable in itself.

These purchases were not made as the petition alleges "in contemplation of the ultimate placing of the Great Northern and Northern Pacific system under a common source of con-
398 trol." They had no connection whatever with the future formation of the Northern Securities Company, or any other company whatsoever, and had no connection with the fact alleged in the petition that the Union Pacific Railway system is to some extent a competing system with the Burlington system.

The said purchases were not made with intent to violate the statute or common law of any State or of the United States; were not in violation of any such law, and are not charged in the petition to have been in any respect unlawful.

XVI. During the reorganization of the Northern Pacific 399
system the firm of J. P. Morgan & Co. acted as reorganization managers, and ever since the reorganization of the Northern Pacific Company has been its fiscal agent and closely identified with the furtherance of its interests. Said firm, prior to May 7, 1901, purchased common stock of the Northern Pacific Company in considerable amounts and their holdings upon that day amounted to about two hundred thousand shares. As this defendant is informed and believes, in making these purchases said firm acted on its own account and in behalf of no other person whomsoever. 400

The said purchases were not made with intent to violate the statute or common law of any State or of the United States, and were not in violation of any such law.

XVII. As this defendant is informed and believes, for some years the defendant Hill and others who were interested in the Great Northern Company, but not including this defendant, had in contemplation the formation of a corporation for the purpose of purchasing their interests in that company, with the general object that said interests should be held together and the policy and course of business of the Great Northern 401
Company should be continuous in developing the company's system and the territory served by it, and not subject to radical change and possible inconsistency from time to time. In or about August, 1901, as this plan was approaching maturity, said parties for similar reasons determined that they would also sell to the new company, when formed, their interests in the Northern Pacific Company, which were considerable in amount, and that the capital of the new company should be made sufficiently large to enable it to purchase all shares of the Great Northern and Northern Pacific companies which the holders 402
might desire to sell and any other shares which the new company might deem it advisable to acquire.

As set forth in the petition, the Northern Securities Company was duly organized pursuant to the laws of New Jersey upon November 13, 1901. It was organized according to law, and possesses all the powers set forth in its certificate of incorporation, and has full power to do every act which it has in fact done, and the petition does not allege the contrary.

403 After its organization the Northern Securities Company duly purchased all the shares of the Northern Pacific Company and of the Great Northern Company hereinbefore mentioned, and also a large amount of shares of the Northern Pacific Company purchased by the firm of J. P. Morgan & Company from the Oregon Short Line Railroad Company, for which it paid partly in cash and partly in its own shares. It was also willing to purchase the shares of any other shareholders of the Northern Pacific and the Great Northern Companies, who desired to sell the same, for the price of one hundred and fifteen dollars for
404 each share of the Northern Pacific Company and one hundred and eighty dollars for each share of the Great Northern Company, payable in its own shares, and did actually purchase and pay for considerable amounts of said stock at those prices.

None of these purchases by the Northern Securities Company were made with intent to violate the statute or common law of any State or of the United States, or were in violation of any such law.

XVIII. The transactions prior to the formation of the Northern Securities Company had no connection whatever with
405 the formation thereof, save as above stated. That company was organized, not for the purpose of acquiring a majority of the stock of either the Great Northern or the Northern Pacific Company, but as above set forth. It was not organized for the purpose of affecting railway rates or competition in the slightest degree, and has not had any such effect. In the transactions above stated this defendant, and, so far as he is aware, the other parties who have been engaged therein, have never sought or intended to violate the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful
406 restraints and monopolies" (26 Stat., 209, c. 647), or to enter into any contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States or with foreign nations, or to monopolize or attempt to monopolize, or combine or conspire with any other person or persons to monopolize, any part of the trade or commerce among the several States or with foreign nations.

The transactions have consisted merely in the organization of a lawful corporation of New Jersey and the sale to, and pur-

chase by it, of lawfully salable property. All acts done in relation to the organization of the Securities Company and the purchase by it of shares of stock of the railway companies, and the sale thereof by the owners have been expressly authorized by law. They have had no effect whatever, in law or in fact, in restraint or monopoly of trade or commerce among the several States or with foreign nations. The petition does not allege that at any place within the jurisdiction of this court or elsewhere any such restraint or monopoly has been effected. 407

If these lawful transactions, consisting merely of the purchase and sale of property, should hereafter have any effect in restraint or monopoly of trade or commerce among the several States or with foreign nations, that would not be their direct effect, but would be merely indirect, remote, incidental, and collateral, and aside from any intention of the parties, and would, therefore, not bring said transactions within said act of Congress above mentioned. Any other construction would render the statute unconstitutional as beyond the power of Congress and as depriving this defendant, and the sellers generally of the stock thus sold, of liberty and property without due process of law, because, thus construed, it would be an inhibition upon their right to sell their property. If complainant's contention be sustained, the right of the owner of property to sell the same will be dependent upon what the courts at any future time may hold to have been the intention of the purchaser in buying such property. This result would seriously impair the liberty of the owner and the value of his property, and is contrary to the constitutional guaranties thereof. 408 409

These transactions are, therefore, not within the act of Congress above mentioned; nor has Congress any constitutional power to annul or prohibit action thus expressly authorized by State statutes under which the same has been taken. 410

XIX. There is a defect of necessary parties defendant herein because in this suit it is sought to annul all sales of shares made by shareholders of the Great Northern Company and the Northern Pacific Company to the Northern Securities Company, and to cancel all certificates of stock of the latter company issued in purchase of the same. As already set forth, the parties making such sales are numerous, and many of them had no connection with the matter save to sell their shares in the rail-

411 way companies to the Securities Company after its organization. It is obvious that in their absence no adjudication can be made annulling such sales to the Securities Company. A decree to such effect as prayed for by the petition necessarily would deprive such original sellers of their property without due process of law. All persons who sold shares in the railway companies to the *Securities Company* are, therefore, necessary parties, and the petition is bad by reason of their absence.

XX. And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said
412 petition charged, without this, that if there is any other matter, cause, or thing in the petition contained material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, the same is not true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

413 DANIEL S. LAMONT,
By DAVID WILLCOX,
Solicitor.

FRANCIS LYNDE STETSON,
DAVID WILLCOX,
Counsel for said Defendant.

25036

The circuit court of the United States in and for the district of 414
Minnesota, third division.

THE UNITED STATES OF AMERICA, complainant,
vs.
NORTHERN SECURITIES COMPANY, THE Great Northern Railway Company, The Northern Pacific Railway Company, and others, defendants. } In equity.

415

THE REPLICATION OF THE UNITED STATES OF AMERICA, THE ABOVE-NAMED COMPLAINANT, TO THE ANSWER OF THE NORTHERN SECURITIES COMPANY, DEFENDANT.

This replicant, the United States of America, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the defendant, the Northern Securities Company, for replication thereunto saith: That it doth and will aver, maintain, and prove its said bill to be true, certain, and sufficient in the law, to be answered unto by 416
the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed. 417

MILTON D. PURDY,
United States Attorney for the District of Minnesota.

St. Paul, Minnesota, June 2nd, 1902.

(Endorsed:) Replication to answer of Northern Securities Company. Filed June 2nd, 1902. Henry D. Lang, clerk.

418 The United States circuit court in and for the district of Minnesota, third division.

THE UNITED STATES OF AMERICA, complainant,
vs.
NORTHERN SECURITIES COMPANY, THE Great Northern Railway Company, The Northern Pacific Railway Company, and others, defendants.
} In equity.

419 THE REPLICATION OF THE UNITED STATES OF AMERICA, THE ABOVE-NAMED COMPLAINANT, TO THE ANSWER OF JAMES J. HILL AND OTHERS, DEFENDANTS.

This replicant, the United States of America, saving and reserving to itself all and all manner of advantages of exception which may be had or taken to the manifold errors, uncertainties, and insufficiencies of the answer of the defendants, James J. Hill and others, for replication thereunto, saith that it doth and will aver, maintain, and prove its said bill to be true,
420 certain, and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive, and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual, in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed or denied, is true, all which matters and things this replicant is ready to aver, maintain, and prove as this honorable court shall direct, and
421 humbly prays as in and by its said bill it hath already prayed.

MILTON D. PURDY,
United States Attorney for the District of Minnesota.

St. Paul, Minn., June 2, 1902.

(Indorsed:) Replication to answer of James J. Hill and others. Filed June 2, 1902. Henry D. Lang, clerk.

25037

The United States circuit court in and for the district of Minnesota, third division. 422

THE UNITED STATES OF AMERICA, complainant,
vs.
NORTHERN SECURITIES COMPANY, THE Great Northern Railway Company, The Northern Pacific Railway Company, and others, defendants. } In equity.

THE REPLICATION OF THE UNITED STATES OF AMERICA, THE ABOVE-NAMED COMPLAINANT, TO THE ANSWER OF THE GREAT NORTHERN RAILWAY COMPANY, DEFENDANT. 423

This replicant, the United States of America, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the defendant, the Great Northern Railway Company, for replication thereunto saith, that it doth and will aver, maintain, and prove its said bill to be true, certain, and sufficient in law to be answered unto by the 424
said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true, all which matters and things this replicant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed. 425

MILTON D. PURDY,
United States Attorney for the District of Minnesota.

ST. PAUL, MINN., *June 2, 1902.*

(Endorsed): Replication to answer of Great Northern Railway Company. Filed June 2, 1902. Henry D. Lang, clerk.

426 The United States circuit court in and for the district of Minnesota, third division.

THE UNITED STATES OF AMERICA, complainant, *v.* NORTHERN SECURITIES COMPANY, THE Great Northern Railway Company, The Northern Pacific Railway Company, and others, defendants.	In equity.

427 THE REPLICATION OF THE UNITED STATES OF AMERICA, THE ABOVE-NAMED COMPLAINANT, TO THE ANSWER OF THE NORTHERN PACIFIC RAILWAY COMPANY, DEFENDANT.

This replicant, the United States of America, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the defendant, The Northern Pacific Railway Company, for replication thereunto saith that it doth and will aver, maintain, and prove its said bill to be true, certain, and sufficient in the law to be answered unto by the said
428 defendant; and that the answer of the said defendant is very uncertain, evasive, and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

MILTON D. PURDY,
429 *United States Attorney for the District of Minnesota.*

St. Paul, Minn., June 2, 1902.

(Indorsed:) Replication to answer of Northern Pacific Ry. Co. Filed June 2, 1902. Henry D. Lang, clerk.

The United States circuit court in and for the district of Minnesota, third division. 430

THE UNITED STATES OF AMERICA, complainant,
vs.
NORTHERN SECURITIES COMPANY, THE GREAT Northern Railway Company, the Northern Pacific Railway Company, and others, defendants. } In equity.

THE REPLICATION OF THE UNITED STATES OF AMERICA, THE ABOVE-NAMED COMPLAINANT, TO THE ANSWER OF J. PIERPONT MORGAN AND ROBERT BACON, DEFENDANTS. 431

This replicant, the United States of America, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties, and insufficiences of the answer of the defendants, J. Pierpont Morgan and Robert Bacon, for replication thereunto saith, that it doth and will aver, maintain, and prove its said bill to be true, certain, and sufficient in law to be answered unto by the 432 said defendants, and that the answer of the said defendants is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in said answer contained, material or effectual in the law, to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true: All which matters and things this replicant is ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays, as in and by its said bill it hath already prayed. 433

MILTON D. PURDY,
United States Attorney for the District of Minnesota.

St. Paul, Minnesota, June 2, 1902.

(Indorsed:) Replication to answer of J. Pierpont Morgan and Robert Bacon. Filed June 2, 1902. Henry D. Lang, clerk.

434 The United States circuit court in and for the district of Minnesota, third division.

THE UNITED STATES OF AMERICA, complainant,
vs.
THE NORTHERN SECURITIES COMPANY, The Great Northern Railway Company, The Northern Pacific Railway Company, and others, defendants. } In equity.

435 THE REPLICATION OF THE UNITED STATES OF AMERICA, THE ABOVE-NAMED COMPLAINANT, TO THE ANSWER OF DANIEL S. LAMONT, DEFENDANT.

This replicant, the United States of America, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the defendant Daniel S. Lamont, for replication thereto saith that it doth and will aver, maintain, and prove its said bill to be true, cer-
436 tain, and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in law to be replied unto by this replicant, without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

437 MILTON D. PURDY,
United States Attorney for the District of Minnesota.

St. Paul, Minn., June 2, 1902.

(Indorsed:) Replication to answer of Daniel S. Lamont, filed June 2, 1902. Henry D. Lang, clerk.

UNITED STATES OF AMERICA, 438
District of Minnesota, ss:

I, Henry D. Lang, clerk of the circuit court of the United States for the district of Minnesota, do hereby certify that I have carefully compared the foregoing paper writings, viz:

Appearance of M. D. Purdy et al. for complainant and order,
Bill in equity,
Præcipe for chancery subpœna and order,
Chancery subpœna,
Præcipe for appearance for Northern Securities Company et al. and order, 439
Præcipe for appearance Great North Railway Company and order,
Appearance for Northern Pacific Railway Company and order,
Appearance of J. Pierpont Morgan and Robert Bacon and order,
Appearance of Daniel S. Lamont and order,
Answer of defendant Northern Securities Company,
Answer of defendants J. J. Hill et al.,
Answer of defendant Great Northern Railway Company, 440
Answer of defendant Northern Pacific Railway Company,
Answer of J. Pierpont Morgan and Robert Bacon,
Answer of Daniel S. Lamont,
Replication to answer of Northern Securities Company,
Replication to answer of J. J. Hill and others,
Replication to answer of Great Northern Railway Company,
Replication to answer of Northern Pacific Railway Company,
Replication to answer of J. Pierpont Morgan and Robert Bacon,
Replication to answer of Daniel S. Lamont,

with the original files and records thereof, which are in my 441 custody as such clerk, and that said copies are true copies of the original files and records, and of the whole thereof, on file and of record in the cause therein named.

Witness my hand as clerk, and the seal of said court.

Done at my office in St. Paul, Minnesota, this 23rd day of December, A. D. 1902.

[SEAL.] HENRY D. LANG,
Clerk of U. S. Circuit Court for the District of Minnesota.

O

ORDER APPOINTING FREDERICK G. INGERSOLL SPECIAL EXAMINER. 1

In the circuit court of the United States for the district of Minnesota, third division.

UNITED STATES OF AMERICA, COMPLAINANT,
against
NORTHERN SECURITIES COMPANY, THE GREAT Northern Railway Company, The Northern Pacific Railway Company, James J. Hill, William P. Clough, D. Willis James, John S. Kennedy, J. Pierpont Morgan, Robert Bacon, George F. Baker, and Daniel Lamont, defendants. 2

The motion on the part of the complainant for the appointment of an examiner to take and report the testimony of all the witnesses on the part of both parties to the above-entitled cause having this day come on to be heard, Charles C. Houpt, esq., United States district attorney for the district of Minnesota, appearing for the complainant, and Hon. George B. Young appearing for the defendants; after hearing the respective counsel, and there being no objection made on behalf of any party to said cause to an examiner being appointed at this time, it is hereby 3

Ordered: That Frederick G. Ingersoll, of the city of St. Paul, in said district of Minnesota, be, and he is hereby, appointed special examiner to take and report the testimony in this cause and return the same to this court.

Dated at St. Paul, Minnesota, July 29, 1902.

WM. LOCHREN, *Judge.*

(Endorsed:) Order appointing Frederick G. Ingersoll special examiner. Entered T. M., vol. 26, p. 108. Filed August 1, 1902. Henry D. Lang, clerk, by Louise B. Trott, deputy.

UNITED STATES OF AMERICA,
District of Minnesota, Third Division, ss.: 4

I, Henry D. Lang, clerk of the circuit court of the United States for the district of Minnesota, do hereby certify that I

have carefully compared the foregoing paper writing with the original thereof, which is in my custody as such clerk, and that the said paper writing is a correct copy of such original and of the whole thereof, in the cause therein named.

Witness my hand as clerk, and the seal of said court. Done at my office in St. Paul, Minn., this 19th day of August, A. D. 1902.

HENRY D. LANG, *Clerk.*

[Seal United States circuit court, district of Minnesota, third division.]

Printed and endorsed on back as follows:

United States circuit court, district of Minnesota, third division.

United States of America *v.* Northern Securities Company et al., defendants.

Certified copy of order appointing Frederick G. Ingersoll special examiner.

OATH OF SPECIAL EXAMINER.

United States circuit court, district of Minnesota, third division.

THE UNITED STATES OF AMERICA, COMPLAINANT,
v.
NORTHERN SECURITIES COMPANY, THE GREAT Northern Railway Company, The Northern Pacific Railway Company, James J. Hill, William P. Clough, D. Willis James, John S. Kennedy, J. Pierpont Morgan, Robert Bacon, George F. Baker, and Daniel Lamont, defendants.

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I, Frederick G. Ingersoll, the duly appointed examiner in the above-entitled cause, do solemnly swear that I will faithfully and fairly examine, take, and report the testimony to be adduced therein and make a just and true report thereof according to the best of my understanding and ability. So help me God.

FREDERICK G. INGERSOLL.

Subscribed and sworn to before me this 12th day of September, A. D. 1902. 9

CONSTAN JENSEN,
Notary Public, Ramsey County, Minn.

[Notarial seal, Ramsey County, Minn.]

(Indorsed on back:) Entered 789, C. Eq. United States circuit court, district of Minnesota, third division. The United States, complainant, *v.* Northern Securities Company, a corporation, et al., defendants. Oath of examiner. Filed September 12, 1902. Henry D. Lang, clerk.

UNITED STATES OF AMERICA, 10
District of Minnesota, Third Division, sct:

I, Henry D. Lang, clerk of the circuit court of the United States for the district of Minnesota, do hereby certify that I have carefully compared the foregoing paper writing with the original thereof, which is in my custody as such clerk, and that the said paper writing is a correct copy of such original and of the whole thereof in the cause therein named.

Witness my hand as clerk and the seal of said court. Done at my office in St. Paul, Minn., this 12th day of September, A. D. 1902. Henry D. Lang, clerk. 11

[U. S. circuit court seal, district of Minnesota, third division.]

(Indorsed on back:) United States circuit court, district of Minnesota, third division. United States of America, plaintiff, *v.* Northern Securities Company et al., defendants. Certified copy of oath of examiner.

STIPULATION AS TO TIME AND PLACE OF TAKING TESTIMONY.

United States circuit court, district of Minnesota, third division.

THE UNITED STATES OF AMERICA, COMPLAINANT,
v.
NORTHERN SECURITIES COMPANY, THE GREAT Northern Railway Company, The Northern Pacific Railway Company, James J. Hill, William P. Clough, D. Willis James, John S. Kennedy, J. Pierpont Morgan, Robert Bacon, George F. Baker, and Daniel Lamont, defendants. 12

It is agreed between counsel that the testimony on the part of the complainant shall be commenced before the special master

heretofore appointed on the 15th day of September, 1902, at the United States attorney's office, Post-Office Building, New York City.

Dated August 21, 1902.

CHARLES C. HOUPT,
Solicitor for Complainant.

JOHN W. GRIGGS,
GEO. B. YOUNG,
Counsel for Northern Securities Company.

M. D. GROVER,
Counsel for Great Northern Railway Company.

C. W. BUNN,
Counsel for Northern Pacific Railway Company.

FRANCIS LYNDE STETSON,
Counsel for J. Pierpont Morgan and Robert Bacon.

FRANCIS LYNDE STETSON,
Counsel for Daniel Lamont.

GEORGE B. YOUNG,
Counsel for James J. Hill, William P. Clough, D. Willis James, John S. Kennedy, George F. Baker.

(Indorsed:) Filed September 13, 1902. Henry D. Lang, clerk.

UNITED STATES OF AMERICA,
District of Minnesota, Third Division, set:

I, Henry D. Lang, clerk of the circuit court of the United States for the district of Minnesota, do hereby certify that I have carefully compared the foregoing paper writing with the original thereof, which is in my custody as such clerk, and that the said paper writing is a correct copy of such original and of the whole thereof in the cause therein named.

Witness my hand as clerk and the seal of said court. Done at my office in St. Paul, Minn., this 13th day of September, A. D. 1902.

HENRY D. LANG, *Clerk.*

[Seal U. S. circuit court, district of Minnesota, third division.]

(Indorsed:) United States circuit court, district of Minnesota, third division. United States of America, plaintiff, *v.* Northern Securities Company et al., defendants. Certified copy of stipulation relative to time of taking testimony.

In the circuit court of the United States for the district of Minnesota, third division. 17

THE UNITED STATES OF AMERICA, COMPLAINANT,
v.
NORTHERN SECURITIES COMPANY, THE GREAT Northern Railway Company, The Northern Pacific Railway Company, James J. Hill, William P. Clough, D. Willis James, John S. Kennedy, J. Pierpont Morgan, Robert Bacon, George F. Baker, and Daniel Lamont, defendants.

It is hereby stipulated and agreed by and between the parties 18
to the above-entitled cause, by their respective solicitors, that the testimony to be taken herein before Frederick G. Ingersoll, the duly appointed examiner, may be taken stenographically by Robert S. Taylor, and shall thereafter by him be put into typewriting.

Dated city of New York, September 15, 1902.

JOHN K. RICHARDS,
Solicitor-General,
JAMES M. BECK,
Assistant Attorney-General, 19
W. A. DAY,
Special Assistant to Attorney-General,
Solicitors for Complainant.
DAVID WILLCOX,
Of Counsel for Defendants Morgan, Bacon, and Lamont,
M. D. GROVER,
Great Northern Railway Company,
JOHN W. CRIGGS,
GEORGE B. YOUNG,
C. W. BUNN, 20
Solicitors for Defendants.

21 In the circuit court of the United States for the district of Minnesota, third division.

THE UNITED STATES OF AMERICA, complainant,
v.
NORTHERN SECURITIES COMPANY, THE Great Northern Railway Company, The Northern Pacific Railway Company, James J. Hill, William P. Clough, D. Willis
22 James, John S. Kennedy, J. Pierpont Morgan, Robert Bacon, George F. Baker, and Daniel Lamont, defendants.

I do solemnly swear that I will fairly and faithfully report and transcribe the testimony to be adduced on behalf of the complainant and defendants in the above-entitled cause according to the best of my understanding and ability. So help me God.

ROBERT S. TAYLOR.

Subscribed and sworn to before me this 15th day of Septem-
23 ber, A. D. 1902.

BENJ. P. THORNTON,
Deputy Clerk of United States Circuit Court.

In the circuit court of the United States for the district of 24
Minnesota, third division.

THE UNITED STATES OF AMERICA, COMPLAINANT,
v.
NORTHERN SECURITIES COMPANY, THE GREAT Northern Railway Company, The Northern Pacific Railway Company, James J. Hill, William P. Clough, D. Willis James, John S. Kennedy, J. Pierpont Morgan, Robert Bacon, George F. Baker, and Daniel Lamont, defendants.

NEW YORK CITY, *Sept. 15, 1902.* 25

At 10 o'clock in the forenoon of the 15th day of September, 1902, at the office of the United States district attorney, in the Post-Office building, in the city of New York, this cause was duly called by the special examiner, Frederick G. Ingersoll.

Mr. John K. Richards, Solicitor-General, and Mr. James M. Beck, Assistant Attorney-General, and Mr. William A. Day, special assistant to the Attorney-General, appeared for and on behalf of the complainant. Mr. M. D. Grover appeared for and on behalf of the defendant Great Northern Railway Company; Mr. Charles W. Bunn appeared for and on behalf of the 26
defendant, the Northern Pacific Railway Company; Messrs. John W. Griggs and George B. Young appeared for and on behalf of the defendant, the Northern Securities Company; Mr. George B. Young appeared for and on behalf of the defendants, W. P. Clough, James J. Hill, D. Willis James, John S. Kennedy, and George F. Baker; and Mr. David Willcox appeared for and on behalf of the defendants, Daniel S. Lamont, J. Pierpont Morgan, and Robert Bacon; all parties to said cause being represented.

Thereupon, by consent of all parties, further proceedings 27
herein were adjourned until Tuesday, September 16, 1902, at 11 o'clock in the forenoon, at room 70 in the post-office building in said city of New York.

28 CITY OF NEW YORK, *September 16, 1902.*

This cause was duly called at room 70, in the post-office building in said city of New York, at 11 o'clock a. m. this day, pursuant to adjournment. All parties complainant and defendant appeared. Thereupon Solicitor-General Richards made the following statement:

Mr. EXAMINER: It has been stipulated by counsel for the United States and counsel for all of the defendants in this case that certain testimony and documentary evidence heretofore taken and reported shall be treated and considered as testi-
29 mony taken and reported by the special examiner in the present case. I therefore request that you spread upon the record a minute to the effect that all parties to this case stipulate and agree that the testimony of James J. Hill, C. S. Mellen, J. S. Kennedy, G. W. Perkins, W. P. Clough, Jacob H. Schiff, Charles Steele, and J. P. Morgan, with the documentary evidence and exhibits introduced in connection therewith, taken in the case of Peter Power against the Northern Pacific Railway Company, pending in the circuit court of the United States for the district of Minnesota, fourth division, before Richard A.
30 Mabey, special examiner, and printed in the transcript, and also all the exhibits introduced in evidence in said case; likewise the testimony of E. H. Harriman taken before the Interstate Commerce Commission at Chicago, Ill., on the 25th of January, 1902, in the matter of consolidations and combinations of carriers, subject to the act to regulate commerce, including the method of association known as the "Community of interest plan," shall be considered and treated as testimony taken in this case and have the same force and effect as if the documentary evidence had been introduced and each of the witnesses formally
31 sworn and examined before you as special examiner in this case.

The EXAMINER. Now, Mr. Solicitor-General, when will you hand to the examiner that testimony—that record?

Mr. RICHARDS. In that connection, Mr. Examiner, I desire to state further that of course both sides reserve the right to call either of these witnesses and take their oral testimony; and, of course, as you suggest, it will be necessary to put in shape all

of the testimony, oral and documentary, to which I have referred; and so, I suppose it will be necessary to adjourn from now until some day next week, say Thursday of next week, in order to permit the placing in proper shape of the testimony which is thus introduced by agreement. 32

Mr. GRIGGS. That is agreeable to the other side.

The EXAMINER. Then I understand that that adjournment is asked for now?

Mr. RICHARDS. Yes.

The EXAMINER. Well, then, we will adjourn until next week, Thursday, at 11 o'clock, at this room. 33

Mr. RICHARDS. At 11 o'clock.

The EXAMINER. Next week, Thursday, at 11 o'clock at this room?

Mr. RICHARDS. Yes.

Adjourned until September 25, 1902, at 11 a. m., room 70, post-office building.

34 CITY OF NEW YORK, *September 25, 1902.*

Pursuant to adjournment, the hearing was resumed at this time. All parties appeared.

Mr. RICHARDS. Mr. Examiner, in pursuance of the stipulation and agreement by counsel for all the parties, of which I advised you at the last meeting, I hand you certain printed testimony:

1. Volume 1 of the special examiner's transcript of defendant's testimony in the Peter Power case.

2. Volume 2 of special examiner's transcript, same case.

35 3. Volume 3 of special examiner's transcript, same case, up to and including page 88.

4. A pamhlet containing the laws constituting charter of the Great Northern Railway Company and a record of its organization. (Marked "Complainant's Exhibit A.")

5. Twelfth Annual Report of the Great Northern Railway Company for the fiscal year ending June 30, 1901. (Marked "Complainant's Exhibit B.")

Mr. GROVER. In that report, Mr. Richards, is a map, marked an exhibit, with special reference to Mr. Hill's testimony.

36 Mr. RICHARDS. Yes.

The SPECIAL EXAMINER. Do I understand that the twelfth annual report introduced here now is a part of Mr. Hill's testimony?

Mr. GROVER. Yes.

Mr. RICHARDS (continuing):

6. A copy of the trust indenture securing Northern Pacific, Great Northern, Chicago, Burlington and Quincy collateral, 4 per cent joint bonds. (Marked "Complainant's Exhibit C.")

7. A copy of the lease of the Chicago, Burlington and Quincy

37 Railroad Company to the Chicago, Burlington and Quincy Railway Company. (Marked "Complainant's Exhibit D.")

8. A copy of the agreement of J. P. Morgan & Co. with the voting trustees of the Northern Pacific Railway Company of December 1, 1896. (Marked "Complainant's Exhibit E.")

9. A copy of dissolution of the voting trust of the Northern Pacific Railway Company. (Marked "Complainant's Exhibit F.")

10. A copy of the minutes of the meeting of the board of directors of the Northern Pacific Railway Company held on November 13, 1901. (Marked "Complainant's Exhibit G.") 38

11. A copy of the circular issued by the Northern Securities Company on November 22, 1901, to the holders of stock of the Great Northern Railway Company. (Marked "Complainant's Exhibit H.")

12. A copy of the testimony of Edward H. Harriman, given before the Interstate Commerce Commission, at Chicago, on January 25, 1902, and reported on pages 78 to 115, inclusive, of the printed report of that hearing. 39

I think that is all that goes in under this stipulation.

Mr. GROVER. Yes, that embraces everything.

Mr. RICHARDS. Now, Mr. Examiner, we desire to introduce on the part of the Government a map which has been prepared by the Interstate Commerce Commission, or by the map maker of the Interstate Commerce Commission. That map is here. Mr. Day can state how the map happened to be made and identified.

The SPECIAL EXAMINER. That, I understand, is introduced under the same general consent. 40

Mr. GRIGGS. They offer it and we say no objection; take it as original evidence.

The SPECIAL EXAMINER. That will be received and marked as one of the exhibits in the case.

It was marked "Complainant's Exhibit I."

41 The following is a copy of vol. 1 of special examiner's transcript in Peter Power case, containing the testimony of James J. Hill and Charles S. Mellen, and here offered by complainant as original evidence in this case.

United States circuit court, district of Minnesota, fourth division.

PETER POWER, COMPLAINANT,
v.
NORTHERN PACIFIC RAILWAY COMPANY, defendant.

42 JAMES J. HILL, after being first duly sworn, testified as follows, in answer to questions propounded by Mr. Lancaster:

Q. Mr. Hill, you will give your name and residence.

A. James J. Hill; St. Paul, Minn.

Q. On the 30th day of December, 1901, you were president and a director of the Great Northern Railway Company?

A. Yes, sir.

Q. And how long have you been president and a director of said company?

A. Since its organization.

43 Q. What year was that, please?

A. The fall of 1889, I think.

Mr. KELLOGG. I wish to enter an objection to my testimony in this case as irrelevant and immaterial, and on the ground that the bill of complaint states no cause of action, and I suppose it may be understood that I need not repeat this objection to every question.

Mr. LANCASTER. That may be stipulated.

Mr. KELLOGG. And I can urge it as though it was placed against every question.

44 Q. Mr. Hill, about how many miles of railway does the Great Northern system comprise, including branches?

A. And proprietary lines?

Q. Yes.

A. 5,700 or 5,800.

Q. What are the eastern termini of the Great Northern Railway system?

A. The Twin Cities and the head of Lake Superior.

Q. Duluth?

A. Duluth and Superior. 45

Q. What are the western termini of the same road?

A. Puget Sound. It has a line along the shore principally of Puget Sound.

Q. And does it reach Seattle?

A. Yes, sir.

Q. And Tacoma?

A. No, sir.

Q. Well, does it reach Portland?

A. No, sir. Over another line.

Q. Does it have a line of railway extending from St. Paul 46 and Minneapolis to Duluth?

A. Yes, sir.

Q. And a line of railway from Minneapolis and St. Paul to Moorhead?

A. Yes, sir.

Q. And to Crookston?

A. Part of the same line.

Q. And does it also extend to East Grand Forks?

A. Yes, sir.

Q. And all of those towns in the State of Minnesota? 47

A. Yes, sir.

Q. Your line also reaches Fargo, N. Dak.?

A. Yes, sir.

Q. Does your line also extend from St. Paul and Minneapolis westward to Wahpeton, N. Dak.?

A. One of the lines to Moorhead and Fargo extends to Wahpeton and passes through Wahpeton.

Q. And touches Breckenridge?

A. Yes, sir.

Q. Which is in the State of Minnesota? 48

A. Yes, sir.

Q. Through what States does the Great Northern Railway system go or pass?

A. There are some lines in Wisconsin, Minnesota, both Dakotas, Montana, Idaho, and Washington. There are some lines in British Columbia. That is all.

Q. And it had all of these lines and was operating all of these lines on and prior to December 30, 1901, did it?

49 A. Practically. There may a few miles have been added since that time, but practically.

Q. Practically all of these lines that you have described were operated and owned by the Great Northern road at and prior to December 30, 1901?

A. Either operated by the Great Northern road—some of them, known as Great Northern lines, are operated by their own companies separately.

Q. Well, all of those lines that you have described, Mr. Hill, were, on the 30th day of December, 1901, and prior thereto,
50 known and operated as a part of the Great Northern Railway system, were they not?

A. The Eastern Minnesota, the Montana Central, Spokane Falls and Northern, and Kootenai Valley are all operated by their own separate corporations.

Q. Well, are the stocks of all of those roads owned and held by the Great Northern Railway Company?

A. Substantially all.

Q. The main line, Mr. Hill, from St. Paul and Minneapolis to Seattle, is that owned directly by the Great Northern Rail-
51 way Company?

A. Owned by the St. Paul, Minneapolis and Manitoba. Leased.

Q. Is it leased?

A. By the Great Northern.

Q. Leased by the Great Northern?

A. Yes.

Q. For how long a time?

A. Nine hundred and ninety-nine years; and the Great Northern substantially owns the stock.

52 Q. That is, substantially owns the stock of the St. Paul——

A. Minneapolis and Manitoba; yes.

Q. And that was the condition on and prior to the 30th day of December, 1901?

A. Yes, sir.

Q. And the Great Northern Railway Company was on that day, and prior thereto, operating the main line from St. Paul and Minneapolis to Seattle?

A. Yes, sir.

Q. And that main line passes in a northwesterly direction 53
from St. Paul and Minneapolis through the State of Minnesota, does it not?

A. Yes, sir.

Q. And in a westerly direction through the State of North Dakota?

A. Yes, sir.

Q. And in a practically westerly direction through the State of Montana?

A. Yes, sir.

Q. And through the States of Idaho and Washington? 54

A. Yes, sir.

Q. To Puget Sound?

A. That is correct.

Mr. LANCASTER. Mr. Kellogg, we would like to have in the record here a map. We have one. This is the Great Northern. We have another one here of the Northern Pacific, but I think this was gotten out after the purchase of the Burlington. It shows the three systems, and that is attached to the Great Northern report for 1901.

Mr. KELLOGG. That map is substantially correct, as such 55
railway maps are.

Mr. LANCASTER. Very well, that may be taken.

Mr. KELLOGG. Of course, that is not an exact map of the railroads. It is what is usually printed in advertising sheets and time tables, as railway maps.

Mr. BOUTELLE. It is a little more accurate than that, isn't it?

Mr. KELLOGG. I don't know how accurate it is.

Mr. LANCASTER. I just want to show what this is, Mr. Kellogg.

Mr. KELLOGG. All right. 56

(The map was marked "Complainant's Exhibit A.")

Q. Mr. Hill, I will show you complainant's Exhibit A, which has been identified by the examiner, which is a map attached to the twelfth annual report of the Great Northern Railway Company for the fiscal year ending June 30, 1901, and ask you if in a general way that shows the lines of railways of the Great Northern Railway system, the Northern Pacific system, and the Chicago, Burlington and Quincy Railroad system.

57 A. Yes, sir; that in a general way shows the various lines of the three systems.

Q. I will ask you if the Great Northern Railway system is shown in red lines on the map.

A. Yes, sir.

Q. And the Northern Pacific Railway system is shown in green on the map?

A. Yes, sir.

Q. And the Chicago, Burlington and Quincy Railway system is shown in blue?

58 A. That is correct.

Q. I would like a little explanation of this, Mr. Hill. I call your attention to dotted lines in blue in the State of Montana, extending northwesterly from Huntley, and ask you what those dotted lines are proposed to show.

A. Supposed to show surveys, or they may show probable surveys or possible lines.

Q. Surveys for proposed lines?

A. Proposed lines or possible lines.

Q. Or extensions?

59 A. Yes.

Q. Now, I call your attention to the dotted lines in red extending from Armington, in a general southeasterly direction, and ask you what those dotted lines in red show, and what they indicate.

A. They indicate a possible extension.

Q. Well, in the case of the Great Northern do they show a proposed extension of the Great Northern line?

A. Not at present.

Q. About what time, Mr. Hill, was this map, Exhibit

60 gotten out by the Great Northern road?

A. Oh, about the time of the publication of the report, I should think.

Q. It isn't dated?

A. The report is dated; yes.

Q. That is the end of the fiscal year, June 30; but this was not gotten out until long afterwards, was it?

A. It is usually gotten out in the month of September. I suppose that map was made, possibly, in September, 1901.

Q. September, you think, 1901?

A. Yes, sir. 61

Q. Now, at the time when this map was gotton out, were those red lines from Armington intended to show a proposed extension of the Great Northern?

A. No, sir. They are simply meant as a possibility. It may be an advertisement or it may be some suggestion or possibility.

Q. At the time this map was gotten out, some time in September, 1901, had there been an actual survey of that line by the Great Northern Railway as shown by this map?

A. I don't think there has ever been any survey by the Great Northern Railway over that ground. 62

Q. I don't wish to take up much time on this, Mr. Hill, but wish to call your attention to this—the red dotted lines from Portland, Oreg., up to Seattle. At the time this map was gotten out, was there a proposed extension, as shown by the dotted lines there, on the part of the Great Northern?

A. No, sir. That is possibly meant—probably meant—I don't know who put it there, but it probably meant to cover a grade that was partially built ten or twelve years ago.

Mr. GROVER. By another company?

A. Built by the Portland and Puget Sound Railroad. 63

Q. Well, as a matter of fact, then, Mr. Hill, at the present time, or on the 30th day of December, 1901, the dotted lines to which I have just called your attention, from Seattle to Portland, was not a proposed extension?

A. I tried to explain that, that these were mere suggestions. I don't imagine that it would be possible to build a line around that particular location. I think that line would run over the top of steep hills. There is a valley there most of the way.

Q. Well, I will ask you this: Was there on the 30th day of December, 1901, an actual proposed line by the Great Northern road between Seattle and Portland? 64

A. No, sir. There was a survey down in some places on one side of the Northern Pacific, and some places it is on the other, of a line built or partially built—partially graded—in 1890, I think.

Q. By another company?

A. Yes, sir; by a company called the Portland and Puget Sound.

65 Q. Now, with reference to the two other dotted lines, extending northerly from the main line of the Great Northern, or take the three dotted lines there; what were those dotted lines intended to show and what do they show?

A. One of them, running down through the center of Kootenai Lake, shows the steamboat route. This line running up the Columbia River up to the mouth of the Okanogan, that may show a steamboat line and it may show a possible railway line. I couldn't say. There is a steamboat running there.

Q. There was not, then, on the 30th day of December, 1901,
66 a proposed line from Huntley, in the State of Montana, to Armington, by the Chicago, Burlington and Quincy Railway system and the Great Northern Railway system?

A. I could answer for the Great Northern that there was not; I could not answer for the Burlington.

Q. I will ask you, Mr. Hill, if you knew of your own knowledge of any proposed extension on the part of the Chicago, Burlington and Quincy Railway Company?

A. I think the Chicago, Burlington and Quincy had engineers within the last year in that country; whether they completed
67 their work or whether they did not, I could not say.

Mr. LANCASTER. Now, Mr. Kellogg, we will offer this map in evidence.

Mr. KELLOGG. All right, put it in evidence. It will be received subject to the same objection.

Mr. GROVER. Is there a scale on it?

Mr. LANCASTER. I don't think there is. As I stated, practically all we want it for is to show the directions and main lines, etc.

Mr. KELLOGG. Well, it may be received subject to the ob-
68 jection that it is irrelevant and immaterial.

Mr. LANCASTER. Mr. Kellogg, have you any objection to the report going in?

Mr. KELLOGG. I don't see what that has to do with the Northern Pacific Railway. I object to that report going in generally. I don't know what is in the report. I haven't examined it. It is certainly incompetent against the Northern Pacific Railway Company.

Q. I will ask you, Mr. Hill, if complainant's Exhibit B is

the Twelfth Annual Report of the Great Northern Railway 69
Company issued some time in September, 1901.

A. It has that appearance; I haven't compared it with the copy.

Q. You have no doubt, I suppose, Mr. Hill, but what that is official?

A. It has every appearance of being the report.

Q. (Mr. BOUTELLE.) Is that the printed report that was issued by the Great Northern, as it went out? This is a report, or a printed copy of a report, that was actually published by the Great Northern road and sent out to the stockholders? 70

A. It may be. I could compare it with a correct copy and then I could say that it is, but I have not read it. I don't know that it is not.

Mr. BOUTELLE. That is not the question.

Q. You haven't any doubt, have you, Mr. Hill, but what that is the official printed copy?

A. It has every appearance. I have not read it, and without reading it I couldn't swear that it was.

Q. You did cause, Mr. Hill, on behalf of the Great Northern Railway Company, in September, 1901, to be sent out a printed 71
copy of the Twelfth Annual Report, did you not?

A. The company has printed every year an annual report.

Q. Of your own knowledge, do you know that such a printed report was gotten out in September, 1901?

A. It is made from the annual report and sent to the shareholders.

Q. I say you know of your own knowledge that a printed copy was sent out?

A. Yes, sir.

Q. You have seen those printed copies, have you not, Mr. 72
Hill?

A. Yes, sir.

Q. And are you not able to tell that that is one of the printed copies which the Great Northern road had printed and sent out in September, 1901, as its Twelfth Annual Report?

A. I haven't read it. It has the appearance of the Twelfth Annual Report, but without reading it I couldn't say.

Q. It wouldn't be necessary for you to read it all through,

73 Mr. Hill, to tell whether or not it was one of the printed copies which your road sent out.

A. I don't know how I could swear it was a correct copy without comparing it with a correct copy. I don't know what is in that.

Q. I don't ask you, Mr. Hill, whether it is a correct copy of the annual report as prepared, but what I want to know is if that is not one of the printed copies which the Great Northern road sent out?

A. I don't know that, sir. I said it had the appearance of it.

74 Mr. KELLOGG. This is hardly a fair examination. What do you want of this report?

Mr. LANCASTER. I want to have it identified as the printed report of the Great Northern road, and I suppose you will admit that, won't you?

Mr. KELLOGG. If we have time to examine it, we will see. You have not pointed out anything you want, and it is not proper evidence in this case. If you will point out anything you want to introduce we will see if we will admit it or not. At present it is objected to as incompetent, irrelevant, and im-

75 material.

Mr. LANCASTER. I haven't got to that. I was simply trying to identify it and to save the time of pursuing this examination of Mr. Hill. I asked you if you would admit that this was a printed copy of the twelfth annual report of the Great Northern road; the question of whether it shall be received in evidence is something to be reached later.

Mr. GROVER. If that is not a correct one, you can get one that is.

Mr. LANCASTER. Certainly.

76 Mr. KELLOGG. Well, subject to the right to examine it and make any corrections, we are willing to admit that this is the printed copy of the twelfth annual report of the Great Northern Railway Company.

Mr. LANCASTER. Yes, sir; and you will have the privilege of examining it, and if you prefer you can bring a copy of your own and we will substitute it.

Mr. KELLOGG. Well, it isn't in evidence yet.

(The twelfth annual report of the Great Northern Railway

Company was marked by the examiner "Complainant's Exhibit B.") 77

Mr. LANCASTER. Complainant offers in evidence complainant's Exhibit B.

Mr. KELLOGG. This is especially objected to as incompetent and as irrelevant and as immaterial.

Q. Now, Mr. Hill, I want to get into the record the names of the directors of the railroads—the Great Northern, the Northern Pacific, and the Chicago, Burlington and Quincy Railway Company—and I thought possibly that might help your memory a little. 78

Mr. YOUNG. At what date?

Mr. LANCASTER. On and prior to December 30, 1901.

A. That states the directors prior to October, 1901.

Q. That is, the twelfth annual report shows the directors of the Great Northern road on and prior to December 30, 1901?

A. No; prior to October, 1901.

Q. Well, I will take those and note the changes.

Mr. BULKLEY. How long have they been directors?

A. James J. Hill, William P. Clough, D. Miller, Edward Sawyer, M. D. Grover, R. I. Farrington, Jacob H. Schiff, Henry W. Cannon, James N. Hill, Samuel Hill, and E. T. Nichols. 79

Q. What changes in the directors were made subsequent to October and prior to December 30, 1901, Mr. Hill?

A. The election of the company was held in October and changes were made.

Q. Will you indicate the changes that were made in the board of directors?

A. A director was elected in place of Jacob H. Schiff, whose term expired.

Q. And who was elected in his place, Mr. Hill? 80

A. I am not certain whether it was Mr. Nichols or Mr. Farrington.

Q. Mr. Nichols and Mr. Farrington were directors of the old board, weren't they?

A. No, sir.

Q. E. T. Nichols?

A. No, sir.

Q. I guess that is right. I took these from a later date. Mr. Farrington, Mr. Hill, appears to be a director prior to

October, 1901; it must have been Mr. Nichols, then, that was substituted for Mr. Schiff. Is that correct?

A. I couldn't say without the record; it is only a matter of recollection. To be accurate, I can give you the information upon that point.

Mr. KELLOGG. What do you care if you have the present board?

Mr. LANCASTER. I had these names here, and I wanted to get it straightened out.

Q. Then the present board, Mr. Hill, would be James J. Hill, William P. Clough, D. Miller, Edward Sawyer, M. D. Grover, R. I. Farrington, Henry W. Cannon, James N. Hill, Samuel Hill, and E. T. Nichols, if Mr. Nichols was the one that was elected?

A. That would not be correct.

Q. In what respect isn't it correct? Give the present board.

A. I can't; I don't remember the names. I know that Mr. Miller is not a member of the present board. That is my best recollection. Colonel Clough is not a member, or Mr. Schiff.

Q. When was the annual election held?

A. I don't remember the time. I wasn't present. It was adjourned.

Q. Mr. Hill, I suppose you would have no difficulty in giving us the names of the directors that were elected?

Mr. GROVER. I will give you those names.

A. You will have no difficulty at all.

Mr. GROVER. I haven't them now, but I will give them to you.

Mr. LANCASTER. If you will submit to the examiner a correct list——

Mr. GROVER. Yes, I will send it to him.

Mr. LANCASTER. What I want is the directors that were elected at the annual meeting in October and the changes, if any, that have been made subsequent to that date and prior to December 30, 1901.

Mr. GROVER. I can tell you now, off-hand of course, there were no changes.

Mr. LANCASTER. If you will consent to Mr. Grover's putting those in here we would just as soon have it in that way.

Mr. GROVER. Mr. Farrington succeeded the gentleman from 85
New York, Mr. Todd; Mr. Dean succeeded Mr. Schiff, and Mr. Weyerhauser succeeded Mr. Clough, and there was only one election.

Mr. LANCASTER. And those gentlemen were elected at the October meeting?

Mr. GROVER. They were elected at the October meeting. It was when the adjourned meeting was held. Not the first day of the meeting, but the annual October meeting adjourned. Mr. Todd was a member and resigned, and Mr. Farrington succeeded him some time previous to October. 86

Q. Now, with those changes, Mr. Hill, that constitutes the present board of the Great Northern Railway Company?

A. Yes, sir.

Q. And that constituted the board on the 30th day of December, 1901?

A. There has been no change since the board was elected.

Q. And Mr. William P. Clough, was he a director on the 30th day of December, 1901?

A. No, sir.

Mr. GROVER. He resigned weeks before that and Mr. Weyer- 87
hauser succeeded him.

Q. Mr. Hill, do you know when the annual meeting of the Northern Pacific Railway Company was held in 1901?

A. I do not know accurately, but have an impression it was about the 13th of November. It might have been prior to that time.

Mr. KELLOGG. Mr. Mellen can tell you that.

Q. Mr. Hill, you were elected a director of the Northern Pacific Railway Company. Do you remember about what time that election took place? 88

A. I think it was held in July or early August.

Q. I will show you this. This is the report of the Northern Pacific. This shows that you were elected July 23, 1901. Is that your recollection?

A. I think that is substantially correct. No doubt it is.

Q. And how long did you continue a director in the Northern Pacific Railway Company?

A. I didn't qualify or accept the position or attend a meeting until after the election in the fall.

89 Q. November?

A. It might have been October or November, but my recollection is that I attended one meeting in November and resigned from the board. I remember when I was elected I called attention to the fact that I was not eligible.

Q. Well, you probably resigned, then, some time in November, 1901?

A. I think about the 17th or 18th of November.

Q. On and prior to December 30, 1901, were you a director of the Chicago, Burlington and Quincy Railroad Company?

90 A. Well, there are two companies, and the railroad company is the older company. I am not certain.

Q. You are not certain whether you were a director of the railroad company?

A. Or not.

Q. Were you ever a director of the Chicago, Burlington and Quincy Railroad Company?

A. I am not sure. I could tell by referring to the record. I am a director in a number of companies, and I have to depend on the record better than my recollection.

91 Q. Will you examine your records, Mr. Hill, and see if you ever were a director of the Chicago, Burlington and Quincy Railroad Company, and if so when you were elected, and if you are still a director of that company?

A. Yes, sir; I will do so.

Q. Were you on the 30th day of December, 1901, and prior thereto, a director of the Chicago, Burlington and Quincy Railway Company?

A. Yes, sir; I was.

Q. And are you such director at the present time?

92 A. Yes, sir.

Q. About when did the Northern Pacific Railway Company and the Great Northern Railway Company conclude their negotiations for the purchase of the Chicago, Burlington and Quincy Railroad Company?

A. I think the stockholders did not take action. I think the action was taken in the first instance by the company in approving the purchase by resolution of the board of directors. I don't recollect a stockholders' meeting to consider that matter.

Q. Well, what I am getting at, Mr. Hill, is, at what time 93
was the matter virtually concluded, that is, when were the negotiations concluded?

A. I think the negotiations were concluded subject to approval some time in April, 1901.

Q. Had the Great Northern Railway Company or the Northern Pacific Railway Company for several months prior to April, 1901, acquired large holdings of stock in the Burlington system?

A. They had not acquired a dollar, nor anyone representing them, directly or indirectly. 94

Mr. KELLOGG. That is, you mean prior to the conclusion of the negotiations?

A. Yes, sir.

Q. Did you, Mr. Hill, prior to April, 1901, hold stock in the Burlington system?

A. Not a share.

Q. Had the common stock of the Chicago, Burlington and Quincy Railroad Company been purchased for or on account of either the Great Northern or Northern Pacific prior to April, 1901? 95

A. I can speak for the Great Northern. There was not one share, either for account for the company or for anyone connected with the company, and I believe that was the case with regard to the Northern Pacific. I have no knowledge.

Mr. KELLOGG. You mean prior to whenever those negotiations were completed? Mr. Hill didn't pretend to be certain of the date of that negotiation.

Q. You say, Mr. Hill, that the negotiations, as near as you can recall, were concluded some time in April, 1901?

A. That is my recollection. 96

Q. Now, of course, we are talking with reference to the month of April as being the time when the negotiations were concluded. I don't want to be misunderstood.

Mr. GROVER. That is correct.

Q. Now, Mr. Hill, the stock of the Chicago, Burlington and Quincy Railroad Company was held by a large number of individuals, was it not?

A. Yes, sir; about 18,000, I think.

97 Q. Did either the Great Northern or Northern Pacific commence in the fall of 1900 to purchase the stock of the Chicago, Burlington and Quincy Railroad Company from individuals?

A. The Great Northern did not in the fall, or at any other time before or since, purchase any shares of the Chicago, Burlington and Quincy Railroad Company from any individual shareholders, nor did anyone connected with the Great Northern or for the Great Northern directly or indirectly.

Q. Then I understand, Mr. Hill, that at no time prior to the conclusion of the negotiations which took place in April, 1901,
98 did you individually, or for or on account of the Great Northern Railway Company, own or hold any shares in the Chicago, Burlington and Quincy Railroad Company?

A. I never bought any for myself, never owned any prior to that time, and never have owned any except as a director, if I am a director; I don't know that I am. And to answer your question in regard to the Northern Pacific, I have no accurate knowledge as to what was done for the Northern Pacific, but I have a distinct recollection that Mr. Morgan told me that neither the Northern Pacific nor his firm, nor anyone connected
99 with it, could or would buy a share of the stock of the Burlington pending the negotiations.

Q. Well, when, Mr. Hill, did the negotiations for the acquirement of the stock of the Chicago, Burlington and Quincy road commence? About when?

A. The actual negotiations, I should say, commenced about or after the middle of January, 1901.

Q. And is it your recollection that negotiations had been had in the fall or early winter of 1900?

A. Yes, sir; I know there were no such negotiations prior
100 to the first of January or to Christmas.

Q. That is the 1st of January, 1901?

A. The 1st of January, 1901, or Christmas, 1900.

Q. Who conducted the negotiations on the part of the Great Northern road for the acquirement of this stock of the Burlington?

A. I did.

Q. And who conducted the negotiations on the part of the Northern Pacific?

A. Members of the house of J. P. Morgan & Co., who were

directors, and I remember Mr. Robert Bacon and Mr. Baker— 101
Mr. George F. Baker, who was a director in the Northern Pacific.

Q. And with whom were the negotiations carried on; that is, with whom representing the Burlington system?

A. With the members of the executive committee of the Burlington and Quincy board of directors.

Q. Can you give us the names of those gentlemen, Mr. Hill?

A. Mr. Charles E. Perkins——

Q. Of New York? 102

A. Burlington.

Q. Burlington, Iowa?

A. Burlington, Iowa. Mr. Huniwell, of Boston; Mr. Forbes, of Boston; Mr. Olney, of Boston, and General Paine, of Boston. I think that covers the names of those present.

Q. I understood you to say, Mr. Hill, that these negotiations were concluded in April, 1901? Do you refer to the action taken by the directors of the different companies?

A. I think the action by the Great Northern was taken in April, 1901. 103

Q. That is, at a meeting of the board of directors?

A. Yes, sir.

Q. And where was that meeting held?

A. I think it was held in St. Paul.

Q. At that time, Mr. Hill, the negotiations had been closed, subject to ratification by the boards of directors of the different companies, had it?

A. The understanding arrived at was ready to submit to the board of directors.

Q. That is, you representing the Great Northern and the gen- 104
tlemen that you have named representing the Northern Pacific, and the executive committee representing the Burlington, had agreed upon a basis of purchase subject to the approval of the boards of the different companies?

A. I think the executive committee of the Burlington had stated that they would recommend their shareholders to accept, and that was submitted to the other companies. I think that was the manner in which the matter was decided, and it is my best recollection of what occurred.

105 Q. Now, at the time when the negotiations were concluded, and the matter ready to be submitted to the board of directors of the different companies, had either the Great Northern or the Northern Pacific any option on any of the stock of the Burlington road to your knowledge?

A. Outside of the negotiations carried on with the executive committee?

Q. Yes.

A. I know that the Great Northern had no options or interest in any options, or any interest in any purchase of stock.

106 Q. So that when the executive committee of the Burlington road arrived at an understanding with you representing the Great Northern, and the gentlemen named representing the Northern Pacific, their action would simply be advisory to 18,000 individual stockholders of the Burlington Railroad Company. Is that correct?

A. Please state that again.

Q. I say that at the time when you, representing the Great Northern, and J. Pierpont Morgan and others representing the Northern Pacific, and the gentlemen, Mr. Perkins and others,
107 representing the Burlington—I say when you arrived at a basis of purchase of the stock, that stock was still owned and held by some 18,000 stockholders, and the action of the executive committee representing the Burlington would simply be advisory to those stockholders?

A. That is all.

Q. And all that the executive committee representing the Burlington, then, could or attempted to do in those negotiations was to arrive at some basis which they would recommend their stockholders to accept?

108 A. And that is what they did.

Q. I say that is what they attempted to do and what they did?

A. Yes, sir.

Q. So that, so far as you know, Mr. Hill, there had been no substantial change in the holdings of the Burlington stock after the commencement of negotiations and up to the time when the executive committee undertook to advise their stockholders to make this exchange?

A. There were reported more or less transactions in the stock.

The price advanced, and more or less transactions were reported. 109
Outside of that I have no knowledge, and I had no special knowledge of any kind.

Q. I notice in the report of the Great Northern, which I understood you to say was submitted to the public or printed in September, 1901, states that the Northern Pacific and Great Northern had actually acquired 96.79 per cent of the total authorized issue of the stock of the Chicago, Burlington and Quincy Railroad Company. That stock was all acquired between the submission of this matter to the boards of directors of the three different companies and the publication of this report, was 110
it?

A. Yes, sir; it was all acquired after it was authorized by the Great Northern and Northern Pacific, and the authority was given, I think, to make the purchase in April.

Q. That is, the authority given by the board of directors of the Northern Pacific and the Great Northern, you mean. The matter was submitted to the board of directors of the Northern Pacific and Great Northern in April, 1901?

A. Yes, sir.

Q. Now, how soon after that submission to the boards of 111
directors of the different companies was this stock of the Chicago, Burlington and Quincy Railroad Company acquired? Do you remember about what time it was when you had acquired this 96.79 per cent?

A. There was a large amount of it deposited under the agreement to purchase within a short time after the understanding was arrived at with the Burlington and Quincy executive committee, but I don't carry in my mind the percentage or the changes in the percentage.

Q. Do I understand you to say, Mr. Hill, that probably a 112
majority of the stock was acquired right away?

A. Oh, I think that the understanding was based upon two-thirds or three-fourths of the Quincy company shareholders; that is, two-thirds or three-fourths of the shares accepting the purchase price.

Q. Did the executive committee representing the Chicago, Burlington and Quincy Railroad Company guarantee to procure that amount at the time when you say you arrived at a basis?

113 A. No, sir; they made no guaranty.

Q. Was there any agreement in writing between the executive committee of the Chicago, Burlington and Quincy Railroad Company and the Great Northern, or yourself representing the Great Northern, or yourself individually, and the Northern Pacific road, or anybody representing it, with reference to this exchange of stock or sale of stock?

A. There were a great many matters put in writing and circulars, but as to whether the preliminary agreement was in writing I don't remember.

114 Q. Were you present, Mr. Hill, at the time the basis of purchase was agreed upon?

A. I was present at a number of meetings and I think I was present when everything substantially was agreed upon that was done.

Q. Are you able to state whether or not the provisions and terms of that agreement were reduced to writing?

A. The whole matter was a formal one, and reduced to writing as it was carried out. Whether there was a protocol or a preliminary agreement I don't remember.

115 Q. Do you remember of signing any preliminary agreement?

A. I don't recall any. The basis was substantially arrived at, and any modifications were subject to telegram or correspondence or personal negotiations.

Q. Was this matter submitted by you to the directors of the Great Northern road, at its meeting in April, in writing?

A. I don't remember.

Q. You don't remember whether you made any written report?

A. Or verbal report; I couldn't say which.

116 Q. I suppose you can ascertain, can't you?

A. Oh, yes.

Mr. GROVER. I can tell you all about it at any time when you want to know.

A. I was very busy those days, and I don't remember everything that happened.

Q. No doubt of it, Mr. Hill; you must have been. About what time were the joint bonds of the Northern Pacific and the Great Northern roads issued with which to purchase the stock of the Chicago, Burlington and Quincy?

A. That was a detail with which I had little to do and do not recall. 117

Q. I am not going into that for the details, Mr. Hill, but about what time—June or July?

A. I should say May or June.

Mr. GROVER. The whole thing was ended before June, Mr. Lancaster.

Q. So that about the 1st of June or 1st of July, 1901, the Great Northern and Northern Pacific roads held and owned a large majority of the stock of the Chicago, Burlington and Quincy Railroad Company? 118

A. Yes, sir.

Q. Now, after the purchase of that stock by the Great Northern and Northern Pacific, was there a company organized under the name of the Chicago, Burlington and Quincy Railway Company?

A. Yes, sir; there was such a company organized.

Q. And that was organized under the laws of the State of Iowa, was it not?

A. Yes, sir; I think so.

Q. The Chicago, Burlington and Quincy Railroad Company 119 was organized under the laws of Illinois, was it not?

A. Possibly, the parent company, but I think there were a number of companies; I think there were a great many companies in the Burlington and Quincy Railroad Company.

Q. There was one distinct organization or company or corporation known as the Chicago, Burlington and Quincy Railroad Company, wasn't there?

A. Yes, sir.

Q. And that was organized under the laws of the State of Illinois? 120

A. I think it was.

Q. And the different corporations that you speak of or organizations under that, the stock of those different companies was held and owned by the main company—that is, the Chicago, Burlington and Quincy Railroad Company?

A. It held the stocks of various companies. I don't carry in my mind the details of those matters.

Q. I don't expect you do, and I didn't mean to ask you for the details, merely the main points, Mr. Hill. Now, the Chi-

121 cago, Burlington and Quincy Railway Company is at the present time, and was on the 30th day of December, 1901, operating what is known as the Burlington system?

A. Yes, sir.

Q. And it is operating that system under a lease?

A. Yes, sir.

Q. About when, Mr. Hill, was that lease executed from the railroad company to the railway company?

A. I couldn't give the exact date, but some time in the fall.

Q. The fall of 1901?

122 A. Yes, sir.

Q. Where are the principal offices of the railway company located?

A. The president's office is in Chicago.

Q. And where are the principal offices of the railroad company?

A. In Chicago; or the official office may be in Burlington as the old company. I don't know.

Q. That is, you mean the official offices of both companies or of the railway company?

123 A. The president's office is in Chicago. Now, where the official office of the company is, if it has an office outside of Chicago, I don't know. I think several of those corporations hold their meetings in the States they are organized in.

Q. What is the capital stock of the railway company?

A. I don't recollect the amount.

Q. Has the amount been fixed, Mr. Hill?

A. That I couldn't say. It hadn't been when I attended the last meeting.

Q. Are you a stockholder in the railway company?

124 A. Only to qualify.

Q. Well, as a matter of fact, at the present time has there been any stock issued excepting to qualify officers?

A. I think there has.

Q. And do you know how much?

A. No, sir.

Q. Do you remember what the authorized capital stock of the railway company is?

A. Only an impression that it has an authorized capital stock of one hundred million, I think.

Q. And you can not give us any idea as to how much has been issued? 125

A. No, sir; I couldn't without it being a wild guess, for I don't know.

Q. Is it more, Mr. Hill, than a nominal amount; that is, up to the present time?

A. I couldn't give the amount; I don't know.

Q. Well, is the stock on the market for sale?

A. Oh, no; not at all.

Q. And do you know at the present time of your own knowledge of any considerable amount of stock having been sold? 126

A. That stock belongs to the Great Northern Railway and to the Northern Pacific Railway.

Q. The stock of the railway company?

A. Yes, sir.

Q. Now, did you acquire that? How did those roads acquire the stock of the railway company, Mr. Hill?

A. Bought it.

Q. When?

A. As it was issued.

Q. Well, when was it issued? 127

A. I couldn't give the date; along through the autumn or fall.

Q. Can you ascertain from your office at St. Paul how much stock of the Chicago, Burlington and Quincy Railway Company has been issued to the Great Northern road?

A. I could not. I could from New York.

Q. Well, do you know, Mr. Hill, of your own knowledge that any stock of the railway company has been issued to the Great Northern Railway Company?

A. I haven't seen it, but I know that the stock would be issued to the Great Northern as fast as it is issued, and I know that the stock has been paid for. 128

Q. Do you mean by that, Mr. Hill, that the Northern Pacific and Great Northern roads, whatever stock comes to them they are to pay for in cash?

A. I am speaking for the Great Northern, and that stock would be paid for in cash.

Q. Do the Great Northern and Northern Pacific own the

129 stock of the railway company by reason of any agreement or understanding with reference to the buying of the stock of the railroad company?

A. The conditions are set out in the lease, and I don't recall what they were.

Q. Have you a copy of that lease?

A. I have not.

Q. Has the Great Northern road got a copy?

A. It perhaps has in New York; I don't think there are any copies in St. Paul.

130 Q. Mr. Hill, do you understand that whatever stock is issued by the railway company is to go to the Great Northern and Northern Pacific Railway companies?

A. It goes to them.

Q. Yes?

A. Yes, sir; that is my understanding.

Q. And is that stock to be paid for in cash by those two companies?

A. Yes, sir.

Q. Well, at par?

131 A. At par.

Q. And neither of those companies, the Great Northern Railway Company nor the Northern Pacific Railway Company, acquired that stock by reason of the purchase of the stock of the railroad company?

A. If that stock was issued to them at par and paid for in cash, that would be the consideration.

Q. I understand.

A. And that is, as I understood your question, my answer.

Q. I understood you to say a moment ago that the stock, as

132 fast as it is issued by the railway company—that is, the Burlington Railway Company—is to go (I suppose in equal shares, is it not?) to the Northern Pacific and Great Northern?

A. Yes, sir.

Q. And that that stock is to be paid for at par in cash by the respective companies, the Northern Pacific and the Great Northern?

A. Stock might be issued for the stock of the Burlington—of the old railroad company. That stock might be issued for that, but you are asking me for stock that was issued—at least I

understood you— for stock that was issued now, and I so testify 133
in regard to that.

Q. I read your testimony, Mr. Hill, before the Interstate Commerce Commission. I may not have understood it. I don't want to pursue this unnecessarily, but I want to get it straight.

A. That report is very garbled, and it might be that you got hold of some inaccurate portion of it.

Q. We have a transcript of the testimony as taken; not a newspaper report.

A. The testimony was not examined or verified, and it is 134
very incorrect. I know something of it. It is full of mistakes, some of which are ridiculous.

Q. I understood, Mr. Hill, that the stock of the Burlington Railway Company, the amount to be issued, etc., has not been agreed upon.

A. It has not been determined; no, sir.

Q. And there is a provision and agreement between the Northern Pacific and Great Northern Railway and the railway company that whatever stock is issued shall go in equal shares to the Northern Pacific and the Great Northern Railway 135
Company?

A. That is correct.

Q. Now, that stock may be issued to those companies and paid for in cash at par?

A. That is right.

Q. Or it may be exchanged for stock of the old railroad company?

A. Yes, sir; it might.

Q. The 96-79 per cent of the capital stock of the old railroad company is now pledged as collateral security for the payment 136
of some two hundred and nine or ten million dollars of collateral bonds?

A. Yes, sir; joint collateral bonds.

Q. So that the only way that either road, the Great Northern or Northern Pacific, could exchange stock of the old company for stock of the railway company would be by payment of those bonds and acquiring that stock?

A. The only way in which they could deliver the stock to the purchaser would be to pay off the bonds.

137 Q. Now, is the agreement, or understanding, or expectation of the railway company to issue its stock—that is, the railway stock—and sell the same for cash, any considerable amount of it?

A. I have no agreement or understanding in reference to that.

Q. Is or is it not the understanding and agreement that eventually the stock of the railroad company, which is now pledged as collateral security for the collateral bonds—trust bonds of the Great Northern and Northern Pacific—when those bonds are paid, that that stock shall eventually be turned over to the railway company in exchange for its own stock?

138 A. That could be done, and that has been considered, but there is no definite information.

Q. In a general way, is that the plan and expectation of the Great Northern and Northern Pacific Railway companies?

A. There is no plan so far advanced as that that I know of.

Q. At the present time the stock of the railway company, whatever stock is issued, is owned by the Great Northern or Northern Pacific Railway Company?

A. Yes, sir.

Q. And those two roads own, so far as you know, all the
139 stock, excepting possibly a qualifying stock for directors?

A. Yes, sir.

Q. Of that road?

A. Of that company.

Q. Of that railway company?

A. Yes, sir.

Q. Then, Mr. Hill, it is not under the present condition the expectation that any considerable amount of capital stock of the railway company shall be issued—that is, at the present time?

A. It might be to the advantage of the company to issue its
140 stock and sell it, but I don't know of any present or immediate plan for any such action.

Q. Mr. Hill, are the following gentlemen directors of the Chicago, Burlington and Quincy Railway Company: J. J. Hill, W. P. Clough, E. H. Harriman, Mortimer L. Schiff, James Stillman, George B. Harris, John S. Kennedy, George W. Perkins, William H. McIntyre, C. E. Perkins, and C. J. Paine?

A. As a matter of recollection that list contains many of the names, and—but I don't know but it is entirely correct. I will say it is correct, subject to correction, because there are two

boards, one of the old company and one of the new, and some of 141
the names are on both. That makes it, as a matter of recollection, a little confusing.

Q. Mr. Hill, the gentlemen whose names have just been given there were directors of the railway company—that is, the Chicago, Burlington and Quincy Railway Company—on December 30, 1901?

A. Yes, sir; I think that these gentlemen were the directors at that time.

Q. What was the purpose or object of organizing the Chicago, Burlington and Quincy Railway Company? 142

A. To unify the operation and management of the company. The old company is and has been made up of three organizations, with three sets of operating officers, substantially three sets of accounting officers.

Q. Well, did the railroad company, then, lease to the Chicago, Burlington and Quincy Railway Company all of its lines?

A. All of its lines.

Q. And all the lines which it owned or controlled, branch and otherwise?

A. Yes, sir. 143

Q. Mr. Hill, is the railway company at the present time anything more than a mere operating company?

A. It is the lessee.

Q. Well, did it take over, in addition to the lease from the railroad company, any of the stocks or securities of the railroad company in other lines—that is, subsidiary lines?

A. Those stocks, as I explained before, are held as a collateral security for the joint bonds.

Q. I don't think you quite understand me. I want to know if the railway company took anything from the railroad com- 144
pany excepting the lease. As I understand it, the railroad company held stocks and securities in various subsidiary companies. Now, were any of those stocks or securities held and owned by the railroad company turned over to the railway company under the terms of the lease?

A. The terms of the lease would be a great deal better than my recollection, and I couldn't testify on that with accuracy.

Q. We haven't the lease, Mr. Hill, and I understood you to say you hadn't a copy of the lease.

145 A. I haven't a copy of it.

Q. Whereabouts is the copy?

A. I suppose a copy is filed in the different offices throughout the State where the railway is. Maybe it is in Minnesota.

Q. Hasn't the Great Northern road a copy of the lease?

A. We have no copy in St Paul.

Q. Mr. Hill, you were not a director of the Chicago, Burlington and Quincy Railroad Company or of the railway company—the Chicago, Burlington and Quincy Railway Company—until after the purchase by the Great Northern and the North-
146 ern Pacific Railway companies of the stock?

A. I was not.

Q. Was Mr. Harriman—E. H. Harriman?

A. He was not.

Q. Do you remember about what time you were elected a director of the railroad company?

A. I do not recall the time.

Q. Was it last summer?

A. I should think it was in the autumn.

Q. Mr. Hill, I understand that pretty nearly all of the
147 stock of the Chicago, Burlington and Quincy Railroad Company is up with the trustees as collateral security for the Great Northern and Northern Pacific joint bonds. Is there an agreement as to who shall vote the stock of the Chicago, Burlington and Quincy Railroad during the time that that stock is up as collateral?

A. I couldn't recall. I should think there is some provision for voting it, but what that provision is I don't recall.

Q. Well, don't you recall in connection with the last meeting of the stockholders of the railroad company as to who voted
148 the stock?

A. I don't recall that I was there, although I might have been.

Q. Well, don't you know, Mr. Hill, that there is a definite provision as to how that stock shall be voted and who shall vote it while it is pledged?

A. I don't recall. I think there is a proxy named to vote the stock. That is a matter of recollection and not anything more.

Q. Well, was the board of directors of the railroad company

at the last election named or suggested by the Northern Pacific and Great Northern Railroad companies? 149

A. It was arrived at by an understanding.

Q. Between the two roads, the Northern Pacific and the Great Northern?

A. Yes, sir.

Q. And that understanding was carried through by whomever the stock was voted?

A. That is probably corr[illegible].

Q. Mr. Hill, it is my recollection that there was such a provision. 150

A. My recollection is not widely different from that. As I said, I thought there was a provision for a proxy. I think that is the way it was managed.

Mr. KELLOGG. Subject to any corrections that we desire to make, we admit that complainant's Exhibit C is a true copy of the trust deed securing the collateral bonds of the Great Northern and the Northern Pacific Railway Company.

Mr. BULKLEY. That is understood on all copies, that they are subject to correction.

Mr. KELLOGG. Yes, sir. 151

Mr. LANCASTER. We offer in evidence complainant's Exhibit C subject to the objection that it is immaterial and irrelevant.

Mr. KELLOGG. That is all right.

Q. Now, Mr. Hill, I simply call your attention to Exhibit C. Whatever arrangement was made with reference to voting the stock during the time the stock of the old company, the Burlington Railroad Company, was up as collateral, is contained in the written agreements, Exhibit C.

A. The exhibit covers the agreement in regard to voting the stock. 152

Q. And that is the only agreement with reference to the power to vote the stock during the time that the same is up as collateral to the joint bond?

A. I know of no other.

Q. So that, as long as the interest is kept up and maintained upon the collateral bonds, the right to vote the stock is in the Great Northern and the Northern Pacific Railway Company?

A. Yes, sir; subject to the conditions of the agreement, of course.

153 Q. But is that not the condition, Mr. Hill, that as long as the interest is maintained upon the collateral bonds, the Great Northern and Northern Pacific shall vote the stock? Have power to?

A. They shall each vote their own holding, and if they did not agree I think there is a method provided for an election.

Mr. KELLOGG. Isn't it stated in detail? It is pretty hard to state the substance of a trust deed.

A. I don't carry this matter in my mind.

Q. What I was getting at is, that during the time, Mr. Hill,
154 that this stock of the railroad company is up as collateral to the joint bonds of the Great Northern and Northern Pacific, the two latter roads have the power to vote the stock of the railroad company. That is, as long as the conditions of that agreement, Exhibit C, are kept up.

A. Yes, sir; I suppose they could agree together on any board of directors they saw fit.

Q. That is, the two roads, the Great Northern and the Northern Pacific.

A. Yes, sir. They are the shareholders, and as shareholders
155 they control the property.

By consent of all parties a recess was taken at this time until 1.30 o'clock in the afternoon.

Monday afternoon, February 18, 1902, at 1.30 o'clock in the afternoon all parties appeared, represented by the same counsel and the following proceedings were had, to wit:

JAMES J. HILL, recalled for further examination by Mr. Lancaster, testified as follows:

Q. Mr. Hill, I will ask you if the following gentlemen were directors on the 30th day of December, 1901, of the Chicago,
156 Burlington and Quincy Railroad Company: C. E. Perkins, F. W. Hunnewell, J. Malcolm Forbes, James J. Hill, J. N. Hill, Norman B. Rean, Robert Bacon, E. H. Harriman, Jacob Schiff, George J. Gould, and H. McK. Twombly?

A. There are some names that I feel sure are members, but there are others I am not clear about. It is a matter of recollection. I had not charged my mind with them.

Mr. LANCASTER. May this be taken?

A. The actual directors can be ascertained.

Q. Certainly, Mr. Hill, but we want to get this in the

record, and may this be taken as your recollection of the 157
directors subject to any correction that Mr. Grover may make?

A. I would rather undertake to furnish a list of the directors.

Q. If you will furnish a list that is all right, Mr. Hill; we would be glad to have it that way, only we want it in the record.

A. I would be very glad to furnish the list.

Q. Mr. Hill, let me ask you if, on and prior to December 31, 1901, you were a director of the railroad company?

A. Yes, sir.

Q. And your son, J. N. Hill, was also a director? 158

A. I think he was.

Q. And who else of the list are you sure of and can you mention some?

A. I think Mr. Perkins, Mr. Forbes, and Mr. Hunnewell.

Q. And are those the only ones you are now sure of?

Mr. BACON. Harriman, are you sure of him?

A. Not sure.

Q. Well, we don't care to waste any time on that because, as you say, it is a matter that can be easily determined.

Mr. LANCASTER. I will offer in evidence Exhibit 5, this map, 159
Mr. Kellogg.

Mr. KELLOGG. Subject to the objection as to its materiality and relevancy. The map may be received in evidence as the railroad commissioners' map of Minnesota of 1901. There is such a railroad map published by the railway commission of Minnesota.

Mr. LANCASTER. And to save any time going over this with Mr. Hill or any other witnesses, the notations as to the different roads, the colors by which they are indicated, that may be taken?

Mr. KELLOGG. Subject to any corrections that we may wish 160
to make hereafter, the notations of the different roads with the colors as shown on the map may be taken as correct?

A. I think they are. I have looked them over, but I do not remember.

Q. Mr. Hill, I barely touched a matter in connection with the Burlington that I want to clear up a little, at least, in my own mind. Is it a fact that some time in the fall of 1900, or early winter of 1901, the Northern Pacific and Great Northern made an attempt or an effort to buy up stock of the Burlington

161 railroad, independent of any negotiations with the directors of that railroad?

A. They never made any effort or attempt to buy the stock of the Burlington road jointly, and I can speak for the Great Northern, it never made any attempt, or was ever concerned in any attempt to buy it, directly or indirectly, outside of the negotiations that were carried on and completed through the executive committee of the Burlington road.

Q. Had any attempt, to your knowledge, been made in the fall of 1900, or early winter of 1901, to buy up the stock of
162 the Burlington Railroad Company, independent of negotiations with the directors of that railroad?

A. Not by the Great Northern or jointly with the Northern Pacific.

Q. Had any attempt by any other road to your knowledge been made?

Mr. KELLOGG. I do not see how that is material to this inquiry at all. If you gentlemen want to ask questions of that kind you can wander around, unless the witness refuses to answer, but we object to it, because it certainly is not material.
163 What other roads have been doing has nothing to do with this inquiry or the issue in this case.

Q. Will you answer that, Mr. Hill?

A. My knowledge is based on what the parties who made the attempt told me.

Mr. KELLOGG. That certainly is not material.

A. It is not.

Q. Who were the parties, Mr. Hill?

A. I got that information in confidence, and unless I am compelled to answer it I would prefer not to.

164 Mr. KELLOGG. It is certainly hearsay, and you do not want to pursue hearsay testimony, Mr. Lancaster, as a lawyer.

Q. Now, Mr. Hill, do you want to be understood as declining to answer that question?

Mr. KELLOGG. No objection to your answering it at all, if these gentlemen want to pursue that sort of inquiry.

A. The question is who gave me the information?

Q. Who the parties were.

Mr. KELLOGG. There is nothing to conceal about it.

Q. Who the parties were that made the attempt to buy up 165
the Burlington Railroad?

A. The particular party, or the party who gave me the information, rather, represented that he was the particular party. His name is Jacob H. Schiff, of the firm of Kuhn, Loeb & Co., in behalf of the Union Pacific interests. I won't undertake to say it was for the Union Pacific, but it would be for the Union Pacific interests.

Mr. KELLOGG. There is no objection to you gentlemen having answers to any questions, but I supposed you were lawyers enough not to go into the subject of hearsay. If you are not, go 166
ahead.

Mr. LANCASTER. Mr. Kellogg, we shall not attempt to go outside of what we think are legitimate issues in this case.

Q. At the time of your opening negotiations on behalf of the Great Northern Railway Company and J. Pierpont Morgan, representing the Northern Pacific Railway Company, for the purchase of Burlington stock, had you learned that some $8,000,000 or $9,000,000 out of $108,000,000 or $109,000,000 of the Burlington stock had been acquired by parties supposed to be representing the Union Pacific? 167

A. My understanding was that it had been acquired and principally all, if not all, of it had been sold by them, because they found that they could not get control of the Burlington Railroad Company by purchasing the stock in the market at any price they were willing to pay.

Q. And it was after you had acquired that information, Mr. Hill, with reference to the attempted purchase from the stockholders of the stock in the Burlington that you, in connection with the Northern Pacific, commenced or opened your negotiations directly with the directors or trustees of the Burlington Rail- 168
road Company.

A. I am not sure whether that information came to me in the first instance before or after. I can not recall that. I know it did after we had taken up negotiations with the executive committee of the Burlington.

Q. Then the fact is, Mr. Hill, that neither you individually or as representing the Great Northern nor the Northern Pacific, to your knowledge, had made any attempt to buy this stock in the open market or individually—that is, from the individual

169 stockholders—previous to your opening negotiations with the directors?

A. We had not made any attempt directly or indirectly in one way or another, and further than that, when the matter was so far advanced as to be taken up with the representatives of the Burlington Railroad Company, it was expressly understood by Mr. Morgan and myself that no one should buy, either of his people or any of my associates should buy, any stock of the Burlington Railroad Company for themselves, and certainly not for the Company; not even for themselves to operate in it. That
170 understanding was clear and explicit, and I believe it was carried out.

Q. Mr. Hill, why did you go to the trustees of the Burlington Railroad Company to purchase this stock instead of attempting to purchase it in the market or otherwise?

A. I knew that the stock of the Burlington company was held by people for many years; some who had inherited it, and it would be an impossibility to buy control of it except through the recommendation and cooperation of the Burlington trustees. They were men whom I had known for several years, and I
171 knew something of the situation of the Burlington company.

Q. And you knew at that time, I presume, of the failure of the Union Pacific's interests to acquire any considerable amount of stock in the open market?

A. I knew it either at that time or afterwards, or possibly both before and after.

Q. Did the Union Pacific, or anybody representing the Union Pacific, at or about the time you opened negotiations with the trustees or directors of the Burlington Railroad Company, request or seek to be allowed into the deal of purchasing the Burlington?

172 A. About the time that the Burlington people and representatives of the Northern Pacific and myself had arrived at an understanding in regard to the Burlington property matters were so far advanced that Mr. Baker, in behalf of the Northern Pacific, and myself were going to Boston, and we were requested by two members of what had been the Union Pacific reorganization committee, or acting for the Union Pacific people, to be allowed to join in the purchase.

Q. Will you give us the names of those individuals, Mr. Hill?

A. One was Mr. Schiff and the other Mr. Harriman.

Q. And about what time in 1901 was this? 173

A. Oh, it might have been early in March.

Q. March, 1901?

A. As near as I could testify; it is a matter of recollection.

Q. You refer to Mr. Schiff and Mr. Harriman; you mean Jacob Schiff and E. H. Harriman?

A. Yes, sir.

Q. At the time of your negotiating with the trustees or directors of the Burlington Railroad Company, did the Union Pacific, to your knowledge, own or hold in the neighborhood of eight or nine millions of Burlington stock? 174

A. I wasn't aware that they held any.

Q. You do not understand, Mr. Hill, that they owned any at that time?

A. No, sir; I understood that they had bought some eight or nine millions, possibly more, and that they had sold it some time previous.

Mr. KELLOGG. Do you mean the railroad company?

A. I mean those who represent the railroad company.

Q. I suppose in this connection, then, you mean Jacob H. Schiff and E. H. Harriman? 175

A. My information largely came from Mr. Schiff.

Q. Well, do you know, Mr. Hill, of your own knowledge, whether that stock was turned in to your purchase by those people?

A. I don't know that they turned in anything.

Q. Well, do you know that they did not turn it in?

A. I don't recollect their name being concerned in the list of Burlington shareholders at any time. However, I am not very familiar with that list.

Q. The request of Mr. Schiff and Mr. Harriman on behalf of 176 the Union Pacific, as you understood it, was refused, was it?

A. I didn't testify that it was on behalf of the Union Pacific; but I said they had represented the Union Pacific in the reorganization committee; they were working in connection with the Union Pacific, and I don't undertake to testify, and I could not testify, as to whether they said they were acting for the Union Pacific or for themselves, or other interests friendly to the Union Pacific.

Q. Well, was their request, Mr. Hill, to purchase a one-

177 third interest—that is, an equitable share—with the Great Northern and Northern Pacific Railway?

A. That is my recollection.

Q. And that request on your part was refused, was it?

A. Yes, sir.

Q. Now, at that time—this was some time, I understood you to say, probably, in March, 1901—at that time did the Great Northern Railway Company own any stock in the Northern Pacific Railway Company?

A. The Great Northern never owned any stock in the North-
178 ern Pacific Railway Company.

Q. At that time did you, individually, own stock in the Northern Pacific Railway Company?

A. Yes, sir; I had been a stockholder of the Northern Pacific for a great many years.

Q. About how many shares, par value? What was the amount of your holdings at that time, Mr. Hill, in March, 1901?

A. Oh, it is difficult for me to recall the amount; somewhere from sixty to seventy thousand shares. Later it was something over seventy.

179 Q. That is six to seven million, par value, in amount?

A. Yes.

Q. Now, at that time, in March, 1901, of your own knowledge, did the Union Pacific or the Oregon Short Line, or any parties representing those two railroad companies, own or hold any stock in the Northern Pacific?

A. Not to my knowledge.

Q. Later on, in the spring of 1901, you did learn that large holdings of Northern Pacific stock were held by what is known as the Union Pacific interests, did you not?

180 A. Yes; they told me that they had bought a substantial control.

Q. About what time, Mr. Hill, did you learn of the large holdings of the Union Pacific or the Oregon Short Line?

A. Early in May, is my best recollection.

Q. Now, between March and the 1st day of May, 1901, had you and others representing the Great Northern and J. Pierpont Morgan & Co., and perhaps others representing the Northern Pacific, been buying up stock in the Northern Pacific?

A. I had not. I don't know that anyone else did, for Mr. 181
Morgan or for the gentlemen you have named.

Q. On or about the 1st of May, Mr. Hill, in 1901, did you and your associates own large blocks of the common and preferred stock of the Northern Pacific?

A. Myself and associates owned large blocks for practically ever since the road was reorganized. That amount changed from time to time; some continued as holders, and some of them reduced, and possibly sold out.

Q. On or about the 1st of May, 1901, can you give us approximately the amount of stock which you and your associates 182
held of the preferred stock of the Northern Pacific?

A. I couldn't give the amount of preferred, because I never charged my mind with the amount of preferred. It was stock that could be redeemed, and in a matter of the control of the railroad it wasn't considered as essential to the control as the common stock was.

Q. Mr. Hill, in the spring of 1901, there was outstanding eighty millions par value of the common stock of the Northern Pacific.

A. That is correct. 183

Q. And there was outstanding at the same time, seventy-five millions of the preferred stock of the Northern Pacific?

A. Yes.

Q. Now, on or about the 1st day of May, 1901, how much stock par value did you and your associates hold?

A. It would be difficult for me to answer that question specifically, because there was great activity on the part of Kuhn, Loeb & Co., or those who were buying the stock in the market, and some of my friends sold their stock, and the 1st of May I would be unable to answer, but say about the 7th or 184
8th of May.

Q. Well?

A. I should think myself and friends controlled somewhere from seventeen and a half to twenty millions.

Q. That is of the common?

A. Of the common; that did not include what was held by Messrs. Morgan & Co.

Q. On and prior to May 7, 1901, how much stock par value

185 did you and your associates hold in the Northern Pacific, that is, of the common stock?

A. I should say in the neighborhood of eighteen or twenty millions.

Q. And on or about that time, how much of the common stock of the Northern Pacific did J. Pierpont Morgan & Co. hold?

A. Seven or eight millions; they held or controlled it. I don't know how much they held; they held or controlled seven or eight millions.

186 Q. And subsequent to that time, May 7, and before May 9, did J. Pierpont Morgan & Co., or did you and your associates acquire further Northern Pacific common?

A. The members of the firm asked me if myself and friends would hold the stock and not sell out. I told them we would, and they went into the market and bought some fifteen or sixteen millions. I think they bought it. My recollection is on Saturday and Monday prior to the 9th of May. On the 9th of May there was a good-sized panic in New York, and I think they bought it on Saturday and Monday prior to that time—

187 bought it in London and New York.

Q. Then, prior to the morning of May 9, Mr. Hill, you and your associates, J. Pierpont Morgan & Co. and other associates, held somewhat exceeding forty-two millions par value.

A. Something less than forty-two; in that neighborhood.

Q. But more than forty?

A. More than forty-one.

Q. More than forty-one million par value of the common stock of the Northern Pacific?

A. Yes, sir.

188 Q. Mr. Hill, Mr. Grover suggests that the reporter did not take down your definition of your associates; now you may state that.

A. When I speak of my associates I mean those who have been interested with me in Great Northern matters, or those who were interested with me in the purchase of the large block of Northern Pacific stock which I bought from the reorganization committee.

Q. Now, will you give us the names of those, Mr. Hill?

A. It would be difficult to give the names; I can give some. 189

Q. Give what readily occurs to your mind.

A. John S. Kennedy, D. Willis James, Samuel Thorne, J. W. Sterling, Oliver Payne, Jacob Schiff, Henry W. Cannon, Lord Strathcona, Lord Mount Stephen. Well, there might have been others, but I think that substantially covers it.

Q. Mr. Hill, shortly before—say between the 5th of May and the morning of the 9th of May—had you learned that what we may call the Union Pacific interests had acquired about seventy-eight millions of the common and preferred stock of the Northern Pacific? 190

A. I understood, on authority that I thought should know, that they had acquired something over sixty; somewhere in the neighborhood of sixty or sixty-five millions.

Q. How was that divided, Mr. Hill?

A. I don't know.

Q. Did you subsequently learn that Mr. Harriman, representing the Union Pacific interests, had acquired about seventy-eight millions—not confining you to those dates, did you subsequently learn that—seventy-eight millions of the common and preferred? 191

A. I understand Kuhn, Loeb & Co. had acquired it.

Q. Did Kuhn, Loeb & Co. represent Mr. Harriman?

A. That I don't know.

Q. Did you understand that Kuhn, Loeb & Co. represented the Union Pacific interests?

A. I understood afterwards that they represented the Oregon Short Line.

Q. Well, as a matter of fact, the Oregon Short Line is owned and controlled by the Union Pacific?

A. I think so. 192

Q. And was at that time, Mr. Hill?

A. I think so and so understood.

Q. Subsequent, then, to May 9, 1901, did you learn that Kuhn, Loeb & Co., representing what we may call the Union Pacific interests, held about forty-six millions par value of the preferred stock of the Northern Pacific?

A. About forty-one.

193 Q. And also held at the same time about thirty-seven millions of the common?

A. That is correct.

Q. When, or about when, Mr. Hill, did you first learn the amount of the holding on the part of Kuhn, Loeb & Co. as to common and preferred stock?

A. I could not testify as to when, except that my knowing what myself and friends held, and what Morgan & Co. held, either for themselves or clients—the total outstanding that was not held by those whom I could clearly indicate or identify
194 would leave the other stock as outstanding stock.

Q. Just a process of arithmetic, then?

A. That is the best information I think we had until the other people stated what they had.

Q. That is what I was going to get at, Mr. Hill, in the next question. Did there come a time subsequent to May 9, 1901, when there was, so to speak, a show down of the holdings on the part of Kuhn, Loeb & Co. and on the part of yourself and J. Pierpont Morgan?

A. No.

195 Q. Was there a conference or meeting between you and J. Pierpont Morgan & Co. and Kuhn, Loeb & Co., or anybody representing them?

A. There might have been more than one meeting. Possibly there were several meetings. There was a very strained financial condition; people were failing and the trouble was very great. Something had occurred that never had happened in New York before—an attempt to buy a control of one hundred and fifty-five millions of stock on the market, and the high price caused people to sell stock they did not own. The bankers and
196 financial men of every description were deeply interested, not only in New York, but in London, and in financial centers on the Continent, and the result was, I think, maybe two or three meetings. I know certainly there was one between the bankers at that time. The Union Pacific people claimed that they had the control by the ownership of a majority of the stock of the Northern Pacific Railroad; that wasn't conceded by Messrs. Bacon and I think Mr. Steele—Mr. Robert Bacon and Mr. Steele—because they knew they held, as long as myself and friends held our stock, a majority of the common stock which

would control the property. They made an agreement that as 197
far as the election of the directors was concerned they would leave it to Mr. Morgan to name the directors, and that was done.

Q. That is getting a little ahead, Mr. Hill.

A. Well, that is the meeting; maybe I have answered a little more.

Q. A little more, but that is all right.

A. It is a part of the whole truth.

Q. Now, Mr. Hill, the common and preferred stock was both voting stock, was it not, in the Northern Pacific?

A. Yes, sir. 198

Q. And since the preferred stock was outstanding, it participated equally with the common stock in all stockholders' meetings?

A. Yes, sir.

Q. At the time of these conferences, or conference, that you speak of, did Mr. Harriman attend those meetings—one or more?

A. The one that I have particularly in mind—I have an impression there was more than one, possibly more than two—but the one I have particularly in mind occurred in Mr. Harriman's office. 199

Q. Now, Mr. Hill, at that meeting did Mr. Harriman claim or did he state to you gentlemen precisely how much stock he held—he or his interests or his associates held—in the Northern Pacific?

A. Not while I was there; not to me.

Q. Well, was there any claim made by him, or by others representing him, in any of those conferences previous to the time when you agreed upon J. Pierpont Morgan as the arbitrator to name the board. Did he make a claim as to the amount, or approximately the amount. of stock, both common and 200
preferred, held by him and his associates?

A. I have not testified that I was present at more than one meeting, and there was nothing of the kind in my presence.

Q. Well, do you recall at any time previous to the selection of J. Pierpont Morgan as the arbitrator to name the board of directors for the Northern Pacific when Mr. Harriman or Kuhn, Loeb & Co. indicated or expressed to you the amount of stock, common and preferred, held by them?

201 A. Nothing more than they always claimed to have control of the Northern Pacific.

Q. Did not there come a time, Mr. Hill, when they made the claim a show down of seventy-eight millions of common and preferred?

A. Not to me. I think, however, that I can answer your question by saying that before the annual election they had their stock transferred to their own names. Then it was practically apparent from the transfer books of the company what they owned. I think that was the first knowledge.

202 Q. And that was what time in the year?

A. I could not testify as to that.

Q. Was that before or after the selection of Mr. Morgan as the arbitrator?

A. Oh, this would be before the annual meeting.

Q. When—with reference, Mr. Hill, if you can fix the date of the annual meeting—when with reference to the selection of Mr. Morgan as the arbitrator?

A. They were pretty anxious to have the matter settled, so that the world would be at peace, and they were willing to leave
203 it to Mr. Morgan, and I think that he named that board after his return from Europe, which was in July, and their stock was transferred then or soon after. The annual meeting I think is held in October.

Q. What I want to get at, Mr. Hill, is this: If before the selection of Mr. Morgan as an arbitrator to name the board of directors of the Northern Pacific, Mr. Harriman or Kuhn, Loeb & Co., or their associates, made a show down or stated to you or your associates, to your knowledge, the amount of their holdings, both common and preferred?

204 A. I never knew their holdings of common and preferred until I got it from those who took it from the record of the Northern Pacific books.

Q. That was in October, just before the annual meeting?

A. Before the annual, or about that time.

Q. What was the total amount of their holdings at that time, both common and preferred?

A. Seventy-seven to seventy-eight millions.

Q. Now, what I want to get at is, as a matter of fact, it was

more than one-half of one hundred and fifty-five millions, wasn't 205
it, Mr. Hill?

A. Yes; they had a majority of all the stock.

Q. That is, they had a clear majority of one hundred and fifty-five millions?

A. Yes, sir.

Q. And it was your recollection a little less than seventy-eight millions?

A. I think a little less than seventy-eight. It might have been a hundred or a hundred or two shares more, but it was in that neighborhood. 206

Q. I say seventy-eight, because in your testimony before the board of commissioners you used that figure.

A. It was in that neighborhood.

Q. Prior to the morning of May 9, 1901, you and your associates and Mr. J. P. Morgan and his associates held a large amount of the preferred stock in the Northern Pacific, did you not?

A. Some of my associates held a considerable amount of the preferred, and some of them held less; some of them held none. I don't know whether Messrs. Morgan & Co. held any or how 207
much.

Q. Are you able to state, having given us the amount of the common—are you able to state now, Mr. Hill, approximately the total amount of holdings of the preferred stock in the Northern Pacific held by you and your associates and J. Pierpont Morgan & Co. and his associates?

A. I don't remember that I held any. I don't think I held any. Some of my associates held preferred. I think I had exchanged my preferred for common some time before, and I don't know and I never did know the amount of preferred stock 208
held by those who were of my party or the amount held by Morgan & Co. I knew that some of my friends held preferred stock. I don't know how much Messrs. Morgan & Co. held, because it cut no figure in the transaction or control of the road.

Q. In other words, you would be unable to state whether yourself and associates, or J. Pierpont Morgan and his associates, held ten or twenty million?

A. I could not give the amount at all. I didn't concern my-

209 self with the knowledge, and only gained that knowledge incidentally that they held any.

Q. At the time of the conference—there was one conference which you say you attended—between Mr. Harriman, in his office, and yourself, and I think you said a representative of J. Pierpont Morgan & Co.—at the time of that conference was it ascertained by you that yourself and associates and J. Pierpont Morgan & Co. held practically forty-two millions of the common and in the neighborhood of thirty millions or a little more of the preferred?

210 A. I never knew or heard that the question was raised as to whether they held any preferred or not. If our friends had the stock that they reported to have, we knew that we had a majority of the common stock.

Q. And you did not know whether you had a majority of the common and preferred or not?

A. We didn't pay any attention to the preferred.

Q. Well, as matters then stood, Mr. Hill, in May, 1901, the common and preferred stock together would control corporate action, wouldn't it?

211 A. Certainly; that is, it would control the election of the board. The corporate action, I think, under the Northern Pacific charter is in the hands of the directors.

Q. There may possibly be some question about that later on, Mr. Hill.

Mr. KELLOGG. Up to the date, that is the decision of the court.

Q. That may be correct, but so far as the election of the board of directors was concerned, and as matters stood on May 9, 1901, it took a majority of both stocks to control an election?

212 A. As matters stood at that time, both common and preferred voted one vote for each share of stock and had to the extent of their holdings a voice in the control of the property in the election of the board.

Q. Subsequent votes, Mr. Hill, demonstrated that so far as the election of the board was concerned—that is, the right to elect a board of directors—that Mr. Harriman and Kuhn, Loeb & Co. held a majority of both stocks, did they not? I say, subsequent votes showed that to be so?

A. They held a majority of both stocks of the Northern 213
Pacific.

Mr. KELLOGG. A majority of the total stock.

A. Of the total, yes. Not of each, but of the total stock.

Q. I want to know if, or at about the time—I will say at the time of the conference which you attended at Mr. Harriman's office shortly after May 9—did you or did you not know at that time whether you and your associates and J. Pierpont Morgan and his associates held a majority of both stocks, that is, taking them together?

A. We knew that we did not. 214

Q. And I understand you to testify now that you did not, as a matter of fact, know whether or not Mr. Harriman and Kuhn, Loeb & Co. held a majority of the two stocks?

A. No, we did not.

Q. You knew, however, Mr. Hill, that you and your associates and Mr. Morgan and his associates held a clear majority of the common stock at that time?

A. Yes, sir.

Q. And I understood you to say that at that conference there was no show down on the part of either faction; either you and 215
your associates and Mr. Morgan and his associates to Mr. Harriman and his associates?

A. That conference was held to agree on a basis to settle a general disturbance in the financial circles of the world.

Q. But as preliminary to that, conceding that that was the object of your conference, as preliminary to that, was there or was there not a show down on the part of the two factions?

A. None that I know of. I wasn't so much interested in the market condition as others, because I had neither bought nor sold a share of stock, and I was brought into the meeting. I 216
remember I was asked to come there, and when I came over to the office, this question was up and it lasted maybe fifteen minutes. The other people said we would let Mr. Morgan select the board.

Q. At that meeting. That was shortly after May 9?

A. Yes, sir.

Q. Was it within a day or two after?

A. I should think so; within two or three days anyway.

217 Q. And at that meeting the agreement was reached that Mr. Morgan should name the board of directors of the Northern Pacific Railway Company?

A. Yes, sir.

Q. That is the board to be elected at the next annual meeting?

A. Yes, it was expected, and I think notice had been given, that the board would be classified, and whether Mr. Morgan was to name the whole or a part I do not recall. I know that Mr. Morgan was to name the board of directors, and I know that on his return from Europe he did.

218 Q. Was that agreement put in writing at that meeting?

A. I don't remember. I have a faint recollection of a typewritten memorandum—maybe it was shown to me somewhere else—just a memorandum of what was proposed.

Q. Well, did you for yourself, or acting for your associates in anyway, execute or sign any agreement?

A. I don't recall any signed agreement. When you asked me if it was in writing I remembered something of seeing a proposition, maybe it was a telegram to be transmitted to Mr. Morgan; maybe that is what was in my mind.

219 Q. So far as your present recollection goes, Mr. Hill, do you wish to be understood as saying that you do not recollect whether there was any executed agreement; that is, any agreement that was signed by the respective parties?

A. I don't recall any.

Q. But you do recall some written proposition—that is, some typewritten agreement—that was drawn up; but whether it was executed or not you do not remember; was that it?

A. No; that is a little more than my recollection. My recollection is that either coming from some of the parties for con-
220 sideration by the others or to be transmitted to Mr. Morgan, or a short statement covering what was proposed. Now, whether that was a cable made for transmission or whether it was a memorandum that was in the office I could not say. Now, it might be both, and I could not say which.

Q. Mr. Hill, have you any present knowledge of having in your possession or under your control any memorandum or agreement that was reached that day?

A. No; I haven't.

Q. Do you recall having signed any memorandum of agree- 221
ment?

A. I don't recall.

Q. Or any memorandum executed or unexecuted since that time?

A. I don't recall more than I have testified to. I have a recollection of seeing a memorandum. Whether it was a cable or whether it was a memorandum used locally, or both, I could not testify.

Q. But at that meeting, if there was any memorandum drawn up, nothing was said with reference to the respective holdings 222
of either common or preferred by the Harriman or the Hill factions, so to speak?

A. My recollection is that there was no discussion as to the amount of stock held. I think Mr. Schiff said we control or own a majority of the Northern Pacific, and I think Mr. Bacon said, "Mr. Schiff, we do not concede that, and before you are through you will find you don't."

Q. Now, Mr. Hill, at that meeting was there anything said by you or your associates, or Mr. Harriman or his associates, about the power of the corporation to retire the preferred stock? 223

A. I could not say as to that; I could not testify.

Q. Mr. Hill, did there come a time when you made known to Mr. Harriman the power that you held there as to the right to retire?

A. I do not recall my making that known to Mr. Harriman. I think Mr. Harriman learned that early in May. I think after they had bought some sixty or sixty-five millions they found out that they needed more common.

Q. Well, did they find it out, Mr. Hill, until after the 9th of May? 224

A. I think they must have found it out before. The market indicated rather. I have no means of knowing other than the market indications. Still, that is a matter I have no knowledge of, and possibly I ought not to give mere impressions as testimony.

Q. Now, Mr. Hill, whatever that agreement was with reference to allowing Mr. Morgan to name the board of directors, it was carried out at the annual meeting in October, was it not?

225 A. I think Mr. Morgan named the board on his return from Europe, and there were some changes in the board; that is my recollection. There were some changes in the board, and I think that parties who had been directors resigned and others took their places.

Q. Did you attend the annual meeting of the Northern Pacific?

A. I attended one meeting, and whether I was present at the annual meeting or not I don't quite recall. I could not testify. I attended one meeting of the board of directors, I know.

226 Q. Mr. Hill, were there any changes in the board of directors of the Northern Pacific between May 9 and the annual meeting in October?

A. Yes, sir.

Q. As a mattor of fact, there were some resignations, were there not?

A. Yes; I testified to that.

Q. Now, were those resignations agreed upon between you and Mr. Harriman, or Kuhn, Loeb & Co., at this conference shortly after May 9?

227 A. They were not.

Q. That was brought about subsequently, was it?

A. I knew nothing about that until I saw the list of those nominated by Mr. Morgan.

Q. Then there were some resignations between May 9 and the annual meeting?

A. I think these resignations were after Mr. Morgan's return, some time in July.

Q. And Mr. Morgan named the parties to take the places of those who resigned, did he not?

228 A. That is my understanding.

Mr. GROVER. That is the fact.

Q. Let me see if we can make this plain. Was there or was there not any agreement at this conference of which Mr. Morgan was appointed arbitrator with reference to naming the present board—that is, that the personnel of that board should be changed?

A. There was no agreement stipulated for retaining the board or changing the board. I remember Mr. Bacon saying if we

leave it to Mr. Morgan, Mr. Morgan must have the entire 229
power to say who shall be nominated.

Q. What I am getting at, Mr. Hill, is, was there anything said with reference to the resignations of the then board?

A. Nothing whatever that I recall, and I came away with the impression that no changes would be made until the annual meeting.

Q. Now, Mr. Hill, there were changes made right away, weren't there, after Mr. Morgan's return?

A. Some time after his return, or soon after his return.

Q. Can you give us the names of those directors who re- 230
signed?

A. I can not.

Mr. LANCASTER. Can you, Mr. Grover?

Mr. GROVER. Not from memory. Maybe Mr. Mellen can.

Mr. LANCASTER. Can you Mr. Mellen?

Mr. MELLEN. It is all in that report.

Mr. KELLOGG. Mr. Mellen can give those when he goes on the stand.

Mr. LANCASTER. I guess that will save time.

Q. Before leaving this matter, I will ask you to give me the 231
names as near as you can recall them, and the full names of the parties present at the conference which you say occurred two or three days after May 9.

A. The meeting might have been within two days, and my recollection is that Mr. Schiff and Mr. Harriman, Mr. Robert Bacon and Mr. Steele were present at Mr. Harriman's office when I was called in.

Q. Who represented Kuhn, Loeb & Co. at that meeting?

A. Mr. Schiff, a member of the firm, a senior member of the house, I think. 232

Q. Mr. Hill, Mr. Robert Bacon and Mr. Steele were partners of J. Pierpont Morgan & Co.?

A. Yes, sir.

Q. Mr. Harriman you understood to represent the Union Pacific and Oregon Short Line?

A. Well, he might have represented himself. It is difficult for me to give any more than my understanding. He represented the Union Pacific interests, or those that were concerned

233 in buying the control of the Northern Pacific. He represented the opposition to our plans.

Q. Then you know, Mr. Hill, of your own knowledge, that the board of directors which was elected at the annual meeting in October, 1901, was nominated or named by Mr. Morgan under that agreement.

A. I know that it was left at that meeting for him to nominate the directors of the Northern Pacific.

Q. You mean the conference shortly after May 9?

A. Yes; that meeting at Mr. Harriman's office.

234 Q. And do you know that that arrangement or agreement with reference to Mr. Morgan's naming the directors of the Northern Pacific was carried out in fact?

A. I do. I have the understanding that it was carried out. There was no other board elected.

Q. Was there at that conference, Mr. Hill, any agreement among the parties to it as to the Union Pacific being represented on the board of the Northern Pacific?

A. There was not.

Q. No understanding with reference to that?

235 A. None whatever. I remember some discussion; not as to the question of Union Pacific, but as to the suggestion of some names. Mr. Bacon said he would not consider it at all on any other basis than that Mr. Morgan shall nominate the board, and if you are willing that he shall nominate the board we will agree to it.

Q. When you say there was some suggestion made with reference to the directors, do you mean to say that Mr. Harriman or Mr. Schiff insisted?

A. I think that they named, or gave some names, or suggested
236 some names, and they were refused.

Q. And the final agreement, then, was that Mr. J. Pierpont Morgan should have the right and power to absolutely name the board of directors of the Northern Pacific.

A. That was the understanding, or the conclusion arrived at. It hardly took the form of a final agreement.

Q. Well, you broke up with that understanding, didn't you?

A. Yes, that is right; and I think it was practically carried out on that line, and the disturbance on the street adjusted itself very quickly.

Q. What gave rise, Mr. Hill, to leaving this matter with 237
Mr. Morgan?

A. I don't know.

Q. What subject was under discussion between you gentlemen that led up to that?

A. The subject under discussion as I testified before was mainly between the bankers on account of the strained condition of the situation in the money markets of the world.

Q. Wasn't the matter that was under discussion between you gentlemen that led up to the appointment of Mr. Morgan as arbitrator the respective claims as to the control of the Northern 238
Pacific?

A. No; the thing that led up to that was the bankers' anxiety to allay this terrible condition, and they wanted to know how it might be done, and as I understand it, the other people waived their control; said we will leave the matter to Mr. Morgan and let him name the board of directors, and we will vote for them or send a proxy.

Q. Mr. Hill, the cause of the bidding up of the common stock on May 9; what caused that stock to be bid up was the anxiety and desire of the two factions to get control of the common stock 239
of the Northern Pacific?

A. I don't consider it so at all.

Q. Mr. Hill, on the morning of May 9 you and your associates held par value about forty-two millions of the common stock of the Northern Pacific; that is, you and your associates and J. Pierpont Morgan and his associates?

A. Do you ask me if we held them?

Q. Yes; we have already been over that.

A. Well, my recollection is that on the 7th of May the stock controlled by Messrs. Morgan & Co. prior to the 1st of May, 240
added to what they had bought between the 1st of May and the 7th, with what myself and friends held, made about forty-one millions of the common stock, or a clear majority of the common stock. The extreme pressure on May 9 was certainly greatly aggravated by the short selling; people selling stock who hadn't got it, and others sold stock—for instance, shareholders in Tacoma and here in St. Paul and Minneapolis, and in St. Louis and Louisville, and in New Orleans and other cities throughout

241 the country where they held the stock. They wanted it sold, but they couldn't deliver it that day, and for several days, and that made the extreme high prices.

Q. Now, Mr. Hill, under the agreement which you and your associates had with Mr. Morgan and his associates——

A. We had no agreement.

Q. You were not at liberty to sell any common stock, were you?

A. We had no agreement.

Q. I understood you to say a little while ago that you had an
242 agreement with Morgan that you wouldn't sell.

A. No; I simply said that myself and friends would hold. I remember the word I used, because they repeated it afterwards. I said myself and friends would stand without hitching, and we did.

Q. Mr. Hill, you intended that, when you said that to Mr. Morgan, that you would stand without hitching—you meant that you and your friends would not deliver common stock.

A. Wouldn't sell a share of common stock. Now, I delivered mine to people who had sold it, and couldn't make the
243 deliveries and had the stock. I remember banks and friends telegraphing me.

Q. That is, they had it, but they didn't have it in New York?

A. They would get some local banker or somebody to certify that it was mailed by express to me, and will you make a delivery? Well, I don't remember how I did, but I arranged to get several people out of trouble that way.

Q. I don't want to take up much time on this, Mr. Hill, but I do want to make this clear. The practical effect of your agreement with Mr. Morgan was that you and your associates,
244 and Mr. Morgan and his associates, would stand together and not deliver any of your forty-one millions of common stock.

A. We wouldn't sell it; wouldn't part with it.

Q. And when you say you did deliver some, you merely exchanged it with others who had stock, but not in New York at that time.

A. That would be returned in a day or two.

Q. Inasmuch as you had it and knew it could be delivered later on, it answered your purpose and you were willing to loan them stock in exchange?

A. Well, that amounted to probably 300 or 500 shares; it 245
amounted to very little.

Q. The panic, then, of May 9 was due to the fact that practically all of the common stock of the Northern Pacific was held by parties who wouldn't sell and deliver; was that it? And, of course, in connection with that, Mr. Hill, the fact that parties had sold short?

A. There was very high prices offered for the stock; very high prices offered, and led people to make sales, thinking that they could cover—or I don't know what they thought. They at least felt that they would like to sell Northern Pacific at that, 246
and it was sold and they couldn't deliver. The purchasers settled at $1.50.

Q. Mr. Hill, some days previous, perhaps weeks previous to May 9, was it or was it not pretty well understood in New York that there was a contest for the control of the Northern Pacific on between what we may call the Hill faction and the Harriman faction?

A. No, sir; there was no understanding of the kind; quite the contrary.

Q. Well, Mr. Hill, I will ask you this—— 247

A. For the purpose of showing what I know, it was quite the contrary——

Q. I have no objection to your explaining.

A. I arrived in New York about the 1st of May. I think I am right in saying that on Thursday, the 2d of May, the Northern Pacific treasury—or not Northern Pacific treasury, but rather the treasurer of one of its companies, one of its proprietary lines—sold quite a block of Northern Pacific common, maybe 7,000 or 8,000 or 10,000 shares.

Mr. MELLEN. Thirteen thousand. 248

A. Thirteen thousand. Well, I knew it was something. They sold it. If the contest between Morgan & Co. commenced on Saturday, they sold it on the previous Thursday; so they didn't know that there was any contest or they wouldn't have sold it and commenced buying it back on Saturday.

Q. It is true that it was given out in the public newspapers for a week or ten days before May 9 that there was a contest on between the two factions.

249 A. I don't recall it, but then I pay very little attention to newspapers; don't read them very often. A great many things are inspired in the newspapers that you have to take with a great deal of salt.

Q. Mr. Hill, I am not quite clear as to what your testimony was about Mr. J. Pierpont Morgan's purchase of the common stock just before May 9. How long before May 9 was it that J. Pierpont Morgan & Co. bought some fifteen or sixteen millions of the common?

A. I think between the 4th and the 6th or 7th. That is my
250 best recollection.

Q. Now, come down, Mr. Hill, to the directors' meeting after the annual election at which a resolution was passed to retire the preferred stock; do you remember the date of that?

A. I think it was the 13th.

Mr. GROVER. November 13.

Q. Did you attend that meeting?

A. I attended a meeting on the 13th of November. I spent most of the time, if not all of the time, in a room adjoining the board room. I was in conversation with Mr. Harriman about
251 some matters, and I think at the time that the meeting was held—it was a short one—most of the time I spent in a room adjoining the board room. I was present and answered roll call at the meeting. Perhaps that would answer your question better.

Q. That is, you answered the roll call of the directors' meeting on November 13?

A. Yes, sir.

Q. When did the retirement of the Northern Pacific preferred stock come up between you and your associates and J.
252 Pierpont Morgan & Co. and their associates?

A. I don't know when it was first mentioned. It was always understood from the time of the reorganization that the preferred stock would be retired and that there would be one kind of stock.

Q. But what I mean is after, say May 9, was there any definite plan between you and your associates and J. Pierpont Morgan & Co. with reference to the retirement of the preferred stock?

A. Previous to May 9. I think that between May 1 and the

time they made up their minds to buy the control of the common that it was decided to exercise that privilege. 253

Q. And that was decided upon between you and your associates and J. Pierpont Morgan & Co.?

A. No; they simply said that that could be done, and they would do it. They wouldn't hand over control of the property. Mr. Morgan had a good deal of feeling that the Northern Pacific had been a difficult property to keep on its feet and get it on its feet. His name was connected with it, and he had a good deal of pride in not handing it over to a rival.

Q. When you speak of a rival, do you mean the Union Pacific interests? 254

A. The interests of the Union Pacific.

Q. And the matter then was definitely determined upon that you had a right to retire the preferred stock?

A. That the Northern Pacific had.

Q. Of course you mean the company had a right to retire the preferred stock?

A. Yes, sir.

Q. And having a complete majority of the common stock that would give you and your associates and Mr. Morgan and his associates complete control of the Northern Pacific? 255

A. Of the Northern Pacific through a majority of the common stock.

Q. Yes; that is what I mean.

A. And the Great Northern had a very direct interest in knowing that it was not—that the control of the Northern Pacific was not—going to be vested in the friends of the Union Pacific, because if that was the case the Northern Pacific owning one-half the control of the Burlington, with the control of the Northern Pacific in the hands of the Union Pacific, the Great Northern would have had to go into the hands of the Union Pacific. 256

Q. Now, Mr. Hill, when subsequent to this determination to retire the preferred stock was it definitely decided upon to retire?

A. Oh, before myself and friends would agree to hold our Northern Pacific we had the promise of Messrs. Morgan & Co. that the preferred stock would be retired.

257 Q. And that was shortly before May 9?

A. Yes, sir.

Q. And probably before May 1, was it not, Mr. Hill?

A. No, sir.

Q. Between May 1 and May 9?

A. Between May 1 and May 9. It was between the time that Kuhn, Loeb & Co. interests attempted purchasing the Northern Pacific stock in a large way, or claiming control of it, and the time that Morgan & Co. bought.

Q. So that when at the time you told Mr. Morgan that you
258 and your associates would hold your Northern Pacific common, Mr. Morgan and you then and there agreed that you would retire eventually—that is, as soon as convenient—the preferred stock of the Northern Pacific?

A. I couldn't agree to retire that.

Q. Well, you and Mr. Morgan had that understanding that it should be done?

A. Mr. Morgan was abroad. His partners were at home and I stated to them, if you will retire that preferred stock under the conditions under which it was issued, we will not sell our
259 stock; we will cooperate with you.

Q. And it was upon that agreement and understanding that you continued to hold—you and your associates—to hold your common stock?

A. As I testified before, it was a very important matter to the Great Northern. It was a question whether we controlled our property or whether the Union Pacific controlled it through the Burlington and the Northern Pacific. If that stock had not been redeemed, and the Union Pacific control the Northern Pacific and half the Burlington, they would very soon control
260 the Great Northern.

Q. Mr. Hill, I suppose you refer now to the provisions of the collateral mortage—the joint bond?

A. No. If one-half the stock of the Burlington belonged to the Northern Pacific and the Union Pacific controlled the Northern Pacific, the Great Northern could not depend on the Burlington down in Union Pacific territory as an ally in any contest, and the Union Pacific could have kept——

Q. If you want to explain this, it is all satisfactory, but we don't want it to go into our case.

A. No. I thought I was answering your question. 261

Mr. LANCASTER. I move to strike out the voluntary statements of Mr. Hill as not being responsive to any questions asked by complainant.

A. Well, what is the question?

Q. There isn't any question. I was trying to frame one when you started on that explanation. Now, when was the matter of the retirement—that is, when were the first steps taken to actually retire the preferred stock of the Northern Pacific—when was that?

A. The first that I knew were at the meeting when the notice 262
was given, when a resolution to retire it was passed, and to give the necessary notice.

Q. About what time?

A. That, I think, was on the 13th of November.

Q. Now, Mr. Hill, previous to the 13th of November, had not you and your associates and Mr. J. Pierpont Morgan & Co. discussed the ways and means of retiring the preferred stock?

A. I couldn't testify accurately as to that.

Q. Well, could you testify that previous to the passage of the resolution to retire the preferred stock, which was on Novem- 263
ber 13, 1901, no arrangements or agreements had been made between you and J. Pierpont Morgan & Co. with reference to carrying out the plan of retirement?

A. The agreement was not made between Mr. Morgan and myself at any time. The fact that it was necessary to raise a large amount of money was more or less discussed possibly before, certainly after that date, but my impression is that the plan as subsequently carried out was discussed both before and after. Remember there were other shareholders besides myself, and they spoke for themselves. 264

Q. Now, Mr. Hill, previous to November 13, 1901, which was the day on which the meeting of the board of directors of the Northern Pacific was held at which the resolution was passed to give notice with reference to the retirement on the 1st day of January, 1901, of the preferred stock? You understand that that was the meeting at which such a resolution was passed?

A. Yes, sir.

265 Q. Now, I want to known if prior to November 13, 1901, a complete plan and scheme had been devised by you and your associates and by J. Pierpont Morgan & Co. so as to provide the money to retire the preferred stock of the Northern Pacific?

A. I think that the entire plan was provided by the board of directors and some of the principal stockholders. I know many of the stockholders were allowed to take their share of the securities?

Q. When was that done?

A. When was the plan agreed upon?

266 Q. When was this plan matured?

A. It was matured prior to the 13th of November.

Q. About how long before?

A. Oh, I couldn't say; maybe ten days or two weeks.

Q. Now, had not the plan of organizing the Northern Securities Company been definitely decided upon prior to November 13, 1901?

A. The plan of organizing the Securities company was decided upon a very long time before—two or three years before.

Q. Then you had not at that time, November 13, 1901,

267 arranged so that the retirement of the Northern Pacific stock in the end would be taken care of by the Securities company?

A. No, sir.

Q. Well, any arrangements with reference to that, were they made subsequent to November 13?

A. The Securities company purchased Northern Pacific stock. The Northern Pacific preferred stock was retired by the sale of a bond, and that bond was convertible into stock. I think that was a matter—the whole subject is one of recollection on my part, but you can get the actual transaction, and it would be a

268 great deal better than my recollection.

Q. Well, that may possibly be so, Mr. Hill, but I want to get at the general features of this transaction.

A. Yes, sir.

Q. Had you prior to November 13, 1901, any arrangement, agreement, or understanding that Mr. Harriman, or of any one representing his interest or the interests of the Union Pacific Railway Company, with reference to the taking care of the preferred stock of the Northern Pacific held by him, or the Union Pacific, or the Oregon Short Line?

A. I had no such arrangement with Mr. Harriman or any 269
one else before or after.

Q. To your knowledge, was there any arrangement or agreement or understanding with reference to the retirement of this stock; that is, as to how it should be retired, and how it should be taken care of by any one representing the Northern Pacific or Great Northern or J. Pierpont Morgan & Co.?

A. I had nothing to do with it and know nothing about it. It could only be retired the same as another stock. I don't know any difference between his stock and any other.

Q. What I want to get at is this: The stock was retired on 270
the 1st day of January, 1902, by a delivery of the stock at J. Pierpont Morgan & Co.'s office and taking the cash par value of the same, was it not?

A. I don't know.

Q. Well, was not that the effect of the resolution?

A. I don't remember the terms of the resolution.

Mr. BOUTELLE. Don't the pleadings admit that now?

Mr. KELLOGG. I think the pleadings state definitely just what was done in detail.

Q. In order to provide for the cash to retire the preferred 271
stock, the Northern Pacific issued seventy-five millions of certificates of indebtedness, did it not?

A. That is my recollection.

Q. The subscriptions for the whole of the seventy-five millions of certificates of indebtedness were actually subscribed for by yourself and others previous to the meeting on November 13, 1901?

A. My understanding and recollection is that each holder of common stock prior to the 1st of January, at the time when the books closed, was entitled to subscribe for seventy-five eightieths 272
of his holdings of common stock in debentures or certificates issued by the Northern Pacific and to pay for the same at par. Now, that is my recollection.

Q. Well, Mr. Hill, before we get to that, what I want to get at is that primarily this preferred stock was to be paid in cash; that is, you had to provide a fund to pay that stock when it was tendered to J. Pierpont Morgan & Co., on the 1st day of January, 1902?

273 A. Yes, sir; certainly.

Q. Now, some provision had to be made in order to provide for that amount of cash, $75,000,000. Now, is it not a fact that prior to the passage of the resolution retiring this stock, which took place on November 13, 1901, Kuhn, Loeb & Co., J. P. Morgan & Co., James J. Hill, George F. Baker, and John S. Kennedy had subscribed for seventy-five millions?

A. No. That is simply an underwriting agreement under which the gentlemen signing it agree to take the $75,000,000, because the parties who had agreed to buy any of these securities
274 that were for sale wanted to know that it would be subscribed for. And that is not an uncommon practice. It is rather a common practice. It is what they call "underwriting." My recollection is that of that $75,000,000 that the underwriting party agreed to take, that they got somewhere from six to seven hundred thousand of it.

Q. What I am getting at is this: That prior to November 13, 1901, Kuhn, Loeb & Co., J. Pierpont Morgan & Co., James J. Hill, George F. Baker, and John S. Kennedy became obligated to the Standard Trust Company of New York for seventy-
275 five millions; that is, to take $75,000,000 par value of the certificates of indebtedness to be issued by the Northern Pacific?

A. When Mr. Kennedy and myself signed that underwriting it was generally considered a matter of form, and Kuhn, Loeb & Co.'s name was not mentioned in connection with it.

Q. Well, I am asking you as to what was actually done?

A. I am trying to answer your question.

Q. Mr. Hill, I want to know if it is not true that previous to November 13, 1901, Kuhn, Loeb & Co., J. Pierpont Morgan & Co., James J. Hill, George F. Baker, and John S. Kennedy
276 had been in fact obligated to this Standard Trust Company of New York to take seventy-five millions of the certificates of indebtedness of the Northern Pacific which were to be issued to take up and retire the preferred stock of that company?

Mr. KELLOGG. I think I will object to that. That agreement is in writing and attached to the pleadings and you are asking Mr. Hill for his recollection of it. The writing is the best evidence and you know it.

A. My recollection of that agreement or the signing of it,

was that it was a mere formal affair, and that it would in all 277
probability carry no stock. It was something the trust company asked to have done. I know that when I signed it it was considered that but a very small amount, if any, of the stock, or rather of the certificates of indebtedness would come to the underwriters, and as to the date when it was signed, whether it was before or after the 13th, I could not testify. I should say it was some time after the 13th and I may be wrong. It is my recollection. The paper would be a great deal better.

Q. I don't want to mislead you. It says the 15th. The agreement itself attached to the answer says the 15th, which I 278
presume is correct?

A. My recollection is that it was after the 13th.

Q. What I am getting at, Mr. Hill, is this: I don't want to haggle about the date—whether or not, previous to the passage of the resolution retiring the preferred stock you and your associates, J. Pierpont Morgan & Co. and their associates and perhaps Kuhn, Loeb & Co., or Mr. Harriman, had not talked over the necessity of providing $75,000,000 to retire the preferred stock?

A. As far as the $75,000,000 to retire the preferred stock 279
was concerned, I have no recollection whatever. I think I would have a clear recollection if there had been any such understanding with Kuhn, Loeb & Co. or Mr. Harriman in any way or manner whatever. The retirement of that stock was not a matter newly considered. The parties knew from early May that it had to be retired or the Northern Pacific would have to pass into the control of the southern people. The proposition was made to some extent, and to a greater or less extent, to meet this amount of money and the method—the issuance of certificates—I think that was more in reference— 280
and this is only an impression—but it is a strong one—that it was with reference to the share capital. These certificates were made convertible so that it did not interfere with the amount of share capital.

Q. What I am getting at, Mr. Hill, is in the first instance you had to make provision to provide, if necessary, the total amount; that is, the seventy-five millions of cash?

A. Yes, sir.

281 Q. In other words, under the resolution which was passed to retire the $75,000,000 on the 1st of January, 1902, every holder of a preferred share of stock had the right to present his certificates and get his money in cash, is not that true?

A. That is right.

Q. Now, in order to provide for that, you and your associates and Mr. Morgan and his associates, had talked over and discussed ways and means of doing that, accomplishing that, hadn't you, previous to November 13?

A. I have tried to make it understood that the providing of
282 that money was a matter that concerned the Northern Pacific, and the Northern Pacific had to make the provision for raising the money, and it did make it and called on its common shareholders and they responded.

Q. I understand exactly how it came about later on, but what I am getting at now is that, primarily, you had to make provision for raising $75,000,000?

A. I had not.

Q. But the Northern Pacific had?

A. You keep confounding me with the Northern Pacific,
283 Judge. If you will get that out of your head you will save a lot of trouble for yourself and me, because I am all the time trying to steer clear of being confounded with people whom I had little to do with.

Q. It was necessary, Mr. Hill, to provide some way of raising, on the part of the Northern Pacific, $75,000,000 to retire the preferred stock?

A. That is correct, sir.

Q. And what I want to get at is, when was that agreed upon? When was the plan of raising that money outlined and agreed
284 upon, to your knowledge?

A. I could not testify. I do not recollect.

Q. Did you discuss with your associates or with J. Pierpont Morgan & Co., or with Kuhn, Loeb & Co., or Mr. Harriman, or anybody else, that proposition?

A. I never discussed it with Kuhn, Loeb & Co. or Mr. Harriman.

Q. Did you discuss it with J. Pierpont Morgan?

A. I discussed it with a great many, or with several people

who were interested—stockholders, and with Messrs. Morgan & Co., and more or less with counsel. 285

Q. And with members of the firm of J. Pierpont Morgan & Co.?

A. With Mr. Morgan and other members of the firm.

Q. Mr. Bacon?

A. Mr. Bacon. I don't know whether the details were discussed to any great length with him. He went abroad some time in the fall.

Q. Did you discuss it with Mr. Steele?

A. I think so, clearly. 286

Q. Now, previous to November 13, 1901, had you personally any conference with the officers, or any of them, of the Standard Trust Company with reference to this matter?

A. I recall none. You mean conferences as to this raising of money?

Q. Yes, sir.

A. I recall none.

Q. Was that matter of raising the money and providing ways and means of raising the money, left to J. Pierpont Morgan & Co. to attend to? 287

A. That was done by the Northern Pacific and by its officers, and what they did I don't know, except as a shareholder, that I was offered, as others were, the right to subscribe for securities.

Q. Mr. Hill, do you know what officers of the Northern Pacific negotiated the $75,000,000?

A. I think it was probably done by the executive committee.

Q. Who are the executive committee?

A. I know two of them.

Q. Well, give me the names of two of them?

A. George F. Baker and John S. Kennedy. Now, there are probably five. 288

Mr. MELLEN. Six.

Q. You can't give the name of the others?

A. No; I can not. The president is ex officio one, I think.

Q. And so far as the method or scheme or plan of raising the $75,000,000 to retire the stock was concerned, you didn't have anything to do with it yourself?

A. I testified a moment ago that I had discussed it with the

289 firm of Morgan & Co. and with counsel, and I could hardly say I had nothing to do with it. I didn't wish to be so understood.

Q. And you approved of the issuance of $75,000,000 of certificates of indebtedness on the part of the Northern Pacific?

A. I did not testify that I approved of it or disapproved of it.

Q. Well, I ask you now, Mr. Hill.

A. It was not a matter for me to approve or disapprove. It was a matter for the Northern Pacific to determine. I approved of the retirement of the stock because it was a necessity.

Q. And the retirement of the stock was also a matter for the
290 Northern Pacific, too, was it not?

A. Certainly.

Q. Why do you make any distinction between the retirement of the stock and the ways and means of doing it, which would be a corporate action, would it not?

A. I could have insisted on the retirement of the stock when I held or represented with others as large an amount as we did early in the season. I could not tell the Northern Pacific how they should retire their own stocks or what financial arrangements they should make.

291 Q. Then, in other words, Mr. Hill, I understand your testimony to be that while you were interested in the retirement of the preferred stock, you did not approve or disapprove of the methods by which that retirement was carried out?

A. I did not disapprove of them, I know.

Q. Did you approve of them?

A. Why, I accepted them, and that was approval so far as they affected my holding.

Q. Now, I will show you Exhibit 5, which is attached to the answer of defendant company in the case that we are taking this
292 testimony in, that purports to be a copy of an agreement between the Standard Trust Company and the Northern Pacific Railway Company.

Mr. KELLOGG. That is correct. It is unless there is any mistake in it, and I don't think there is.

Mr. LANCASTER. That came from your office, Mr. Kellogg?

Mr. KELLOGG. Yes, sir; and it is correct.

Q. Have you examined Exhibit 5?

A. I examined that paper that you showed me.

Q. That is Exhibit 5 attached to defendant's answer?

A. Yes, sir. 293

Q. I will ask you if you executed that agreement in your own name and in your own behalf?

Mr. KELLOGG. You have referred him to an agreement.

Exhibit 5 was executed between the Northern Pacific and the Standard Trust Company.

Mr. BULKLEY. That was the one you referred to in the evidence.

Mr. KELLOGG. Which one do you mean, Mr. Hill, to refer to, the one he executed or the one to the Standard Trust Company? 294

Mr. BOUTELL. The underwriting agreement was probably attached to the agreement, wasn't it?

Mr. KELLOGG. That may have been so. This is the underwriting agreement.

Mr. LANCASTER. I suppose it was all one agreement and one paper?

A. Oh, no; one was a Northern Pacific matter, and this was a personal matter.

Q. Now, I will call your attention to what we will designate as the underwriters' agreement. 295

A. Yes, sir.

Q. Which purports to be a contract between the Standard Trust Company of New York and Kuhn, Loeb & Co., J. P. Morgan & Co., James J. Hill, George F. Baker, and John S. Kennedy. This appears as an exhibit to the defendant's answer. I ask you if you executed that on or about the 18th day of November, 1901? That is the date that is given here.

A. Yes, sir; I executed that agreement.

Q. And at the time of the execution of the underwriters' agreement, did you know of the execution of the agreement 296 between the Standard Trust Company of New York and the Northern Pacific Railway Company, executed on the 15th day of November, 1901?

A. I knew that the Standard Trust Company had made an agreement with the Northern Pacific to take the certificates of indebtedness. I don't recall the date.

Q. As a matter of fact, Mr. Hill, was not the agreement between the Standard Trust Company and the Northern Pacific

297 Railway Company made a part of and a copy of that agreement attached to your agreement with the Standard Trust Company; was not that a part of it?

A. No, sir; it was not.

Mr. KELLOGG. I shouldn't wonder if it was.

A. My recollection is clear that the underwriting paper was presented to me in Mr. Morgan's office and explained to me. I was offered one-third of the one-third of the underwriting, and I took it.

Q. Mr. Hill, I call your attention to the language of the
298 underwriters' agreement where it says, "The trust company, at the request of the subscribers, has made or is about to make an agreement with the Northern Pacific Railway Company of even date herewith, a copy of which is hereto annexed and marked 'Exhibit A,' upon the express conditions that the subscribers hereto enter into this agreement." Now, with your attention called to that provision of the contract which you signed, are you able to say that there was not attached to the paper which you signed a copy of the agreement between the Standard Trust Company and the Northern Pacific Railway Company?

299 A. My recollection is that the underwriting agreement was not attached to anything, and that it was executed on or soon after the date I testified a while ago; that it was my best recollection, and is now, that it was executed after the Northern Pacific put out this circular notice.

Q. Mr. Hill, is it not a fact that the Standard Trust Company would not enter into the agreement with the Northern Pacific with reference to furnishing the money upon the certificates of indebtedness until the underwriters' agreement, which I have just shown you, was executed by Kuhn, Loeb & Co., J.
300 Pierpont Morgan & Co., James J. Hill, George F. Baker, and John S. Kennedy?

A. I have no knowledge what the Standard Trust Company might have done with the Northern Pacific beyond what they did do, and my understanding was, and is now, that they made that agreement or arrangement, and that this underwriting was offered to the parties, and after the arrangement was made. And if I had not signed it, and if Mr. Kennedy had not signed it, and Mr. Morgan not signed it, any number of others were ready

to sign it for the profit they would make out of it, because 301
underwriting usually carries a profit with it. If these certificates were not all subscribed by the holders of the common stock the unsubscribed portion would come to the underwriters. That is what that agreement means. I was under no obligation to sign it a minute before I put my name to it, and there was no previous agreement made that I should sign it, and when I was offered it to sign I remember quite well it was in the evening in the office of Messrs. Morgan & Co. I was not under any obligation to sign it, and there had been no agreement that I should sign it. Anybody else—any banker—would have 302
been glad to have signed it and take his chance of making some profit out of it.

Q. What I am trying to get at is whether or not it was understood and agreed between the Northern Pacific Railway Company and the Standard Trust Company that before the Standard Trust Company would undertake the obligation of the agreement between those parties, the same would have to be underwritten by responsible people satisfactory to them?

A. That is a question I could not answer.

Q. That answers it. That is all I want. When you can't 303
answer a question and don't know, that is enough.

A. I could not answer what was the understanding between the Northern Pacific. I know what the understanding was with me when I signed that agreement.

Q. And at the time that you signed this agreement there had been no previous understanding or agreement of any kind that you should execute it?

A. No, sir; none whatever. If I didn't sign, or if Mr. Kennedy did not sign it, we were under no obligation of any nature or kind. I know Mr. Kennedy hesitated some time. 304
He said, "We may be called upon to take a very large amount." Mr. Morgan said, "If you don't want it, I will be very glad to take it myself."

Q. Mr. Hill, do I understand you to say that before the meeting of November 13, 1901, you knew that the preferred stock of the Northern Pacific was to be retired?

A. I knew that a number of people in the Northern Pacific had discussed it many times, and I knew from Messrs. Morgan

305 & Co. and from the officers of the company and the directors that it would be retired.

Q. Had you talked with the directors of the Northern Pacific directly with reference to it?

A. Some of them.

Q. Had you talked with a majority of them?

A. I didn't keep exact count as to the number. I think I did unquestionably talk with a majority.

Q. What I am getting at is whether you knew before November 13 that the matter had been sufficiently discussed and
306 determined upon so that you were sure of the action which the board was going to take on the 13th?

A. I felt entirely sure that on the 13th of November the action that was taken would be taken to retire the preferred stock of the Northern Pacific.

Q. Had you discussed this matter with Mr. Harriman with reference to the retirement of the preferred stock?

A. I don't recall any such discussion.

Q. Did you discuss the matter with Mr. Jacob H. Schiff?

A. I don't recall any. I remember Mr. Schiff telling me on
307 one occasion that they had the opinion of quite prominent lawyers that the stock could not be retired, and I told him to save his breath on that matter because our counsel had told us that it not only could be retired, but I asked him not to bank on it being continued after the 1st of January. Whether that was before or after the 13th I couldn't say.

Q. Now, as a matter of fact, Mr. Hill, how was the preferred stock retired?

A. I don't know, except that it was retired and paid for in cash. I think it was presented at the office of the Northern
308 Pacific. It might have been at Mr. Morgan's office for greater convenience, because the office of the Northern Pacific is up on the fifteenth or sixteenth story of a very high building, and the other is right on the street—I don't know, I was not in New York at the time.

Q. As a matter of fact, Mr. Hill, do you know that all of the preferred stock was in fact retired and has in fact been retired?

A. I don't know that.

Mr. BOUTELL. Is not that matter covered in the amended answer?

Mr. KELLOGG. Yes; it has all been retired. There may be 309
a few certificates that have not been turned in. We will find out definitely if you want to know.

Q. Well, by the resolution of November 13, 1901, there was a provision made for the benefit of the common-stock holders to subscribe for the certificates of indebtedness, wasn't there?

A. Yes, sir.

Q. And there was also another provision by which those certificates of indebtedness could be converted into common stock?

A. That is my recollection.

Q. Now, what arrangement, or agreement or plan was all laid 310
out and practically agreed upon by the interested parties prior to November 13, 1901?

A. The plan or details was a matter that came under the direction of the Northern Pacific, and I could not testify as to what they did further than any other shareholder. My recollection is that they issued certificates which were convertible into common stock, and these certificates were subscribed for by the common-stock holders at par and afterwards were exchanged for common stock. That is what I did with mine.

Q. I don't think you quite understood my question. I want 311
to know if the details of this plan with reference to the issuance of the certificates of indebtedness by the Northern Pacific and the subscriptions for those certificates by the common-stock holders, and then the further step of converting those by the subscribers into common stock—whether all those plans and details were in fact agreed upon by yourself and Mr. Morgan and other interested parties previous to November 13, 1901?

A. I had nothing to agree to in the matter. It was a matter for the Northern Pacific to do. I was not a member of the board of directors of the company, and I had no agreement and 312
I could not make any agreement except as to my stock.

Q. Well, Mr. Hill, did you know previous to November 13, 1901, the details of the plan which was to be voted upon?

A. Oh, in a general way I have no doubt I knew what the intention was.

Q. You knew that the subscription for the certificates of indebtedness would not be open to preferred-stock holders, didn't you?

313 A. It was stipulated expressly in the circular that it was to common-stock holders.

Q. What I am getting at is, previous to the meeting of November 13, 1901; I want to get your knowledge of what that resolution was or was to be. Now, I want to know if previous to November 13, 1901, you knew of the details of the plan which was to be voted on at that meeting of the board of directors?

A. I knew in a general way all the steps that were to be taken, but as to the details I could not testify how much or how
314 little knowledge I had on the subject. I knew in a general way that the stock was to be retired by an issuance of certificates to the common stockholders and not to the preferred stockholders.

Q. Who had the matter of the preliminaries, or making or devising the scheme and formulating the plan—who had the matter in charge for the Northern Pacific?

A. I couldn't say. I suppose the Northern Pacific counsel had charge of it.

Q. Prior to November 13, 1901, you knew that this plan as
315 it would work out would result in the then owners of the common stock of the Northern Pacific acquiring the additional $75,000,000 of common stock which would be issued?

A. I knew that ever since the reorganization of the company. I knew that that was the condition when the preferred stock was retired, and that it might be retired at any time up to 1917.

Q. You don't mean that it was made a condition. You mean that there was a provision in the charter of the Northern Pacific allowing the company to make provision so that the preferred stock could be converted into common stock or retiring it?

316 Mr. KELLOGG. Yes; that was in the certificates of stock, too, and the resolutions issuing it, and everything.

A. The common stock would control the company.

Q. Mr. Hill, do you mean by that to say that there was any provision or, rather, condition in the charter or in the reorganization agreement or in the certificates themselves of the preferred stock by which the common stockholders should get the additional common stock to retire the preferred stock?

A. I always understood that. I understood it from Mr.

Morgan about the time I bought a very large block of stock from the committee. 317

Q. Mr. Hill, did you understand, and do you understand now——

A. I will answer that a little further, if I may, that when the preferred stock was retired there was only common stock, and my understanding of the situation was based largely on a conversation with Mr. Morgan; that it was his intention to retire that preferred stock about the time that the voting trust expired, which was five years. I think it legally expired in five, but was abandoned or discontinued—dissolved—at the end of four years. 318 I am very clear Mr. Morgan told me that when the voting trust expired that he wanted to have only one kind of stock, and would retire the preferred stock.

Q. I think your original answer is not correct when you say that it was a condition. I want to know if it is your present understanding, or has ever been your understanding, that there was any condition by which the preferred stock was to be surrendered, and, conditionally, common stock issued for the benefit of the common stockholders. In other words, was it necessary that the preferred stock should be retired in favor of the common stockholder, 319 so that he would acquire additional stock, or could not the preferred stock have been retired in any manner which the directors may have selected or chosen?

A. My understanding was based upon a somewhat intimate knowledge of the situation before the reorganization committee. The preferred stock was largely issued in lieu of bonds, and the holders of these wanted bonds in place of stock. The reorganization committee was very anxious to keep the fixed charges as near $6,000,000 per annum as they could—not to exceed six and one-quarter millions of dollars—and I am clear that Mr. Morgan told me that he said to the representatives of these people that he meant to pay that preferred stock off—said you can have preferred stock and not bonds, and we will pay you the preferred stock in money, and they took the privilege to pay it up to 1917. 320 Now, that conversation with Mr. Morgan was at an early time, and it may have affected my understanding. But your question as to the understanding had with

321 Messrs. Morgan & Co. about the 1st of May, that we were to hold our common stock, was on the condition that the Northern Pacific should be retired at the first opportunity, which was the succeeding January or following January.

Mr. BULKLEY. You mean the preferred stock?

A. The Northern Pacific preferred stock; yes.

Q. Now, Mr. Hill, to get back previous to November 13, 1901. Whether you know all the details of the plan which was submitted to the board of directors on that day or not, you knew that the ultimate object of the retirement and the carrying out
322 of that plan would result in the common stock holders of the company increasing their holdings to the extent of $75,000,000 new issue of common stock?

A. Seventy-five millions, or such part of that as was subscribed for whenever the stock would be retired.

Q. And you also knew that under the arrangement which was to be passed by the board of directors the preferred stock holder would have no part or share in that privilege of subscribing?

A. I understood that he would have no more share in the debentures or certificates that could be converted into common
323 stock than if they had not contained that provision—any more than if they had been a time bond—and that the preferred stock holder would simply get his money and cease to have any interest in the Northern Pacific Railway Company.

Q. And the further plan with reference to the subscription to the certificates of indebtedness and the converting of those certificates into the further issue of common stock was all done for the benefit of the common stock holder, wasn't it?

A. It was done for the benefit of the common.

Q. Well, if it was a privilege to subscribe for the stock, that
324 privilege was only extended to the common stock holder?

A. If the preferred stock was entitled to dividends before the common stock could receive any, to get that preferred stock out of the way it was certainly an advantage to the common stock.

Q. What steps, if any, had been taken by you and your associates and Mr. Morgan and his associates with reference to the organization of the Northern Securities Company prior to November 13, 1901?

A. The Northern Securities Company, or a company of that

character, has been considered by the large shareholders of the 325
Great Northern Railway Company for several years.

Q. And for what purpose, Mr. Hill?

A. For the purpose of combining their interest in the property.

Q. And what was the object or purpose of the combination?

A. Some of them were very old men and they had always acted together and in harmony, and they desired to perpetuate that action.

Q. What amount of stock, par value, of the Great Northern Road did those men that you now speak of hold prior to Novem- 326
ber 13, 1901, in the Great Northern Road?

A. Oh, I don't think there was any material change in their holding for a long time. I could not say about November 13.

Q. About.

A. On the 1st of November I should say they held somewhere from thirty-three to thirty-five millions.

Q. And were you among the number?

A. Yes, sir.

Q. How many individuals do you refer to in that connection, Mr. Hill? 327

A. Oh, fifteen or sixteen.

Q. That is, that you refer to as old men?

A. No, some of them are old men. Several of them are old men; but as those who discussed this matter for a long time and who finally took action upon it.

Q. And was that the purpose and object, Mr. Hill, of your organizing the Northern Securities Company?

A. That was the purpose.

Q. And at the time of the organization of the Northern Securities Company were these things that you have told us the 328
only objects or purposes that you had in mind at that time?

A. The action in buying the majority of the stock of the Northern Pacific in the market in April or May, or both, brought the question up more strongly than before as to the necessity of the Great Northern old shareholders who had been continuously connected with the property from the beginning making their holding together permanent, and, I think, in June, somewhere about the 5th or 6th of June, speaking from recol-

329 lection, Mr. Kennedy, on his return from Europe, discussed the matter with me, going over the entire situation, the relations of the Burlington; the relations growing out of the Burlington; the relations growing out of the large purchases by the Union Pacific interests of the Northern Pacific, and suggested whether we should not include in our holding company our holdings in the Northern Pacific.

Q. And for the same purpose?

A. For the same purpose, so that we would all act together and no one would sell out or leave the others. We would all
330 act together.

Q. For the purpose of unifying the interests that you had in the two roads?

A. Yes, sir; for the purpose of unifying the interests in each road; because when the Burlington was transferred or sold to the Northern Pacific and the Great Northern jointly, our owning an equal share in the company it was a matter of great consequence to the Great Northern as to who would own the stock of the Northern Pacific or control the Northern Pacific, and some of our shareholders—some of them are 86 years old,
331 others are more than 80, and so on—they might have concluded that they would sell their stock, and it might have made a difference as to the majority of the common stock.

Q. Of the Northern Pacific?

A. Of the Northern Pacific, if the control of the Northern Pacific passed to the Union Pacific, as a matter of influence. The control of the Great Northern would have passed to the Union Pacific because we would not have held it a day longer than we could have sold it.

Mr. BOUTELL. You mean the Burlington instead of the Great
332 Northern.

A. I testified that the Great Northern would pass to the Union Pacific if we sold it, very quickly. You can see readily that we didn't want to hold a line from Lake Superior and the Twin Cities to Puget Sound, with all the rest of the roads in the United States in a position to fight us and without power to fight back.

Q. Mr. Hill, was it the object and purpose of the Northern Securities Company to acquire a majority of the stock of the Northern Pacific and of the Great Northern?

A. When it was first discussed it had no reference to the 333
Northern Pacific at all.

Q. And later on, when the Northern Pacific was taken into the scheme, was it with a view to acquire a majority of the stock of the Northern Pacific as well as of the Great Northern?

A. The discussion covered simply the Northern Pacific common stock held. I am not sure that it covered any of the preferred. I am sure that it covered the common stock held by myself and close friends.

Q. Well, now, when were the first actual steps taken to organize the Northern Securities Company? 334

A. The first active steps were taken, I should say, a couple of years ago; but the official steps, or the steps of making the company of record——

Q. That is what I mean.

A. Well, that would be shown by the date of the organization, the date of the filing of the articles. I could not give that date.

Q. I suppose there would have to be some preliminary steps taken, wouldn't there?

A. I was not present at the formation of the company. 335

Q. When and where was it agreed that the capital stock should be four hundred million?

A. That was the first meeting of the Northern Securities Company, or maybe the second meeting; I don't know.

Q. You mean after the organization?

A. The first meeting that I attended.

Q. After the organization?

A. I think so.

Q. Mr. Hill, let us come right down to the time when the Northern Securities Company was organized? 336

A. Yes, sir.

Q. Without reference to what you had had in mind in previous years, I want to know when, with reference to the filing or publishing of your articles of incorporation, was the amount $400,000,000 capital stock agreed upon.

A. I am not clear that the capital stock was fixed at four hundred millions when the articles were filed. I may have another company in my mind. But my recollection was that the articles were filed and this amount increased.

337 Mr. KELLOGG. That don't seem to have been.

A. I am speaking from recollection. This paper you have shown me would be a great deal better than my recollection.

Q. But, Mr. Hill, after you have seen this provision with reference to the capital stock of the company, are you not able to fix approximately the time when you and your associates agreed upon the amount of the capital stock?

A. No.

Q. Well, was the amount of the capital stock of the Northern Securities Company fixed with reference to the capital stock
338 of the Northern Pacific and Great Northern Railway companies?

A. It had some reference to that.

Q. Did it have reference to the then actual market value of those two stocks?

A. No, sir.

Q. Well, then at the time you formed the Northern Securities Company, organized the Northern Securities Company, had you agreed upon the basis at which the Northern Pacific stock should be turned into the Northern Securities Company in
339 exchange for Northern Securities stock, as well as the basis on which the Northern Pacific stock should be turned in in exchange?

A. My recollection of that is that possibly in my interview with Mr. Kennedy, early in June, soon after his return from Europe, that the question came up as to how, if we put our own holdings into a company, upon what basis this stock would go in, and he asked me to turn it over. Maybe I wrote him and maybe I saw him; but I think the basis—I think, after consulting with two or three of the shareholders, I fixed the rate
340 upon which each, the Northern Pacific and the Great Northern, would be taken or purchased by the holding company when such holding company was organized.

Q. Was that rate, Mr. Hill, that you fixed $1.15 for the Northern Pacific, and $1.80 for Great Northern?

A. That was right.

Q. What I am getting at is this: Wasn't the four hundred million capital stock of the Northern Securities Company determined upon because of the fact that that would practically

include or take in all of the stock of the Northern Pacific Rail- 341
way Company and the Great Northern Railway Company at or upon the basis which you indicate?

A. After discussing the matter with Mr. Kennedy, and with some of my friends from abroad who were here in July, it was considered, and I may say determined, to go on and form the company. Many of them felt that they would like to give all the shareholders of the Great Northern the right to participate in any company, the old leading shareholders to put their stock in, and they said if a close corporation was formed it would be the first time in the history of the property that each and every 342
shareholder had not the same opportunity that every other shareholder had, and they discussed that with me, sometimes one and sometimes another. There was no meeting to discuss it. The general feeling, however, was among those with whom I talked, and I had that feeling myself, that we would give each shareholder the opportunity to come in at the price we put our own in, if he desired, and if he preferred to stay out, that was his privilege. Now, in making the arrangement, or in arranging the amount of capital stock that had to be provided for, there was also a condition that had reference to the fixing of the 343
amount. There were other companies, other properties, some of which are not located in this country, and the holding of which was hardly contemplated by the corporate authority of the Great Northern. It was intended to cover all shares of that character and of companies of that description in the securities company. That had to do with the amount of the capital stock. But that it was solely to hold the Northern Pacific and the Great Northern. That wasn't the controlling point. It could be amended at any time, to increase it or decrease it. But to provide for the hundred and twenty-five millions Great North- 344
ern at $1.80 would take $225,000,000 of the securities company, if that many of the Great Northern shareholders chose to sell their stock to the securities company.

Q. Now, Mr. Hill, to go back just a moment. After all this talk and discussion that you have had for several years with reference to forming a corporation to hold stock of the Great Northern Railway Company originally and subsequently the holdings of the Northern Pacific, there came a time when some definite conclusion was arrived at.

345 A. Yes, sir.

Q. And somebody was authorized and requested to go ahead and organize a corporation. Now, about when and where was that determination arrived at?

A. The determination to form the corporation was arrived at before the 1st of July.

Q. 1901?

A. 1901.

Q. And the plan for organizing the Northern Securities Company ——

346 A. Was worked out and modified or changed between the 1st of September and the date of the publication of the articles.

Q. Who finally decided upon the plan that was adopted in the organization of the Northern Securities Company?

A. Practically, Mr. Kennedy, Mr. George Baker, Mr. James, Mr. Thorne, Mr. Clough, Mr. Perkins, and myself.

Q. And were there no others than those whose names you have just given who had anything to do with the actual perfecting of the plan of organization of the Northern Securities Company?

347 A. No one outside of the counsel who drew the papers. I think I had as much to do with it as anybody.

Q. Mr. Hill, in the discussion and consummation of the plan which resulted in the organization of the Northern Securities Company, had J. Pierpont Morgan or his partners anything to do with it?

A. Mr. Perkins was his partner. He had something to do, but in the first instance nothing, and at the last very little.

By the consent of all parties an adjournment of these proceedings was had at this time until February 18, 1902, at 10 o'clock
348 in the morning.

TUESDAY MORNING, *February 18, 1902.*

JAMES J. HILL, recalled.

Examined by Mr. LANCASTER:

Mr. LANCASTER. Last night I forgot to formally offer in evidence complainant's Exhibit E. I offer it in evidence now.

Q. Mr. Hill, I understood you yesterday to say that in the matter of the basis upon which the Northern Pacific common was to be turned into the Northern Securities Company and the

stock of the Great Northern, that you fixed that basis yourself. 349
Is that correct?

A. I recollect, or as I recollect it, the figures I suggested were adopted and considered right by the parties whom I consulted.

Q. And what considerations determined $1.15 for the Northern Pacific common, Mr. Hill? What were the chief considerations which determined that amount with you and your associates?

A. The value of the property, the property taken as a whole; its capacity to earn money, its land grant, and the situation in the country, and so on. 350

Q. Did the market value of the stock at that particular time——

A. The stock hadn't a market quotation at the time that I suggested the figure. My recollection is that at the time that the figure was suggested or named it was midsummer.

Q. And at the time when you suggested that figure and that was determined upon, the Northern Pacific common was practically out of the market, wasn't it?

A. I think so; not quoted.

Q. And was not being sold in the stock markets? 351

A. No transactions.

Q. Was the Great Northern stock being sold at the time when the $1.80 was agreed upon?

A. When that rate was named, Great Northern was selling on the market.

Q. And at what figure?

A. My recollection is about $1.95.

Q. At the time when it was agreed to put it into the Northern Securities Company at $1.80?

A. Yes, sir. 352

Q. And had it been selling at $1.95 for any length of time previous to that?

A. Oh, yes; it had been selling; it sold up to $2.

Q. Was $2 the highest point it had reached?

A. I don't recall the figures; possibly something over 200. I don't carry those figures in my mind.

Q. The considerations which you mentioned in reference to the Northern Pacific, were those chiefly instrumental in fixing

353 the $1.80 as the basis of the Great Northern, excluding the land grant; I think you mentioned the land grant in reference to the Great Northern?

A. In reference to the Northern Pacific.

Q. I mean the Northern Pacific, yes.

A. The Great Northern had property that gave it a value and were considered in addition to the railway.

Q. Mr. Hill, at the time when the $1.15 for the Northern Pacific common and $1.80 for the Great Northern was agreed upon as the basis upon which those stocks were to be exchanged
354 for Northern Securities Company stock, did Mr. Harriman and his associates, or the Oregon Short Line or the Union Pacific hold their $78,000,000 of Northern Pacific common or preferred?

A. The question seems to assume something that I have not testified was the case. It says it was agreed upon; I say that I suggested this price. I recall no agreement.

Q. I understood you to say, Mr. Hill, that you suggested the price and it met with approval and that that was actually——

A. The approval of those with whom I consulted, and they
355 were very few, and this was simply a stockholders' affair acting individually, and a circular was subsequently prepared after the formation of the company; but before that it was limited to a very few people, and in that connection let me say there was no agreement or formal undertaking.

Q. In that connection will you give me the names of the very few stockholders with whom you consulted and to whom you suggested the $1.15 and $1.80 as the prices of exchange?

A. I think the suggestions were mainly confined to Mr. Kennedy, Mr. James, Mr. Thorne, Mr. Sterling, and Mr.
356 Baker. Now, it might have been suggested to some others; probably Mr. Clark.

Q. Did any of those gentlemen whose names you have given represent J. Pierpont Morgan & Co.?

A. No, sir.

Q. Before the circular was sent out and this basis given out to the stockholders generally, did you suggest this basis of $1.15 and $1.80 to anybody representing J. Pierpont Morgan & Co.?

A. I don't recall. I think I have an indistinct recollection 357
of discussing the matter with Mr. Morgan, but as to whether the price or rate for exchange was discussed, I could not testify.

Q. Now, Mr. Hill, before this basis was suggested to your friends, whose names you have given, or at the time of that suggestion, did Mr. Harriman, or the Oregon Short Line, or the Union Pacific, hold the seventy-eight millions of the common and preferred of the Northern Pacific?

A. As a matter of hearsay, I should testify they did. It was after the purchase, but I didn't know, as I testified yesterday, what stock they held until it became apparent by their having 358
their stock transferred on the books of the Northern Pacific Company, and I learned through that channel, which would be some time late in September.

Q. Well, it was your understanding, and is your understanding at the present time, Mr. Hill, that, subsequent to May 9, the Harriman interests, or the Union Pacific interests, did not acquire any additional stock, either common or preferred?

A. I don't know that. I know they claimed to hold a majority of the Northern Pacific Company at that time.

Q. Now, Mr. Hill, I understood you to say that this sugges- 359
tion of the basis of exchange was made some time in the midsummer of 1901?

A. Yes, sir.

Q. And so far as you knew then, and so far as you know now, the Harriman, the Oregon Short Line, and the Union Pacific interests held whatever stock, common and preferred, in the Northern Pacific which they held on or about May 9?

A. I knew by what they claimed and by common hearsay, that they held what they asserted was a control of the Northern Pacific. 360

Q. Subsequently to this time, when this basis of exchange had been suggested by you to your friends, did Mr. Harriman, acting for the Union Pacific, or the Oregon Short Line, or for others, sell or make any agreements to sell all or any portion of the seventy-eight millions of common and preferred stock of the Northern Pacific Railway to you or your friends, or your associates, or to J. Pierpont Morgan & Co., to your knowledge?

A. My recollection is that he sold it to Morgan & Co.

361 Q. And about what time, Mr. Hill, did you learn of that sale?

A. I couldn't fix the time closer than to say I should place it in the month of November.

Q. Was or was not there an agreement of sale practically concluded along about the month of November?

A. None whatever, to my knowledge; I never heard of any.

Q. And so far as you know, the sale was negotiated and consummated some time in the month of November?

A. That is as far as I know.

Q. Had there been any previous negotiations with Mr. Har-
362 riman, or with anyone representing Mr. Harriman, carried on by you or your associates, or to your knowledge by J. Pierpont Morgan & Co., looking to the purchase of Mr. Harriman's or the Oregon Short Line's interests in the Northern Pacific?

A. I was aware at the time that negotiations were being carried on. I remember Mr. Harriman making some proposition to me in regard to railway matters and in regard to territorial matters, and nothing came of them; they were dropped.

Q. Well, do I understand you to say that there were any negotiations carried on, either by you or your associates, or by
363 J. Pierpont Morgan & Co., to your knowledge, looking to the purchase of Mr. Harriman's interests, or the Oregon Short Line's interests, or the Union Pacific interests, prior to November?

A. My recollection is that about the month of November Mr. Bacon, of Morgan & Co., was about to sail for Europe, and he had before he went abroad conducted these negotiations.

Q. That is, he had conducted the negotiations with Mr. Harriman looking to the purchase of Harriman's interests in the Northern Pacific?

364 A. Whatever the negotions were. That was my understanding. I was not present during these negotiations, except I remember on one occasion I came into Mr. Morgan's office, and in the evening I saw Mr. Harriman there, but I left immediately. Mr. Bacon and Mr. Harriman retired to another room. My business was transacted and I left.

Q. I understood you to say yesterday that the organization of the Northern Securities Company was practically settled and decided upon in the summer of 1901?

A. That is correct, and the rate at which the Northern Securi- 365
ties Company would take the stock was decided, but that was at a time when it was expected that the Northern Securities Company would hold a comparatively small amount.

Q. Of what?

A. Northern Pacific or Great Northern.

Q. Mr. Hill, at the time when the Northern Securities Company was decided upon, which took place some time in the summer of 1901, at that time, to your knowledge, were there any negotiations being carried on, or had been carried on prior to that time, with Mr. Harriman, or with persons representing 366
Mr. Harriman, or the Oregon Short Line, looking to the purchase of the entire holding of the Union Pacific or the Oregon Short Line, or Mr. Harriman?

A. There was absolutely no such negotiations, directly or indirectly, and I think there could not have been any without my knowing it.

Q. Now, the actual sale of the Harriman stock—we will call the stock which stood in the name of the Oregon Short Line, and perhaps in the name of Mr. Harriman and Mr. Winslow Pierce, the Harriman interests or Harriman stock. Now, at the 367
time of the actual sale of that stock to J. Pierpont Morgan & Co., do I understand you to say it took place in November, 1901?

A. I testified as my recollection that it was sold to Morgan in November.

Q. Now, was or was not that sale the result of conferences between Mr. Harriman and J. Pierpont Morgan & Co., yourself and Mr. Schiff, of Kuhn, Loeb & Co.?

A. No; I don't recall conferences between myself, Mr. Schiff, of Kuhn, Loeb & Co., or Mr. Harriman on that subject. I do 368
recall a number of conferences with Mr. Harriman in regard to railway matters.

Q. But so far as the sale of the Harriman interests, the Harriman stock, or the Oregon Short Line stock in the Northern Pacific—so far as the actual sale of that stock or the negotiations for that stock, you had or took part in them. Is that so?

A. I made no agreement with Mr. Harriman of any kind for the sale or purchase of that stock.

369 Q. That perhaps doesn't answer my question. Did you take part in the negotiations which led up to the actual purchase of that stock by J. Pierpont Morgan & Co.?

A. I testified a moment ago that I recalled being in Mr. Morgan's office one evening when Mr. Harriman was there. The subject may have been mentioned as to what they were negotiating about, but I did not remain, and Mr. Harriman and Mr. Bacon withdrew into another room.

Q. Did you attend any conferences between Mr. J. Pierpont Morgan & Co., or any of his partners, Mr. Schiff or Mr. Harri-
370 man, which were held for the purpose of negotiating the purchase of that stock?

A. I recall none whatever.

Q. Then to leave that matter, Mr. Hill, I understand you to testify that you took no part and had no part in the negotiations which led up to the purchase by J. Pierpont Morgan & Co. of the Oregon Short Line stock, or the Harriman stock, or the Union Pacific stock?

A. My recollection is that the purchase was made mainly by Mr. Bacon.

371 Q. Of J. Pierpont Morgan & Co.?

A. Of Morgan & Co. Now, it is quite possible, and I might say more than possible, that I knew from time to time something of the negotiations, but the negotiations were carried on and closed, whenever they were closed, by Morgan & Co.

Q. Well, Mr. Hill, if you didn't take any active part, or any part, in the conferences with Mr. Harriman, did you consult and confer and advise with Mr. Bacon, of J. Pierpont Morgan & Co., with reference to the purchase of the Harriman or Oregon Short Line stock?

372 A. Oh, I think if Mr. Bacon asked me in regard to the matter I should have given him any advice that I could.

Q. I am not asking you, Mr. Hill, what you might have done, but have you any recollection now of actual conferences with Mr. Bacon?

A. I have no recollection of any special discussion or conferences, excepting the one that I have alluded to as taking place one evening when I was in Morgan's office, and met Mr. Harriman and Bacon there.

Q. Well, I understand from your previous testimony that 373
nothing special at that time was said by anybody with reference to the sale of the Oregon stock at that meeting?

A. I recall nothing special, and I do recall Mr. Bacon and Mr. Harriman going into another room, I supposed to carry on their negotiations.

Q. Then you wouldn't refer to that meeting that evening in Mr. Morgan's office as a conference looking to or in any way touching the purchase of this stock?

A. Not a conference that would affect the result particularly.

Q. Were you called by anybody to that meeting? 374

A. I don't recall the reason why I went there. I had occasion to go in and out of Morgan's office several times a week.

Q. But at the present time you don't recall any reason for your visit to his office that evening?

A. I do not recall the reason. Now, I might have been called in there to ask me some question about a railway, I don't know; or some question in regard to the matter in hand; I don't recall it. I was not, however, the main party in carrying on the negotiations.

Q. Now, when you say that this sale was made in November, 375
are you speaking of your own knowledge? That is, you say the Harriman sale was made in November?

A. I am speaking of my best recollection; that is all.

Q. Are you able to testify that it did not occur either in September or October of 1901? I would show you Mr. Harriman's testimony.

A. I will say that that is not according to my recollection. I have no doubt you can establish the exact date without the slightest trouble.

Q. I will ask you this, Mr. Hill: Do you know whether or 376
not there was an agreement for the sale of this stock previous to November?

A. I know of no such agreement. I think and feel certain that if any such agreement had been made I would have known something of it.

Q. Now, at the time when the actual sale of the Harriman stock was made to J. Pierpont Morgan & Co., had the Northern Securities Company been incorporated?

377 A. I couldn't testify to that. I haven't charged my mind with that figure because I always go to the figures.

Q. Calling your attention to the date of the articles of incorporation of the Northern Securities Company, November 13, 1901, are you able to state whether the sale of the Harriman stock was made to J. Pierpont Morgan prior to that time?

A. I could not testify with any accuracy.

Q. Mr. Hill, do you know that as a part of the consideration for the sale of the Harriman stock, so called, to J. Pierpont Morgan & Co., a large block of Northern Securities Company's
378 stock, which was to be issued later, was to be turned over to Harriman or his associates?

A. I knew that the stock was exchanged the same as other stock. Now, that is all the exact information I had on the subject.

Q. I want to make this quite clear, if I can, Mr. Hill. Do you now know of your own knowledge that at the time when the sale was actually made by Mr. Harriman to J. Pierpont Morgan & Co., that it was agreed that Mr. Harriman should receive, as part consideration for that stock, Northern Securities
379 Company stock to a large amount?

A. I knew that that was the course that was pursued, but when I got that knowledge I can't recollect. I can't recall whether it was before or at the time the stock was delivered to the securities company. Now, it might be that I knew a day or two before. It might be that I knew three or four days, because the transaction was large and the time that would elapse between the purchase of the stock by Morgan, or what arrangement he made for the purchase, rather—it was part cash——

380 Q. What I want to get at is this: Are you able to state now whether or not you knew prior to the actual transfer or sale of the Harriman stock to J. Pierpont Morgan & Co., that as a part consideration for that transfer and sale Northern Securities Company's stock to a large amount was to be turned over to the Harriman interests? That is what I want to know.

A. I could not testify as to when I got that knowledge. That is the best testimony I can give.

Q. Mr. Hill, was this substantially the transaction as you

understood it then and as you understand it now: That Mr. 381
Harriman sold his Northern Pacific common and preferred to J. Pierpont Morgan & Co. for cash, with a reservation of an option on his part—Morgan's part—to give him a certain percentage of Northern Securities Company stock instead of cash when it should be issued?

A. My knowledge of the matter is substantially what was done, and whether Morgan agreed to pay him cash with a reservation is a matter that I had no knowledge of.

Q. Then, Mr. Hill, right in this connection, will you please state what you know was done with reference to the Harriman 382
stock?

A. The stock was turned over. I think the common stock was turned over to the Northern Securities Company—sold to it. The preferred stock was retired.

Q. Retired by whom?

A. The Northern Pacific.

Q. Who presented it for retirement?

A. I couldn't say; Morgan & Co., I assume.

Q. It had previously been turned over by Mr. Harriman to Morgan & Co.? 383

A. Yes.

Q. And Morgan & Co. presented it for retirement?

A. I think so; I was not in New York at the time, but that would be the general course, and is my understanding.

Q. When you speak of the common stock being exchanged or sold to the Northern Securities Company, who exchanged it? That is, who presented it for exchange, J. Pierpont Morgan & Co. or Mr. Harriman?

A. My recollection is Morgan & Co.

Q. And is it not a fact that J. Pierpont Morgan & Co., after 384
the exchange of the Harriman common stock, turned over to Harriman or his associates between fifty and sixty millions of the Northern Securities Company's stock.

A. I don't know the amount, but they turned over whatever amount was the equivalent of the common stock purchased by the Northern Securities Company.

Q. Well, as a matter of fact, Mr. Hill, don't you know that

385 Mr. Harriman actually acquired and now holds, either for himself or for the Oregon Short Line or the Union Pacific, a much larger proportion of Northern Securities Company's stock than would have been given to him or exchanged to him for his common stock in the Northern Pacific?

A. As soon as the notice was given to redeem the preferred stock of the Northern Pacific, my recollection is that a number of the preferred stockholders surrendered their stock, took their certificates for their common and converted them. Now, it may be, and I think quite likely, that that is what was done by
386 Mr. Morgan or his firm with the Harriman preferred stock. I know that others did that.

Q. Mr. Hill, do you know now, of your own knowledge, how much cash the Harriman interests got upon the sale of their common and preferred stock, aggregating about seventy-eight millions par value?

A. I do not recall the exact amount of the cash.

Q. Did you hear Mr. Harriman's testimony before the Interstate Commerce Commission?

A. Part of it.

387 Q. Do you remember his testimony in regard to his present holdings in the Northern Securities Company?

A. I do not.

Q. And do I understand you to say that at the present time, Mr. Hill, you do not know within five or ten millions of the holdings of Mr. Harriman and his associates, in the Northern Securities Company?

A. I think that they hold somewhere from seventy-five to seventy-eight millions of the Northern Securities Company's stock. They may have sold. I am basing this on what I
388 assume they held a month or six weeks ago; they may have sold some of it.

Q. Then, a month or six weeks ago, Mr. Hill, the Harriman interests held some seventy-five to seventy-eight millions par value of the Northern Securities Company's stock?

A. That is my recollection.

Q. And as a matter of fact you don't know yourself of any sales by them?

A. I do not, and I would not, unless I was the purchaser.

There is no way that I could know, unless I should watch the 389
stock market, and I have not been there to do it.

Q. Now, Mr. Hill, was there any connection whatever between the organization of the Northern Securities Company and the purchase of the Harriman stock? That is, taking those two things together, was there any connection between those two things and the selection of Mr. Morgan as arbitrator to name the board of directors of the Northern Pacific Railway Company?

A. There was absolutely no connection whatever. The time at which it was agreed by the banks to allow Mr. Morgan to nominate the directors was in May. The Northern Securities 390
Company was actually formed in November. It had been discussed without any reference to Mr. Harriman's holding, or anybody else's holding for several years, and they had no more to do with each other than you have to do with either of them, and I assume that you had nothing to do with them.

Q. Now, Mr. Hill, at the time of the selection of Mr. Morgan as an arbitrator to name the board of directors, was or was not a majority of the then board favorable and friendly to the Hill-Morgan interest?

A. Now, I would like to know what the Hill-Morgan inter- 391
ests are. I have seen it in the newspapers a great deal, but I I have never been able to find out what it is.

Q. Well, I will explain it as I understand it. I understood that just shortly before May 9 you and your associates and Mr. Morgan and his associates held and owned forty-two millions, or about forty-one or forty-two millions, of the common stock and something over thirty millions of the preferred stock of the Northern Pacific road, and I understood you to testify yesterday that you told Mr. Morgan that you would stand without hitching, and that you would not let go or deliver any of your stock, 392
and he agreed to do the same thing, and that you did stand together in that matter of holding the common stock together. That is what I understood by the Hill-Morgan interests; and with that explanation I will ask you if at that time a majority of the board of directors of the Northern Pacific Railroad was friendly to the Hill-Morgan interests?

A. I testified yesterday that Mr. Morgan was in Europe at the time. I also testified yesterday that we did not hold the

393 outside preferred stock of the Northern Pacific Company, and this statement assumes things and puts words in my mouth that I didn't say, because they weren't true.

Q. Then I will change it. I will try and make it conform to what you say your testimony was, Mr. Hill. I understood you to say yesterday afternoon that you and your associates and J. Pierpont Morgan & Co—now, we will not quibble about J. Pierpont Morgan. I remember your testimony with regard to Mr. Morgan being away, but J. Pierpont Morgan & Co.—you and your associates and J. Pierpont Morgan & Co. owned
394 and controlled and held previous to May 9 something like forty-two millions, perhaps a little less than forty-two millions, but a clear majority of the common stock?

A. Yes.

Q. Now, as to the amount of preferred stock I think you did testify that you did not know what amount of stock was held by you and your associates and Mr. Morgan & Co., so that we will leave that undetermined. But I now refer to the forty-one or forty-two millions of common stock which you referred to in your testimony yesterday afternoon, which you on your
395 part and for your associates agreed to hold and not deliver to anyone, and Messrs. J. Pierpont Morgan & Co. agreed to hold theirs together. Now, I say I call that the Hill-Morgan interests, and I want to know if at that time a majority of the board of directors of the Northern Pacific Railway Company were favorable and friendly to the Hill-Morgan interests?

A. They were selected mainly by Mr. Morgan, or the voting trust which had controlled the Northern Pacific. Some of them I knew were my friends. I couldn't name who they were, the list covered fifteen, and some of them were not
396 friendly, at least to me.

Q. Mr. Hill, all the directors, then, on the board had been named by the voting trust?

A. Elected by the voting trust.

Q. And that voting trust had been dissolved, I think, some eight or ten months?

Mr. GROVER. The 1st of January.

Q. The 1st of January, 1901. Is that true?

A. That is right.

Q. So that at the following annual election the board of 397
directors of the Northern Pacific Railway Company would be elected by the stockholders at their annual meeting?

A. That is correct.

Q. Now, was it your understanding at and prior to May 9, and I will say a few days subsequent when you held your conference with Mr. Harriman which you testified to yesterday afternoon, that a majority of that board as then constituted was favorable and friendly to Mr. Morgan or J. Pierpont Morgan & Co. and yourself and associates?

A. I knew that some members of the board were my per- 398
sonal friends; I knew that some of them were unfriendly and had been.

Q. Mr. Hill, at the time when you promised J. Pierpont Morgan & Co.—that is, one of the partners of the firm, Mr. Morgan being away—that you would hold your common stock, and they agreed to hold theirs, you testified that there was an agreement with J. Pierpont Morgan & Co. and an understanding that the Northern Pacific preferred should be retired. Is that correct?

A. That is correct. I told them that if the Northern Pacific 399
control was retained, or to assist them in retaining it, we would hold our stock and not sell it.

Q. You understood then, Mr. Hill, that the control of the Northern Pacific, so far as the board of directors was concerned, was in J. Pierpont Morgan & Co., did you not?

A. He had selected the board of directors, but there are many men there who are independent of anybody's control.

Q. Didn't you, in your testimony, a moment ago, use the words, "If the control of the Northern Pacific was to be retained?" Now, it was your understanding that it was then in 400
J. Pierpont Morgan & Co.?

A. That is the control of it through an ownership of the majority of the stock.

Q. Well, they had up to that time, Mr. Hill, J. Pierpont Morgan & Co. had elected—that is, the voting trust of which he was the head had named or elected the board of trustees?

A. The voting trust didn't own the stock.

Q. I understand, but they elected?

401 A. Yes, sir.

Q. And, then, the board of trustees had been named by the voting trust?

A. Yes, sir; that is right.

Q. Now, Mr. Hill, at the time when you had this understanding and agreement with J. Pierpont Morgan & Co., that the Northern Pacific preferred should be retired, that agreement and understanding necessarily contemplated corporate action, did it not?

A. By whom?

402 Q. By the Northern Pacific Railway Company.

A. Oh, yes, sir; that is the only way it could be retired.

Q. And at that time you necessarily had in mind action to be taken by the board of directors, did you not?

A. Yes, sir.

Q. And you then assumed that if the majority of the common stock, which was then held by yourself and associates and J. Pierpont Morgan & Co., should request the board of directors to pass that resolution that it would be done, did you not?

A. Well, speaking for myself, I hoped it would be done.

403 Q. I say, in those negotiations you assumed that it would be done, did you not?

A. I trusted it would be done.

Q. Now, you were aware that the stock could not be retired; that is, there could be no compulsory retirement until the 1st of January, 1902?

A. That is correct; that is the date fixed.

Q. And I suppose you were aware that at the annual meeting which was to take place in October, of the stockholders,

404 that at that annual meeting Mr. Harriman and his associates would have a majority of the common and preferred stock; that is, if they presented it and voted it?

A. If they presented it and voted it, and the meeting was held in October. The meeting date was a matter of the by-laws, which might be changed and amended at any time.

Q. That is just what I am getting at. At that time, Mr. Hill, you had in mind, if necessary, to postpone the annual meeting of the stockholders beyond January 1, did you not?

A. It might have been done.

Q. I want to know, Mr. Hill, if, as a matter of fact, you had 405
that in mind at the time that it could be done?

A. It had occurred, and was discussed.

Q. So that if it was necessary, in order to accomplish the purpose of the retiring of the Northern Pacific preferred stock, and you succeeded in getting a resolution passed by the then board of directors, the same board of directors could postpone the annual election beyond the 1st of January, 1902, at which time the retirement would take place?

A. Now, let me say that that was not discussed by me with Morgan & Co. 406

Q. Well, was it discussed by you with anybody?

A. With my own counsel, as a step that might be taken. My recollection is that it wasn't necessary to take any steps.

Q. But, Mr. Hill, let me ask you this, if you have finished.

A. I was going to say that my recollection is that it was not necessary to bring that up or discuss it with Morgan & Co., because the Harriman interests sent in their proxy to vote their stock to Morgan & Co., as they agreed to.

Q. I am getting at things that were in your mind before Mr. Morgan was selected, Mr. Hill, as arbitrator. I want to follow 407
that up with this question, Mr. Hill: Did you have in mind, or were you advised by your counsel, that if action be taken by the then board of directors, and an annual election of stockholders should be held as provided by the then by-laws in October, that it would be possible for the new board which might be named by the Harriman interests to cancel and annul any resolution of retirement?

A. That matter and any consultation with counsel was after my return from New York subsequent to my visit there during the first of May. 408

Q. Now, about what time was that?

A. Oh, I should think toward the last of May or first of June.

Q. What I want to get at is, you did have in mind some time the last of May or first of June, whatever time it was you got home or consulted with your counsel—you did have in mind the possibility of the Harriman interests dominating the election or controlling the election of the board of directors at the next annual meeting, did you not?

409 A. Certainly.

Q. And you did have in mind, and you were advised by your counsel, that if that should be done the directors so named would have the power to annul or cancel any action looking to the retirement of the Northern Pacific preferred which might be taken by the then board of directors?

A. They might have attempted to annul it.

Q. I don't care so much about the rule of law of the case as I do what was in your mind and what was called to your attention. I ask you now if the possibility of such action was not
410 present in your mind at that time?

A. It was called to my attention and was present during the summer, I suppose. It was a subject I thought very frequently of.

Q. Is it not a fact, Mr. Hill, that you went ahead upon the assumption that the then board of directors would be favorable and would pass such resolution as might be necessary to retire the preferred stock, and that the then board of directors, if necessary, and they were so advised and requested by you and J. Pierpont Morgan & Co., and your associates, that they would
411 postpone the annual election until after January 1, 1902?

A. I don't recall that question of postponement coming up between myself and the members of the board of directors of the Northern Pacific at any time, or being discussed with them.

Q. Did you discuss it with anybody?

A. I remember talking it over and having it discussed with counsel; that is, that such course might be taken.

Q. Mr. Hill, is it not true, and was it not your then understanding, that the mere control of the forty-two millions of common stock by you and your associates and Mr. Morgan, and
412 the mere control of the board of directors as then constituted, provided an annual election should be held in October, would not give you and your associates and J. Pierpont Morgan & Co. and their associates the final control or the control after the annual election of the Northern Pacific Railway Company?

A. About forty-one or forty-two millions certainly was not a control of one hundred and fifty-five, and if the preferred stock voted, with the Harriman stock against us, we would be in a minority.

Q. I say if you had—that is not an answer to my question, 413
Mr. Hill. As the matter then stood on May 9, you and your associates and J. Pierpont Morgan & Co. and their associates held between forty-one and forty-two millions of the common stock of the Northern Pacific Railway Company?

A. Yes.

Q. Now, assuming that you had a majority of the board of directors, as then constituted favorable to the proposition to retire the preferred stock of the Northern Pacific Railway Company, it was necessary, in addition to that, to carry out the plans of retirement to postpone, in case the seventy-eight mil- 414
lions of common and preferred held by Harriman were left outstanding, it would be necessary, in order to carry out your plan of retirement, to postpone the annual election, or might be necessary, beyond the 1st of January, 1902?

A. It might be necessary to postpone it if the preferred stock was to be retired on the 1st of January, because at that time, I think prior to that time, notice had been given of an intention to classify the board of directors, electing for one, two, and three years, and it would have been manifestly unjust for the preferred stock to have voted to elect a board of directors when that stock 415
would cease to exist on the 1st of January, a few months after electing the board of directors who were going to manage that property for two or three years.

Q. Yes, but that would be upon the assumption that your plan of retirement was to be carried out.

A. Why, of course.

Q. Now, I am trying to develop the other side of this programme a little. I want to know, Mr. Hill, if, as a matter of fact, these various considerations that we have just been discussing did not influence you and your associates and J. Pierpont 416
Morgan & Co. to open negotiations for the purchase of the Harriman stock, the seventy-eight millions of common and preferred?

A. I did not open negotiations for the Harriman stock, or for its purchase, at any time.

Q. Did that influence J. Pierpont Morgan & Co., to your knowledge?

A. I do not know that it did. I always felt that that stock could be retired and that any attempt to prevent its retirement

417 would fail, and I had the fullest confidence that it was a contract that could be enforced in any honest court.

Q. Now, Mr. Hili, I want to ask you this—if you didn't also realize, right in that same connection, that in order to carry out your plan of retirement it might become necessary to postpone the annual election which was then fixed for October, 1901?

A. I have testified repeatedly that the postponement of the election was suggested as one step by counsel.

Q. And one step that would be necessary, or might become necessary, in order to accomplish your plan of retirement?

418 A. It might become necessary.

Q. Wasn't that proposition, Mr. Hill, with reference to the necessity of postponing the annual election discussed with Mr. Stetson, of New York, who was counsel for J. Pierpont Morgan & Co.?

A. I don't recall any discussion of that kind.

Q. Do you recall now whether or not it was discussed with J. Pierpont Morgan & Co., or with any of his partners?

A. I don't recall that discussion. I think I may have mentioned it to them as a suggestion or an opinion from our counsel

419 in the West.

Q. The counsel of the Great Northern road, Mr. Grover?

A. Yes, Mr. Grover. I am very apt to go to him for advice on legal matters on almost any subject.

Q. Mr. Hill—I don't remember whether I asked you or not—do you remember at what price the seventy-eight millions of common and preferred of the Harriman Northern Pacific stock was sold to J. Pierpont Morgan & Co. at?

A. I do not recall the figure.

Q. You did know at the time, did you?

420 A. I think likely, but I can't recall the figure. I don't know that I knew exactly what the figure was. I don't know that I ever knew.

Q. I think you have already testified that one particular member of the firm of J. Pierpont Morgan & Co. conducted the negotiations for the purchase, did you?

A. Yes, sir.

Q. And what was his name?

A. Robert Bacon.

Q. He is a member of the firm of J. Pierpont Morgan & Co.? 421

A. Yes, sir.

Q. And he lives in New York?

A. Yes, when he is at home; he has been away since fall.

Q. Mr. Hill, from May 9 to January 1, we will say, 1902—May 9 preceding January 1, 1902—what amount of stock during that period, common and preferred, in the Northern Pacific did J. Pierpont Morgan & Co. hold, if you know, approximately? I don't expect you to state it accurately, but, if you can, state it approximately.

A. Oh, twenty-two to twenty-seven or twenty-eight million. 422

Q. And that was, of course, independent of the Harriman purchase?

A. Yes.

Q. Do you know how much of that, Mr. Hill, was preferred?

A. I am counting common.

Q. All common?

A. Yes.

Q. Now, did J. Pierpont Morgan & Co. subscribe for their proportion of the certificates of indebtedness which were issued by the Northern Pacific Railway Company? 423

A. I think that Morgan & Co.—in fact, I know that Morgan & Co. sold some of their stock in the meantime.

Q. How much, Mr. Hill, as near as you can state?

A. Oh, I should say ten or twelve million.

Q. Now, on January 1, 1902, how much stock of the Northern Pacific Railway Company did J. Pierpont Morgan & Co. hold—about?

A. I don't know that they held any.

Q. Well, what had become of it?

A. The Northern Securities Company had bought it. 424

Q. What I am getting at, Mr. Hill, is, how much common stock did they turn into the Northern Securities Company in exchange for Northern Securities Company's stock?

A. I couldn't say without getting knowledge from the books.

Q. Couldn't you approximately?

A. No. The company is new and I have never seen a list of the stockholders of the Northern Securities Company; never had been made up to the time I was last in its office.

Q. Well, do you know approximately how much of the stock

425 of the Northern Securities Company is now held by J. Pierpont Morgan & Co., or by any of the partners of that firm?

A. I do not know how much.

Q. Well, do you know whether it is five million or forty million?

A. I know it is not forty and it might be five and it might be ten.

Q. Well, to get at the matter shortly, you don't *know whether* it is five or three times five?

A. I do not.

426 Q. You can not give us any approximation of the amount?

A. No. I have no recollection of the list of stockholders, and I think it is Morgan & Co.'s custom to carry any stock they hold in other names.

Q. Well, at the time, on or about the 1st of January, or previous to the 1st of January, after the organization of the Northern Securities Company and the starting of the business of that company, did you not know approximately the amount of common stock held by J. Pierpont Morgan & Co. which it was their intention to exchange for Northern Securities Com-

427 pany stock?

A. About. In fact, when the stock was exchanged I knew about what they held.

Q. And about how much was it?

A. Oh, I should say twelve or fifteen millions.

Q. And that so far as your present recollection goes was all the stock which J. Pierpont Morgan & Co. or any of the partners of that company had to exchange for Northern Securities Company stock?

A. No; they had the so-called Harriman stock outside of

428 that.

Q. I am eliminating that.

A. Outside of that, that is my recollection of about what Morgan & Co. had. That figure is not intended by me to be more than an estimate, and it is the best information I have on the subject.

Q. I understand. At the present time there is outstanding of the common stock, new and old issue, of the Northern Pacific Railway Company, one hundred and fifty-five millions, is there?

A. Yes, sir; that is the exact figure. 429

Q. And what part of that one hundred and fifty-five millions of stock is now held by the Northern Securities Company?

A. One hundred and fifty-two or one hundred and fifty-three, or possibly more, millions.

Q. I will ask you this in this connection, something I forgot yesterday. The Great Northern Railway Company is and always has been a corporation organized under the laws of the State of Minnesota, is it not, Mr. Hill?

A. Yes, sir.

Q. And its authorized capital stock at the present time, and 430 on the 30th day of December, 1901, was what amount?

A. Its capital stock was one hundred and twenty-five million.

Q. And that stock is not divided into common and preferred?

A. No, sir. It is called preferred, but there is no common.

Q. There is only one class and never has been but one class of stock in the Great Northern?

A. That is right.

Q. And on the 30th day of December, 1901, how much of the authorized capital stock of the Great Northern road had been issued and was outstanding? 431

A. Probably one hundred and twenty-three million. It may be a fraction more; something less than one hundred and twenty-five.

Q. Mr. Hill, on the 30th day of December, 1901, what amount par value of the capital stock of the Great Northern road was held by the Northern Securities Company?

A. Possibly forty million.

Q. And by saying possibly forty million do you wish to be understood as saying that that is as near as you can fix it?

A. That is as near as I can fix it at that time. I think that 432 that is very near what was held at that time.

Q. And at the present time what is the holding of Great Northern stock by the Northern Securities Company?

A. I don't know.

Q. Well, do you know that it is much larger, Mr. Hill?

A. It is some larger, but not a great deal larger. It may be five or six millions more.

Q. So, that at the present time the holding of the Great

433 Northern stock by the Northern Securities Company is not exceeding forty-five or forty-six million?

A. My information comes from the office of the company in New York, and it is put somewhere less than fifty million; between forty-five and fifty.

Q. Now, Mr. Hill, on the 30th day of December, 1901, how much stock did you own and hold yourself individually in the Great Northern Railway Company par value?

A. Between two and a half and three million dollars.

Q. And had you, previous to that time, exchanged any of
434 your Great Northern stock for Northern Securities Company stock.

A. Yes.

Q. Well, I will ask you this: What time did the Northern Securities Company commence issuing its stock? When did it first commence to do business?

A. It commenced to do business about two or three days after it was organized.

Q. Mr. Hill, can you fix the date for us about when?

Mr. GROVER. That is pretty nearly right, perhaps three or
435 four days; very shortly.

Mr. YOUNG. You have the circular there which is dated two or three days after.

A. That is substantially correct.

Mr. LANCASTER. This appears to have been filed November 13, 1901, with the secretary of the state of New Jersey, and under the laws is there any publication down there?

Mr. GROVER. No.

Mr. LANCASTER. It goes into effect immediately?

Mr. GROVER. Yes.

436 Q. At the time when the Northern Securities Company commenced doing business, how much stock par value in the Great Northern Railway Company did you own and hold?

A. I couldn't give the exact figure.

Q. Well, approximately, Mr. Hill?

A. Oh, $11,000,000 to $12,000,000.

Q. On the 30th day of December, 1901, you had exchanged that stock, excepting two or three millions, into stock of the Northern Securities Company, had you?

A. Yes; substantially. 437

Q. And at the present time, how much stock do you own and hold in the Great Northern Railway Company?

A. Two and a half or three millions.

Q. Do any of your associates at the present time own and hold any of the stock of the Great Northern Railway Company?

A. I have not looked at the stockholders' list of the Great Northern Railway Company recently, and do not know.

Q. Well, do you mean to say that you do not know whether or not your associates have exchanged all of their Great Northern stock for Northern Securities Company? 438

A. I think Mr. Kennedy has exchanged all of his; I think he told me so, and I don't know whether Mr. James has or whether he has not. I don't know whether Mr. Thorne has or whether he has not. I think Mr. Baker has.

Q. Mr. Hill, do you know whether or not the amount held by the Northern Securities Company, which you say is forty-five or fifty million of the Great Northern Railway Company, together with what is held by you and your associates, constitute a clear majority of the outstanding capital stock of the Great Northern Railway? 439

A. I never made the calculation and could not answer it.

Q. You mean to say, then, that at the present time you don't know whether you and your associates, the Northern Securities Company, own and control a majority of the Great Northern Railway stock or not?

A. I don't know that the Northern Securities Company—I know they don't.

Q. I assume that forty-five or fifty is not a majority of one hundred and twenty-three, but what I am getting at is if you know whether or not the stock held by the Northern Securities 440 Company, together with the stock held by yourself and your associates, constitute a clear majority of one hundred and twenty-three million?

A. Well, if I call my associates the shareholders of the Great Northern Railway——

Q. I thought we had that well defined yesterday afternoon; you named them. I refer to them.

A. Those who were named as my associates yesterday would

441 not have a control, but the shareholders of the Great Northern Railway have always been very loyal supporters of the board of directors and sent their proxies when called upon, and I have no doubt they would act practically as a unit.

Q. And act practically as you would recommend?

A. I think they always have been ready to.

Q. Then it has not been necessary up to the present time for you to locate absolutely a majority of the capital stock of the Great Northern Railway Company; is that it?

A. I don't know why it should be necessary.

442 Q. I am not asking for the reasons, I am simply asking for the fact.

A. Well, it is the best answer I can give. Now, my judgment or opinion of what is necessary is a difficult question to answer. If I had thought it was necessary I suppose I could have had a list made.

Q. You named over yesterday, Mr. Hill, a list of some ten or twelve, I think, names of gentlemen, of which the following is a copy: John S. Kennedy, D. Willis James, S. Thorne, R. S. Sterling, Oliver Payne, Jacob Schiff, H. W. Cannon, Lord 443 Strathcona, and Lord Mount Stephens, and I think you testified that those men, whom you designated as your associates, had for a long time held a large amount of the stock of the Great Northern road and had always acted together in the management and control of that road.

A. That is not correct.

Q. Well, will you correct it?

A. Yes, sir. Those were my associates who had purchased the Northern Pacific stock. Jacob H. Schiff was a director, but not at any time of the old promoters. He was a director, and 444 his firm owned or represented an amount of stock. Not a very large amount.

Q. It will take a little time, but let's get it straight. What I want to get at is the names of the individuals to whom you have referred several times in your testimony as being your associates in the Great Northern, men some of whom were 86 years of age, and some 80, etc. Now, let's have their names.

A. The man 86 years of age is Johnston Livingston, and Lord Strathcona was born in 1820.

Q. Now, we are talking about Great Northern associates?

A. Entirely. 445

Q. And who else?

A. Mr. Thorne, Mr. Sterling, Lord Mount Stephens, Willis James, Mr. Kennedy, and Baker was a Great Northern stockholder for many years, and Mr. Cannon, and Mr. Payne.

Q. Do you know whether Lord Strathcona has any stock in the Great Northern road at the present time?

A. I do not. I think his stock is turned in, but that is only an opinion.

Q. You don't know whether it is turned in or not?

A. No; I think it is. 446

Q. You said Mr. Kennedy exchanged all of his?

A. I think he told me he had.

Q. Do you know whether Mr. Baker has?

A. I have the impression that he has. I don't know that he has.

Q. Do you know whether Mr. James has?

A. I think he has.

Q. All of the stock?

A. I think so.

Q. Mr. Thorne? 447

A. I could not say as to Mr. Thorne; he has been sick for some time.

Q. Mr. Clough?

A. Mr. Clough, I don't know. I think Mr. Clough's holding isn't large.

Q. Mr. Perkins?

A. There are two gentlemen of that name.

Q. Well, you only gave us one here as being your associate in the Great Northern?

A. I did not. 448

Q. No; you did not give that name; that is right.

Mr. KELLOGG. There is a Burlington Perkins and a Morgan & Co. Perkins.

A. That is right.

Mr. BULKLEY. Which is which?

Mr. YOUNG. Charles E. Perkins is the president of the Burlington.

449 Q. Mr. Hill, do you know whether or not there is any stock of the Great Northern Railway Company that is up in the hands of the trustees or a trustee to be exchanged at any time?

A. I know of none.

Q. Are there any agreements at the present time of which you have any knowledge between any stockholder and the Northern Securities Company for the exchange of stock in the future?

A. None whatever.

Q. Mr. Hill, the stock which you hold now, which you hold
450 out from the amount which you had on hand at the organization of the Northern Securities Company, is that stock under any agreement of any kind, to be turned into the Northern Securities Company?

A. No, sir; it was held out because it was collateral security for borrowed money at the time and it was not as easy to turn it over as it might be after the debt was paid.

Q. And is it your purpose and intention, Mr. Hill, to turn that over to the Northern Securities Company as soon as it is released?

451 A. It is released, I think, now.

Q. Well, is it your present intention to turn over and exchange the Great Northern stock for Northern Securities Company stock?

A. Well, I may have a little sentiment to induce me to hold some of the Great Northern shares. I might.

Q. That does not quite answer the question. I ask you what your present intention is?

A. I couldn't testify. I haven't any present intention.

Q. Is there at present any purpose or intention on the part
452 of you and your associates to secure a majority of the Great Northern Railway Company's stock to be exchanged for Northern Securities Company stock?

A. I don't know what the intentions of my associates are in the matter; I have never consulted them in regard to it. I suppose that any time we want any action of the Great Northern Railway Company the stockholders will be ready to do as they have in the past. Generally I have felt they were a very loyal set of people

Q. You issued a circular to the stockholders of the Great 453
Northern Railway Company?

A. Yes, sir.

Q. And in that circular you set forth the plan or scheme of exchange?

A. That is, the circular was issued by the Northern Securities Company.

Q. And it was signed by you as president of the Northern Securities Company, was it?

A. I think so.

Q. As a matter of fact, you sent that or directed that it be 454
sent to all the stockholders of the Great Northern?

A. They were all given an opportunity to exchange their stock up to a certain date, I think the 22d of January. The circular speaks for itself; and you have a copy of it, for I saw it yesterday.

Q. We don't find it here, Mr. Hill. At the time when the Northern Securities Company was formed was it your expectation and desire that a majority of the common stock of the Northern Pacific Railway Company should be turned into the Northern Securities Company in exchange for the latter com- 455
pany's stock?

A. In November?

Q. Yes, sir.

A. Yes.

Q. It was?

A. Of the Northern Pacific?

Q. Yes.

A. Yes, sir.

Q. Was it your expectation and desire at the time of the organization of the Northern Securities Company that a major- 456
ity of the stock of the Great Northern Railway Company should also be exchanged for Northern Securities Company stock?

A. I think it was expected that a majority would be exchanged. At the same time the market price at that time was considerably higher than the price the Northern Securities Company purchased the Great Northern stock at. It was a matter that was left to the shareholders.

Mr. LANCASTER. Mr. Kellogg, we will offer in evidence Exhibit F.

457 Mr. KELLOGG. All right. It is taken subject to the same objection, that it is irrelevant and immaterial. We waive the authentication.

Q. Mr. Hill, I will show you complainant's Exhibit G and ask you if that is a copy of the circular sent out by the Northern Securities Company, signed by you as president, to the stockholders of the Great Northern road in November last?

A. That is a copy of what was sent from the Northern Securities Company office in New York to its shareholders.

Mr. LANCASTER. It is offered in evidence.

458 Mr. KELLOGG. It is received, subject to the same objection.

Q. Mr. Hill, can you give the names of the directors of the Northern Securities Company?

A. I could not.

Mr. LANCASTER. I have a list here, which I think is correct. Have you a list, Mr. Grover?

Mr. GROVER. Yes, sir.

Q. Mr. Hill, will you give the names of the present directors of the Northern Securities Company?

A. James J. Hill, John S. Kennedy, George F. Baker, D.
459 Willis James, E. T. Nichols, George W. Perkins, Robert Bacon, E. H. Harriman, Jacob H. Schiff, Samuel Thorne, George C. Clark, Daniel S. Lamont, Nicholas Terhune, James Stillman, and W. P. Clough.

Q. You are president of that company and have been since its organization, have you not?

A. Yes, sir; I have been president since it commenced to do business. I think there was a president ahead of me.

Q. Were the officers named in the articles?

A. I think so.

460 Q. The first vice-president is John S. Kennedy?

A. Yes, sir.

Q. And the second vice-president, George F. Baker?

A. Correct.

Q. And the third vice-president, D. Willis James?

A. Correct.

Q. And the fourth vice-president, William P. Clough?

A. That is right.

Q. And the secretary and treasurer is E. T. Nichols?

A. That is correct. 461

Q. And was there an executive committee of the corporation?

A. Yes, sir; there is.

Q. And who is chairman of the executive committee?

A. The president is ex officio chairman, I think.

Q. And how many members constitute the executive committee?

A. Five or six.

Q. Can you give those names.

A. I could not. I think the four vice-presidents and E. H. Harriman. 462

Mr. GROVER. The four vice-presidents and E. H. Harriman and the president ex officio.

Q. That would make six.

A. Well, I said five or six.

Q. Mr. Hill, to your knowledge, was there any Great Northern Railway stock on the market for sale?

A. Oh, yes, sir.

Q. Was it being dealt in?

A. There are quotations frequently.

Q. And has been since the 1st of January, 1901? 463

A. Yes, sir.

Q. Has there been any considerable dealings in Great Northern Railway stock since the 1st of January?

A. I don't recall; it is never an active stock; it is never a stock that has been dealt in in large amounts, but I think I have seen seven or eight hundred shares in a day dealt in some times.

Q. Mr. Hill, can you state approximately the number of stockholders at the present time in the Great Northern Railway Company? 464

A. I could not without a list of them. Last fall when I last saw a list there was some fifteen or sixteen hundred, but that changes as the sales are made.

Q. You are unable now to give even an estimate of the number of stockholders outstanding?

A. I have no means of estimating the changes. The sales might increase the number of holders or it might reduce them. I have seen the number of shareholders up well toward two thousand.

465 Q. Where are the stock books of the Great Northern Railway Company kept?

A. New York.

Q. And do you have a copy, or substantially a copy, of that book in your office at St. Paul?

A. I suppose I could get one, if I wanted it.

Q. What I mean is, either the secretary or assistant secretary of the Great Northern road is at St. Paul?

A. The secretary, I think.

Q. And you have your assistant secretary reside in New
466 York?

A. Yes.

Mr. GROVER. The secretary is in New York.

Q. And the assistant secretary resides in St. Paul?

A. Yes, sir.

Q. What I want to know is, whether or not you keep in your office at St. Paul a duplicate copy, or something serving the purpose of a duplicate copy, of your stock book?

A. I think once a year there is; whether it is oftener than that, I could not testify.

467 Q. And all transfers of stock are registered in your office at New York?

A. Yes, sir; they are made there; of course they are registered there.

Q. Now, the custody and control of the books of the Great Northern Railway Company, then—the original books—are in the possession and control of the secretary, Mr. Nichols. Is that his name?

A. Mr. Nichols.

Q. In New York City?

468 A. The stock books are necessarily kept there.

Q. They are kept by Mr. Nichols, are they, as secretary of the company?

A. Yes.

Q. That is what I am getting at. Where are the records of the official meetings of the stockholders and directors of the Great Northern Railway Company kept?

A. They are in New York.

Q. And are they in the custody of the secretary, Mr. E. T. Nichols?

A. Yes, sir. The directors' meetings are held in St. Paul. 469

Q. And the minutes of the directors' meetings are kept by whom?

A. Kept by the secretary in St. Paul.

Q. That is the assistant?

A. By Mr. Sawyer.

Q. He is the assistant secretary, is he?

A. He is either secretary or assistant. One is assistant treasurer and secretary, and the other is assistant secretary and treasurer.

Q. But Mr. Sawyer has the custody and control of the records 470 of the directors' meetings in St. Paul?

A. Yes, sir.

Q. Well, we will want to clean up a little and ask a few more questions. We had better take an adjournment until 2 o'clock.

By consent of all parties, a recess was taken at this time until 2 o'clock in the afternoon.

Thursday afternoon, February 20, 1902, at 2 o'clock all parties appeared pursuant to the adjournment, represented by the same solicitors, and the following proceedings were had, to wit: 471

JAMES J. HILL, being recalled for further examination by Mr. Lancaster, testified as follows:

Q. Mr. Hill, is there a voting committee of the Northern Securities Company?

A. I think not; I don't recollect any.

Q. Has there been any provision made for a committee to represent the Northern Securities Company in any stockholders' meeting of either the Great Northern or Northern Pacific Railway Company?

A. No committee that I know of. I think there is a proxy. 472

Q. To whom?

A. I don't recall to whom it ran, but I think there is a proxy. I think the board appointed a proxy to vote stock in case any occasion for voting it should arise.

Q. Do you know whether or not that proxy is held by one individual or by a committee?

A. I don't recall.

Q. Has that proxy been actually issued?

473 A. That I don't know.

Q. And does it cover the stock of the Great Northern as well as the stock of the Northern Pacific?

A. They would be different proxies.

Q. I mean, does the provision with reference to the proxies cover both classes of stocks?

A. I think so.

Q. And does the proxy run to the same person?

A. I think not; I think it is a separate proxy.

Q. Are you able to give the name or names of the parties
474 holding either proxy or both?

A. I think that I am one of the proxies for the Great Northern.

Q. And who else with you?

A. I don't recall. Possibly Mr. Nichols is the alternate.

Q. And who is the party holding the proxy for the Northern Pacific Railway Company?

A. I don't recall.

Q. Is it you, Mr. Hill?

A. I am not. I think that Colonel Lamont, vice-president,
475 who is resident and in the office of the Northern Pacific, I think that he is the proxy for the Northern Pacific, but I am not certain; and as to the alternate I don't know.

Q. Has any stock of the Northern Securities Company been issued and sold to any individual or individuals for cash?

A. I couldn't testify as to that.

Q. Well, has the Northern Securities Company any assets excepting the stocks of the Northern Pacific Railway Company and of the Great Northern Railway Company?

A. It has.

476 Q. What are they?

A. Other stocks or securities.

Q. Of what companies?

A. Well, for one, it has stocks or stock in the Crow's Nest Coal Company.

Q. How much?

A. I don't remember. I think 25,000 shares.

Q. From whom did it acquire that stock?

A. The stock was purchased under my direction from people in Canada and was carried and turned over.

Q. Did the Northern Securities Company pay cash for it? 477

A. I think so. This transaction was ready to close when I left New York. How far it has advanced I don't know.

Q. At what price was the 25,000 par value put in at—25,000 shares, did you say?

A. Twenty-five thousand shares, I think.

Q. At a par value of $100?

A. I am not sure whether it was twenty-five or fifty; I am not sure which. It was less than a hundred.

Q. And for that you say the Northern Securities Company paid cash? 478

A. Yes.

Q. It didn't issue its own stock?

A. It didn't issue its own stock direct.

Q. Did it indirectly?

A. It might sell its stock to provide the money.

Q. Well, are you able to state, Mr. Hill, how much cash to the company that transaction of the Crow's Nest Coal Company involved?

A. I do not know how much.

Q. Approximately. 479

A. I do not know how much of that stock it has sold; that is, how much the securities company has sold for cash.

Q. Has it sold any considerable amount?

A. I think it has.

Q. About how much?

A. I do not know.

Q. Well, what do you regard as a considerable amount? You say it has sold a considerable amount.

A. Oh, it would amount to probably $3,000,000 or $4,000,000.

Q. That is, the Northern Securities Company has sold its 480 own stock to various parties to the extent of $3,000,000 or $4,000,000 for cash?

A. It either has or intends to. It either has or expects to.

Q. I am confining it up to date, Mr. Hill, to what has been done.

A. Well, I couldn't say, because I haven't been in the office for some time.

Q. Then, so far as your own knowledge goes, Mr. Hill, are

481 you able to say that the company has, up to date, in fact, bought any property for which it has paid cash up to the present time?

A. It has agreed to buy property for which it must pay cash, and whether that transaction has been completed since I left New York or not I couldn't say.

Q. Well, has it purchased any other property or any other stock outside of the stock of the Northern Pacific and the Great Northern except this Crow's Nest Coal Company?

A. Yes.

Q. What other?

482 A. Oh, other coal companies; two.

Q. Two other coal companies?

A. Yes, sir; one of them situated on Puget Sound; the other east of the Rocky Mountains.

Q. That is, other independent companies—independent of the Northern Pacific or the Great Northern?

A. Yes, sir; and it expects also some other coal companies and mineral holding ones.

Q. Has it, up to date, Mr. Hill, paid out any cash for these two other coal companies that you have mentioned?

483 A. I couldn't say.

Q. How much stock of the Northern Securities Company has been issued up to date?

A. I couldn't say.

Q. Can you say approximately, Mr. Hill?

A. Not without access to the books.

Q. Well, have you any present information as to the approximate amount of stock actually issued?

A. I should say it was over 230,000,000 or 240,000,000. It may be over 250,000,000.

484 Q. And 152,000,000 or 153,000,000 I think you testified of that amount of stock issued was issued for the acquirement of the Northern Pacific stock?

A. Yes, sir.

Q. At 115?

A. Yes, sir.

Q. So that as a matter of fact it would be considerably more than 152,000,000 or 153,000,000 of the Northern Securities Company stock?

A. Yes.

Q. Probably 165,000,000 or 170,000,000 of Northern Securi- 485
ties Company?

A. Yes, sir; somewhere from 170,000,000 to 180,000,000.

Q. Of the Northern Securities Company stock which it was necessary to issue in order to take care of 152,000,000 or 153,000,000 of the Northern Pacific?

A. Yes, sir.

Q. Mr. Hill, were the two coal companies that you referred to, one on Puget Sound and one elsewhere I think you stated, were those companies before they were purchased in whole or in part by the Northern Securities Company owned or con- 486
trolled by either the Northern Pacific or Great Northern?

A. The Crow's Nest Coal Company was not.

Q. I didn't ask you about that one, but the ones that you mentioned, one of them I think you said on Puget Sound——

A. And one of them east of the mountains?

Q. Yes.

A. Well, they were in th interest of the Great Northern.

Q. Both of them?

A. Yes.

Q. And did the Northern Securities Company acquire those 487
properties or the stocks for those properties from the Great Northern Railway Company?

A. No.

Q. From whom did they acquire them?

A. I have not testified that they did more than expect to acquire them.

Q. You are not able to say, then, that up to the present time they have actually acquired them or whether they have any actual agreement for them?

A. They have an expectation, and it is intended to acquire 488
them, but whether that has been carried out I am unable to say.

Q. Well, do you say expectation, Mr. Hill, because of any agreement outstanding for their purchase?

A. No special agreement. In regard to these two, I explained the matter to the board of directors and they thought it was a proper thing for them to acquire these properties, and additional properties of that character. In other words, that they should as a matter of policy seek to secure a supply of fuel for the company and for the country served by the company's lines.

489 Q. Mr. Hill, do you mean by what you have testified to that the stocks of these two coal companies—one on Puget Sound and one east of the mountains—which were held in the interests of the Great Northern, that those stocks are so held that they may at any time be turned over to the Northern Securities Company?

A. The Northern Securities Company could buy either the stocks or the property.

Q. That is, the present arrangements are such that they can be delivered to the Northern Securities Company whenever it is
490 desirable to carry out the scheme?

A. I think so. The owners would have to agree to sell before the purchasers could close a bargain, but I think that they would agree.

Q. And is that the same with reference to the Crow's Nest?

A. The Crow's Nest is a matter of stock in an organized company. It is a foreign company.

Q. I understood you to say you were unable to state whether it had actually been transferred or not?

A. I so stated.

491 Q. That you are unable to state whether or not the stock has been transferred?

A. That is right, but I believe that the Crow's Nest stock is in a position where it could be transferred, and it may have been transferred since I left New York.

Q. Are the other two coal mines at the present time in corporate companies?

A. I think so.

Q. Mr. Hill, Mr. E. T. Nichols is the secretary and treasurer of the Northern Securities Company, is he not?

492 A. I think so; yes, sir.

Q. And where does he reside?

A. His residence or his business residence?

Q. Well, where his actual residence is?

A. New Jersey.

Q. And what town or city?

A. He lives near Morristown.

Q. And where is his official residence as treasurer of the Northern Securities Company?

A. In New York.

Q. And is the office of the treasurer of the Northern Secu- 493
rities Company in New York?

A. The main office is in New Jersey.

Q. Does Mr. Nichols maintain his office as treasurer of the company in New Jersey?

A. No; he has an office in New Jersey, and the books of the company and the corporate office is in New Jersey. It also has an office in New York.

Q. And is the business of the company and the business of Mr. Nichols as treasurer of the company in New York?

A. Well, it would be in both places, I think. I am not 494
familiar with the requirements of the New Jersey law. I may in time become so.

Q. Mr. Hill, do you know whether or not the Northern Securities Company is doing anything more than maintaining an official office in New Jersey?

A. Under the provisions of the New Jersey laws there are certain requirements in regard to local representation and office, and I know that at least these laws are complied with. Now, how much further than that, and how much business is transacted there I couldn't say. 495

Q. Isn't it a fact, Mr. Hill, that the actual business of the corporation is carried on and conducted from the corporation's office in New York City?

A. The bulk of the business would be carried on there.

Q. Mr. Hill, at the time of the organization of the Northern Securities Company how much stock was then subscribed for?

A. I couldn't testify. I don't recollect.

Q. Do you know whether or not any stock was subscribed for?

A. My recollection is that there was. 496

Q. Do you know of your own knowledge whether or not any cash was actually paid into the Northern Securities Company on these subscriptions?

A. The company in organizing required a considerable amount of cash.

Q. How much?

A. I don't recollect the amount, but a considerable amount. It might have been $3,000,000 or $5,000,000.

497 Q. Well, do you know of your own knowledge that $3,000,000 or $5,000,000 was actually subscribed?

A. I do not.

Q. Do you know of your own knowledge that $3,000,000 or $5,000,000, or any considerable sum, was actually paid in cash by any subscriber?

A. I do not.

Q. Do you know of your own knowledge that any cash was actually paid into the Northern Securities Company at the time of its organization, or immediately thereafter?

498 A. Yes, sir; I do.

Q. And how much?

A. I testified, a large sum. It might have been——

Q. Mr. Hill, let us understand each other. I am not asking you what might have been, or what possibly was done, but if you know——

A. I can not give you the amount.

Q. Then, so far as your own knowledge is concerned, you are unable to state that any cash was actually paid in at or immediately subsequent to the organization of the Northern Securities

499 Company?

A. I know that cash was paid in at that time; I could not say how much.

Q. Well, if you know of your own knowledge, Mr. Hill, that any was paid, can you give us approximately the amount?

A. I said I could not.

Q. Do you know, Mr. Hill, whether or not the amount or amounts paid in in cash was anything more than was probably necessary or required to pay the expenses of incorporation, etc.?

A. Oh, there were other necessary payments and then to carry

500 out these other purchases would require a further sum of money.

Q. Mr. Hill, was it not the principal and practically the whole object and purpose of the Northern Securities Company to acquire stocks in the Great Northern and Northern Pacific and to pay for them by the issuance of its own stock? Wasn't that the principal and practically the entire object and purpose of the corporation?

A. That was not the entire object or purpose or sole reason.

Q. Was it practically the whole purpose and object?

A. If it was practically it would have been in fact, but it 501
wasn't.

Q. Well, Mr. Hill, I want to know if at the time of the organization of the Northern Securities Company it was the purpose and intention practically of the company and of the officers who promoted it, and the individuals who promoted it, to purchase stock in the Great Northern Railway Company and the Northern Pacific Railway Company and to issue its own stock in payment therefor?

A. It was contemplated to buy other stock or other properties at the time. 502

Q. Yesterday afternoon, Mr. Hill, did you not testify that when the Northern Securities Company was first contemplated, and down to some time in the midsummer of 1901, the principal object of the organization of the Northern Securities Company was to hold together and combine the stock of yourself and immediate associates in the Great Northern Railway Company?

A. That was in regard to the Great Northern Railway.

Q. And didn't you testify yesterday that subsequently and a little later on the matter was discussed, and I think you sug- 503
gested Mr. Kennedy as the man who first proposed the taking in of the holdings of the Northern Pacific Railway Company?

A. Held by a small number of people who contemplated forming such a company which you might call a close corporation, and at that time not expected to be a majority of either company.

Q. Then later on, Mr. Hill, didn't you testify yesterday afternoon that that scheme was broadened so as to let in all the stockholders of the Great Northern that desired, or might desire, to come in and exchange their stock? 504

A. They were all given an opportunity to remain associated with the principal owners as they had been in the past.

Q. Then down to the time when the corporation was organized, November 13, 1901, weren't the principal objects and purposes of the incorporation of the Northern Securities Company to acquire the stocks of the Northern Pacific and Great Northern, and to buy them—acquire them—by issuing its own stock in payment therefor?

505 A. The object is fairly stated in the circular; it gave the holders of the Great Northern the opportunity to come in if they so desired and to remain out if they so desired, and the holders of the Northern Pacific, the steps that were taken I do not recall, except for myself and a few immediate associates. The stock of the Northern Pacific was held by comparatively few holders; I think altogether, common and preferred, four or five hundred.

Q. On November 20, 1901, the Northern Securities Company, by you as its president, issued complainant's Exhibit G,
506 which is a circular to the stockholders of the Great Northern Railway Company, and on or about the same date a similar circular was sent out to the holders of the Northern Pacific stock, wasn't there?

A. I don't recall.

Q. Wasn't there a circular sent out detailing the basis upon which the Northern Pacific stock could be exchanged?

A. I don't recall ever having seen such a circular. There might have been, but I don't recall ever having seen it, and it wouldn't have been likely that I would have seen it, except it
507 might have been sent to me as a shareholder, and in that case Mr. Nichols, who represented me in such matters, would have received it.

Q. Did you see the circular sent out by the Northern Securities Company to the stockholders of the Great Northern Railway Company?

A. I signed it.

Q. Well, now, I am asking you if one was sent to the stockholders of the Northern Pacific Company?

A. Oh, you mean from the Northern Securities Company?

508 Q. Certainly; that is what I am talking about.

A. I don't know whether such a circular was sent or not. I think not. It is only a matter of recollection, but I don't recall any such letter sent. There might have been, but I I don't recall it. There was a great many papers passing at those times and I haven't charged my mind with the details of them.

Q. Up to November 22, 1901, had the Northern Securities Company made any efforts or attempts to purchase or acquire

any other stocks than those of the Northern Pacific and the 509
Great Northern Railway Company?

A. It expected to, and the matter of acquiring other stocks was discussed.

Q. Had it actually taken any steps to acquire any other stock at that time?

A. Before its organization?

Q. No, sir; I am talking about after November 13 and on or about November 22.

A. I couldn't testify as to the date when these steps were taken. I think at the first meeting of the executive committee 510
I outlined the matter of several properties that the company should own.

Q. Mr. Hill, are you able to give any other stocks or securities other than the stocks of the Great Northern and the Northern Pacific, the two coal companies, one on Puget Sound and one east of the Rocky Mountains, and the Crow's Nest Coal Company in Canada in which the Northern Securities Company at the present time has any interest?

A. I don't know. I have not testified that it had an interest in all these. 511

Q. I understand, but you say it may have, or at least is expected to have.

A. Yes.

Q. Now, I ask you whether you can name any others?

A. Yes. Some very important and very large interests in iron ore and lands containing iron ore in this State.

Q. Now, those are in contemplation?

A. Yes, sir.

Q. Do you know of your own knowledge that the Northern Securites Company has in its possession or under its control or 512
has bought or purchased any other stocks than those of the Northern Pacific and Great Northern?

A. I know that the purchase of other securites, bonds, and stocks have been contemplated, and I have not been in the office for some time, some weeks, and I do not know how far the transactions have been completed.

Q. Do you mean to say you don't know whether they have any or not at the present time?

513 A. I don't know whether the transactions have been completed or not. I know it was the intention and expectation, and the matter was discussed—the acquiring of other securities. Some of these securities would be bonds and some of them stocks.

Q. Were any persons interested in the Northern Securities Company or in the organization of that company other than yourself and persons interested either in the Great Northern or Northern Pacific Railway companies?

A. None that I know of. I think the persons who were
514 actively interested were originally shareholders in the Great Northern, and most of them, if not all, had shares in the Northern Pacific at the time the company was organized.

Q. I will leave this for a moment, Mr. Hill. I want to go back to the Chicago, Burlington and Quincy Railroad Company for just a moment. Prior to May 9, 1901, was E. H. Harriman a director of either the Chicago, Burlington and Quincy Railway Company or the Chicago, Burlington and Quincy Railroad Company?

A. Prior to May 9 there was no Chicago, Burlington and
515 Quincy Railway Company.

Q. Was he a director of the Chicago, Burlington and Quincy Railroad Company?

A. I think not. I feel very sure he was not.

Q. And the Chicago, Burlington and Quincy Railway Company was organized—I think you have stated, but I have forgotten—about what time?

A. During the summer of 1901.

Q. And Mr. Harriman, subsequent to May 9, was elected a director of the Quincy Railroad Company?

516 A. I think he was elected at the annual meeting.

Q. And about when was that held?

A. I don't remember.

Q. In the fall of 1901?

A. No; I should say it was before that.

Q. In the summer?

A. It might have been in the autumn.

Q. Well, it was subsequent to May 9?

A. Yes.

Q. And, Mr. Hill, at the time Mr. Harriman was elected a 517
director of the Chicago, Burlington and Quincy Railroad Company, at the annual meeting of the stockholders which occurred, you say, probably in the autumn of 1901, the Great Northern and Northern Pacific Railway Company held and voted, through its proxies or voting committee, all the stock of the Chicago, Burlington and Quincy Railroad Company, did it not?

A. They authorized the stock to be voted.

Q. And the Great Northern and Northern Pacific Railway Company selected the board of directors for the Chicago, Burlington and Quincy Railroad Company, didn't it? 518

A. Practically.

Q. Now, the Great Northern and Northern Pacific Railway Company also named the directors of the Chicago, Burlington and Quincy Railway Company, did they not?

A. Yes, sir. That is, as stockholders they did.

Q. And Mr. Harriman was, with the consent and approval or by the direction of the Great Northern and Northern Pacific, placed upon the boards of directors of each company?

A. Mr. Harriman was elected a director of the railway company when the board was elected, and also of the railroad com- 519
pany, I think, at the annual election.

Q. And at those meetings the two roads, the Northern Pacific and the Great Northern, held all the stock of both companies, did they not?

A. Well, they held a large majority of it.

Q. And they named the directors?

A. Practically.

Q. And at the same time the Northern Pacific and the Great Northern also named George J. Gould as a director of the railroad company? 520

A. Yes, sir.

Q. Both Mr. Harriman and George J. Gould were, and for some time previous had been, directors of the Union Pacific Railroad Company, or railway company, had they not?

A. Mr. Harriman had. Mr. Gould is usually interested in railroad properties in the West, and as far west as Colorado.

Mr. BOUTELLE: Missouri Pacific?

A. I think he used to be connected with the Union Pacific.

521 Mr. BOUTELLE. Missouri Pacific, I said.

A. Missouri Pacific; yes.

Q. Are you unable to state whether or not Mr. Gould, at the time he was elected a director of the Chicago, Burlington and Quincy Railroad Company, was a director of the Union Pacific?

A. I could not testify.

Q. Or do you know whether he was a director of the Southern Pacific?

A. I couldn't testify.

Q. Mr. Hill, you understood at that time and understood
522 ever since that the Union Pacific owned and controlled a majority of the stock of the Southern Pacific?

A. I have never understood that it owned a majority of the stock. I knew that it had purchased, at least I was informed it had purchased, the Huntington interests, but that was not a majority.

Q. It was very nearly a majority, wasn't it?

A. I don't remember what the proportion was; it was a large block.

Q. Mr. Hill, the Union Pacific at that time owned and con-
523 trolled the Oregon Short Line?

A. Yes, sir; I believe they did.

Q. And the Southern Pacific controlled the Central Pacific?

A. Well, I don't know which was considered the parent company, whether the Central controlled the Southern or the Southern the Central. It was one interest.

Q. I was going to say they were allied interests at this time, in 1901?

A. I think they have been considered one interest for some time.

524 Q. That is, the Union Pacific and the Central Pacific and the Southern?

A. No; the Central and the Southern.

Q. And the Oregon Short Line had been controlled and managed by the Union Pacific?

A. For some time.

Q. Now, the Chicago, Burlington and Quincy Railroad Company was to a large extent—that is, through a large territory—a competing line with the Union Pacific, was it not?

A. Well, in some places it was a competing line and in some 525
places a connecting line.

Q. I say through a very large part of the territory it was a parallel and competing line with the Union Pacific, was it not?

A. I think through the largest territory it was a connecting line, but part of the territory it is certainly a competing line.

Q. During the spring and summer and fall of 1901, did you understand that Mr. E. H. Harriman was the chairman of the executive committee of the Union Pacific and a member of its board of directors?

A. Yes, sir. 526

Q. And also president of the Oregon Short Line?

A. I didn't know who was president of the Oregon Short Line.

Q. Were you informed that he was president of the Oregon Short Line?

A. I don't know. I understood that the Oregon Short Line was controlled by the Union Pacific, and whoever was president or was not president would be controlled by that company.

Q. Did you understand that Mr. Harriman was chairman of the executive committee of the Oregon Short Line and Naviga- 527
tion Company?

A. I did not; no.

Q. Did you understand that that company was allied to the Union Pacific?

A. I have always understood, for a year and a half, I might say—possibly longer—that the stock was largely owned by the Union Pacific, both common and preferred.

Q. And did you understand at that time that Mr. Harriman was president of the Southern Pacific?

A. I did not, and don't know that he was. I do not recall 528
when he was elected president of the Southern Pacific, but I am only speaking from recollection.

Q. Mr. Hill, in your testimony before the Interstate Commerce Commission at Chicago I think you gave two reasons why you refused the request of Mr. Harriman to join in the purchase, with the Northern Pacific and the Great Northern, of the Chicago, Burlington and Quincy Railroad Company, and one of these reasons was that such purchase by the Union Pacific would be illegal.

529 A. That is correct.

Q. And was that opinion based on the assumption of fact that the Union Pacific was a parallel and competing line to some extent with the Chicago, Burlington and Quincy Railroad Company.

A. That was a reason. The Union Pacific Railway Company could not properly become an owner of that stock or join in the purchase without infringing on the law.

Q. And the laws of what States, as you understood it?

A. I don't know the States. I think Nebraska, and I think
530 most of the Western States.

Q. So that at that time, Mr. Hill, you must have had in mind and believed that to a very large extent, at least, the Union Pacific and the Chicago, Burlington and Quincy Railroad Company were parallel and competing lines?

A. A portion of the property is a parallel and competing line, then and now.

Q. That is, the two lines, the Union Pacific and the Burlington?

A. Yes, sir.

531 Q. Prior to May 9 was Mr. Harriman ever to your knowledge a director of the Northern Pacific Railway Company?

A. Not that I know of.

Q. And was he elected subsequent to May 9 as a director of the Northern Pacific Railway Company?

A. On Mr. Morgan's return I think Mr. Harriman was one of the names that he suggested or designated as directors in the Northern Pacific.

Q. Now, subsequent to May 9, was there any undertaking or agreement or negotiations between you or your associates or
532 J. P. Morgan & Co. and his associates, to your knowledge, with Mr. Harriman by which it was understood and agreed that Mr. Harriman should become a director of the Chicago, Burlington and Quincy Railroad Company, and of the Chicago, Burlington and Quincy Railway Company, and of the Northern Pacific?

A. No such agreement was discussed or made. Mr. Morgan on his return named these parties as the board of directors for the Northern Pacific without any agreement or pledge or promise.

Q. Without any understanding that Mr. Harriman should be represented upon any of those boards? 533

A. I think there was a clear understanding or statement by Mr. Bacon that Mr. Harriman's name was not to come up, not to be considered, and also Mr. Schiff's, but this is mere hearsay. But we have been compelled to give a good deal of hearsay.

Q. We will allow you to give some more if you wish to.

A. All right. When Mr. Morgan came back, I think Mr. Morgan said: "Here, we will put Mr. Harriman on this board, and Mr. Schiff, too, to show them we are not afraid of them." 534

Q. Mr. Hill, after these cessations of hostilities, or supposed hostilities, between the Harriman faction and the Hill faction as we understood it this morning, this putting of Mr. Harriman upon the board of directors of the Chicago, Burlington and Quincy Railway Company and of the Chicago, Burlington and Quincy Railroad Company, and upon the Northern Pacific Railway Company was simply an act of magnanimity on the part of the Hill-Morgan faction; was that it?

A. There was a good deal of fear professed by Mr. Harriman and Mr. Schiff that the Northern lines taking the Burlington 535 would be too strong. I don't know but they feared we would swallow them or something, and they professed great fear that the Burlington was going to build through to California and to southern California and what is known as the W. A. Clark road, now building from Los Angeles into Utah. I remember being asked by some of them if our company or the Northern Pacific or the Burlington were connected with it or expected to be. I told them no; we were developing an entirely different section of the country, and we were not anxious to extend into southern California or San Francisco, and I think that largely led to 536 those people being put into the Burlington board that they might be witnesses; that there was nobody going to dig pitfalls, etc., for them in that country. Now, I think that is why they were put there.

Q. Mr. Harriman at that time had no stock in the Burlington, had he?

A. I don't think Mr. Harriman then or since has any stock in the Burlington except to qualify him as a director.

537 Q. And he had none in the railway company?

A. No, sir.

Q. And at the time he was elected a director of the Northern Pacific he had either sold or had contracted to sell all of his stock to J. Pierpont Morgan & Co.?

A. I don't think he had contracted to sell any of it; he contracted or promised verbally to give his proxy to Mr. Morgan to vote it at the succeeding election and carried that agreement out, and he subsequently sold all of his stock, and sold it to J. Pierpont Morgan. In fact, I am sure that was after the
538 election of the Northern Pacific.

Q. There was no connection between the cessation of hostilities—if we may use that word—on the part of Mr. Harriman against the Northern Pacific and his appointment or election to the directorate of that road subsequently, was there?

A. His appointment as director of the Northern Pacific road grew out of the offer of Mr. Harriman and his associates to let the appointment be made by the selection of Mr. Morgan for the board of directors of the Northern Pacific, and their promise to put their stock, or proxy representing their stock, in his hands
539 to vote it at the succeeding annual election. Now, that was the cause, I think, for Mr. Morgan's putting him there; not because there was an agreement, because there was no agreement. Mr. Morgan might have taken eleven men or fifteen men off the street and nominated them.

Q. So that there was no connection between his placing the proxy in the hands of Mr. Morgan to vote his stock and his appointment as a director upon the board of the Great Northern and the Northern Pacific?

A. Not the slightest. I testified already that my recollection
540 is that Mr. Bacon said that Mr. Morgan should be entirely free to act, and that Mr. Harriman or Mr. Schiff, or Mr. anybody else's name should not be considered.

Q. And there was no connection whatever between Mr. Harriman's placing the proxy to vote his stock in the hands of J. Pierpont Morgan & Co. and Mr. Harriman's subsequent election to the board of the Chicago, Burlington and Quincy Railroad Company?

A. Not the slightest.

Q. Nor any connection between the placing of the proxy for his stock in the hands of J. Pierpont Morgan & Co. and his selection for the directorate of the Chicago, Burlington and Quincy Railway Company? 541

A. Not the slightest.

Q. His appointments and elections to all three of those roads came about without any agreement or understanding on the part of anybody that they should come. That is correct, is it?

A. That is correct, except that there was an agreement it should be left to Mr. Morgan, and Mr. Morgan made the selection. 542

Q. I understand; but the actual selection had no connection whatever with any prior understanding or agreement?

A. No agreement or understanding of any kind.

Q. Mr. Hill, at and prior to May 9, 1901, did you know that the Chicago, Burlington and Quincy Railroad Company had, in fact, projected extensive lines of railway; that is, that it had contemplated extending its lines into what was known or supposed to be Union Pacific territory?

A. I did not. I knew that the Chicago, Burlington and Quincy Company had made their surveys and was credited with 543 making others; but I didn't know that it was contemplating the construction of lines into California or elsewhere.

Q. Was it generally supposed, or was it a matter of public knowledge prior to May 9, 1901, that the Burlington Railroad Company was then intending to extend its lines into some of what is known as Union Pacific territory? I am not asking about the fact, but was that generally understood to be the case?

A. I had no understanding or knowledge, but I asked the questions of the president or chairman of the Burlington; I asked the question of Mr. Perkins, the chairman of the Bur- 544 lington board, and Mr. Perkins told me they had made a number of surveys to know where they might go, but they had no work immediately contemplated. I knew also from some time before Mr. Perkins came to see me to know if I would join him in buying control of the Oregon and Navigation during the time the Union Pacific was being reorganized and before they acquired it. I had some knowledge as to what was the plan of the Burlington property and people.

545 Q. Has the Burlington Railway Company which, so far as operating roads or extending lines is concerned, has succeeded the railroad company—has it at the present time under construction any of the lines that are supposed to be projected during the summer of 1901?

A. It hasn't any lines under construction that I know of. There was a short piece running southwest from Sheridan, and I believe that has been completed.

Q. Mr. Hill, has there since May 9, 1901, been, to your knowledge, any actual abandonment by the Chicago, Burlington
546 and Quincy Railroad Company or the Chicago, Burlington and Quincy Railway Company of construction of extensions?

A. None whatever.

Q. And there are at the present time, so far as you know, no extensions contemplated?

A. None. It has some very heavy improvements contemplated, but no extensions.

Q. I am speaking about extensions of its railway.

A. Of new railroad?

Q. Yes.

547 A. No extensions contemplated that I know of.

Q. And is it true, Mr. Hill, that from May 9 down to the present time there has been no agreement or understanding of any kind between the Union Pacific and the Chicago, Burlington and Quincy Railway Company or the railroad company and the Northern Pacific and the Great Northern with reference to the policies of the respective roads touching one another?

A. The construction of lines or competing lines?

Q. Yes; I will ask you that first with respect to constructing parallel or competing lines.

548 A. No such understanding.

Q. Or extensions?

A. There is an extension contemplated in the Snake River country which would be made jointly.

Q. By what roads?

A. By the Navigation Company and the Northern Pacific.

Q. And for the joint benefit of both roads?

A. Well, the situation is a peculiar one. There is a very deep gorge. One company owns one end of it and the other

company the other, and there is a piece not completed in the middle, and it would benefit the situation and make it easier for everybody, for the railroads and the public, if the line was completed through. I think Mr. Mellen is here, and he can throw more light on that subject than I can, but I think—I have never seen the country—but I think it is a desirable thing to do for the benefit of the people, particularly those that live at the upper end of the valley. 549

Q. And for the joint benefit of both roads?

A. Well, it would be for the benefit of the country. It would save the people living at the upper end of the valley from going 100 or 150 miles out of the way. 550

Q. We will assume it is primarily for the benefit of the people, but was there some incidental benefit to be derived by the two roads?

A. It would certainly benefit both roads.

Q. I didn't know but that was a clear case of public benefaction.

A. Oh, no; the public wil' always benefit by a railroad.

Q. And vice versa, I suppose, Mr. Hill?

A. Yes, sir. 551

Q. Now, excepting that, Mr. Hill, there is no understanding and has been no understanding or agreement of any kind between the Union Pacific and the Chicago, Burlington and Quincy system and the Northern Pacific and the Great Northern?

A. That covers all.

Q. With reference to the construction of extensions and new lines, etc.?

A. No lines abandoned and no lines opened up.

Q. And there has been no agreement or understanding of any kind between those different roads with reference to the policies of the different roads to one another? 552

A. Territorial matter?

Q. Yes.

A. No, none in regard to territorial matters.

Q. Is there at the present time, and has there been since the summer of 1901, what you would call a better understanding between these roads?

553 A. Since the visit of the Interstate Commerce Committee to the West I think there is an effort to maintain rates.

Q. You think that is entirely due to the visit of the Interstate Commerce Commission?

A. I wouldn't say that; it might be due to a fear that the law would be enforced against them. That applies mainly to points between the Missouri River and Chicago. My information is somewhat limited.

Q. If you will pardon me, I want to get through—let us go back. I am not speaking so much of the present time as I am
554 with reference to the deal of last summer. I want to know if, as a result of the conferences between the different roads and the negotiations that were had and the changes made in stock, and the placing of Mr. Harriman on the directorate of the different railway companies, I want to know if, as a result of that, there is any better understanding between the Union Pacific and the Burlington, the Northern Pacific and the Great Northern?

A. That was simply a matter of the stockholders, and Mr. Morgan was selected by the Union Pacific interests. They
555 said if the strain was relieved that they were satisfied to put their proxy in Mr. Morgan's hands. That was for the purpose of relieving the strained situation in the money markets, and that is all there was of it. Now, as to any agreement in regard to territory or operation, or the relation between the roads covering the business or their interests with the public, there wasn't anything of the kind, directly or indirectly.

Q. Let me call your attention to my question, and see if you will answer that directly.

Mr. KELLOGG. I thought that was a pretty direct answer.
556 Sometimes it happens that lawyers on different sides do not look at things in the same way.

Q. I want to know, Mr. Hill, if as a result of the conferences and negotiations and sales of stock that you have described during the summer and fall of 1901, and the placing of the proxy by Mr. Harriman in the hands of J. Pierpont Morgan & Co., about seventy-eight millions of the stock, which was a controlling interest in the stock of the Northern Pacific, and the placing of Mr. Harriman upon the board of directors of the

Chicago, Burlington and Quincy Railway Company, and of the 557
railroad company, and upon the board of the Northern Pacific Railway Company, and also, later on, placing him as a director upon the Northern Securities Company, which now holds practically all the stock of the Northern Pacific Railway Company and a large part of the stock of the Great Northern Railway Company, has resulted in a better understanding between these roads as to the policies to be pursued?

A. Nothing whatever. The making of Mr. Harriman a director of these companies was considered by neither company, acted upon by neither company, but was solely a matter of the 558
shareholders. As far as Mr. Morgan was concerned, Mr. Morgan had a right under Mr. Harriman's proxy or agreement to select the directors for the Northern Pacific, and I think that there was much weight given by him in selecting Mr. Harriman, to the fact that he wanted to show Mr. Harriman that he was not taking any advantage of him, or was afraid of him, or suspected him.

Q. You have explained that to my entire satisfaction, but what I am trying to get at is, what has all of these various things that you have described, and this interchange of confer- 559
ences between the Harriman faction and the Hill-Morgan faction resulted in? I want to know if it has resulted in a better understanding between the Union Pacific Railroad and the Great Northern and the Northern Pacific, and the Chicago, Burlington and Quincy Railway system, as the policies of those roads effect one another.

A. I don't know that there is any difference in the understanding or policy of the roads affecting each other to-day than there was last year or any previous year.

Q. So that these various things that have come along, these 560
different developments with regard to the Harriman interests, his sale of the stock to J. Pierpont Morgan & Co., and his final exchange, which resulted in the exchange of that stock into the Northern Securities Company, and his appointment upon the Northern Pacific board, and his appointment on the board of the Chicago, Burlington and Quincy Railway Company and railroad companies. They have simply been acts of Mr. Morgan's to show his confidence in Mr. Harriman, and to show him also that he is not afraid of him upon these boards?

561 A. I am not able to testify as to Mr. Morgan's object or reasons further than I have stated.

Q. I thought you had stated pretty fully, Mr. Hill, what he did it for. I understand you to give your explanation of why he did it.

A. I made my answer and it is there.

Q. I say, so far as you know, there were no other reasons than those you have given existed for these numerous acts on the part of J. Pierpont Morgan showing his confidence in Mr. Harriman?

562 A. I have answered that there was no agreement or understanding that there should be any particular change in the relations of the railroads. Now I recall attending two conferences at Mr. Harriman's request affecting the railroad situation in the Southwest, in Colorado, but I may say these are the only two conferences that I remember attending. They were to try and settle some differences between Mr. Gould and Mr. Harriman. The relations were very strained, and they were paying rebates, or it was claimed they were paying rebates, to big shippers, and doing very irregular things, and Mr. Harriman asked
563 me to come over and attend the meeting, and I attended two or three meetings with him on that ground.

Q. That was a matter in which you were not interested, either for the Northern Pacific or Great Northern?

A. No.

Q. You went in merely as a peacemaker?

A. The Burlington was interested to some extent.

Q. Oh, yes; then you went in as a party interested in the Burlington?

A. I was not an officer in the Burlington, and I said to them
564 I was not, and couldn't bind the Burlington or act for it.

Q. But you were president of a company which owned half of the stock of the Burlington?

A. But if I could do them any good I would go and hear what they had to say, and I did.

Q. Mr. W. P. Clough, who is now vice-president and director of the Northern Securities Company, was formerly a director and vice-president of the Great Northern Railway Company?

A. He was for many years.

Q. And Darius Miller, who is now the general traffic man- 565
ager?

A. No; he is vice-president of the Burlington.

Q. And has he charge of the traffic department?

A. Special charge of it.

Q. Special charge of the traffic department of the Burlington system?

A. Yes, sir.

Q. And what office did he have with the Great Northern?

A. He was, I think, second vice-president—the Great North-
ern was very sorry to lose him. 566

Q. Mr. Hill, I think I barely touched on this: Do you know whether or not, prior to the organization of the Northern Securities Company, J. Pierpont Morgan & Co. had contracted to sell all, or practically all of their stock or holdings in the Northern Pacific Railway Company?

A. They had sold a portion of it.

Q. To whom?

A. To me.

Q. How much?

A. Oh, I should say ten millions. 567

Q. And how much, at the time of the organization of the Northern Securities Company, did they then hold?

A. Oh, ten or eleven millions.

Q. And at that time were they, to your knowledge, under any contract or agreement to sell and dispose of that stock to anybody?

A. I don't know that there was any special contract, but they were, as I remember, willing to sell it to the Northern Securities Company.

Q. Was there any general understanding, if not a special, that 568
they should turn it over to the securities company?

A. I think Mr. Morgan named a price that was higher than the price that was paid, and I told him that the securities company would not pay that price. It would pay one price to all. I think maybe Mr. Kennedy was with me at that conversation, and Mr. Morgan agreed to turn his stock in.

Q. At the price of $1.15?

A. Yes, sir.

569 Q. And was it the agreement between you and J. Pierpont Morgan & Co. that you would take about ten millions, or half of their holdings yourself, if they would turn in the balance at $1.15 to the Northern Securities Company?

A. No; my agreement had nothing to do with his turning into the Northern Securities Company directly. I wanted the shares and asked him if he would sell them.

Q. The ten millions?

A. Yes; I wanted them for other friends.

Q. And that had no other connection whatever with the sub-
570 sequent turning in by J. Pierpont Morgan & Co. of ten or twelve millions of their stock to the Northern Securities Company?

A. I am inclined to think that the price paid for the stock and the understanding that Mr. Morgan would turn the stock into the Northern Securities Company was before I bought the large block from him.

Q. What I am getting at is, you mean to say there was no connection between your purchase absolutely of the ten millions and the turning in by J. Pierpont Morgan & Co. of the ten or twelve millions into the Northern Securities Company?

571 A. None whatever. That is what I have testified to.

Q. You bought these ten millions for yourself?

A. And others.

Q. And at what price, Mr. Hill?

Mr. KELLOGG. I don't see how that is material.

A. I don't remember. I think the price was $1.15—that is what it was, I am sure.

Q. Had you purchased any stock of J. Pierpont Morgan & Co. during the summer and fall of 1901, prior to the purchase of the ten millions?

572 A. Between the 1st of May and the purchase of ten millions?

Q. Yes.

A. No, sir; I had not.

Q. Had your associates?

A. Not that I know of. I don't think there is any change in his holding.

Q. I think your answer already covers it, but did you purchase this ten million of J. Pierpont Morgan & Co. prior to January 1, 1902?

A. Oh, yes, sir; I think it was in August or September.

Q. Mr. Hill, I think you already testified, at least in some 573
of your explanations, that you had held a large amount of stock in the Northern Pacific since its reorganization—in March, 1896, wasn't it?

A. I don't remember, but it was reorganized in 1896. I think possibly before; I think myself and three others had about three millions invested in it before the actual reorganization; the old securities.

Q. And subsequent to the reorganization you purchased in the neighborhood of twenty-six millions?

A. I think twenty-six or twenty-seven millions. 574

Q. And on whose behalf did you purchase that stock? On your own or on behalf of the Great Northern?

A. As individuals; the Great Northern had nothing to do with it.

Q. And did the Great Northern have anything to do with the financing of the deal?

A. Not a dollar.

Q. Did you pay $26,000,000 for that stock?

A. No, sir; we didn't.

Q. You and three of your associates carried that stock prac- 575
tically all the time?

A. No, sir.

Q. How long did you carry it?

A. We carried bonds until the company was reorganized, and then we got stocks as security from the reorganization, and, I think about a year after the close of the reorganization, I bought from the reorganization committee—maybe less than a year—from the committee what stock it held of the company. That was bought and distributed at once between myself and seven or eight others, and I think I have given the names of 576
those who were associated with me, and Jacob Schiff and Col. Oliver Paine will appear as associates in that transaction.

Q. In the spring of 1901, I think, you testified either here or before the Interstate Commerce Commission, that you held about seven million and a half par value of the capital stock of the Northern Pacific?

A. That was my individual holding.

577 Q. And you were the largest individual holder of stock in that company?

A. I think I was.

Q. And that is a part of the stock which you got as you have just described?

A. *Some; but some was acquired* afterwards. Some of it was acquired subsequently.

Q. You sold and bought back other stock at different times?

A. Yes.

Q. I will revert to the Burlington matter for a question or
578 two, Mr. Hill. At the time you commenced negotiations with the executive committee of the Burlington Railroad Company, or at any time during these negotiations with them, did they at any time represent to you that they controlled any particular portion of the stock of that road—that they owned or controlled it?

A. The executive committee?

Q. Yes, sir.

A. They didn't profess to act for any particular holding of stock; they were strongly of the impression, and so represented
579 to me, that their shareholders would largely be governed by their recommendation, and subsequently that was the case.

Q. From the time you commenced negotiations in January, 1901, with the trustees or executive committee of the Burlington Railroad Company up to the time these negotiations were concluded, was the Burlington stock—that is, the railroad company's stock—being sold and dealt in in the open markets?

A. That was the case, and I recollect at the time there was quite a marked variation in the price up and down.

580 Q. And what was the highest price that you can now recall and for which the Burlington Railroad Company's stock was sold or purchased in the open market?

A. I couldn't recall. Probably one hundred seventy-five or eighty.

Q. Not exceeding one hundred eighty?

A. It might have been, but I don't recollect—something in that neighborhood. However, I don't concern myself particularly with the market price of the stock.

Q. Isn't it a fact, after you commenced your negotiations 581
with the executive committee of the Burlington Railroad Company that there were large sales and purchases of the railroad company's stock in the open market at from one hundred fifty to one hundred sixty-five, varying along from time to time?

A. My understanding at the time was that there was somewhere between ten and fifteen millions of the Burlington stock that might be considered for sale in the market, but the great bulk of the stock was held by investors and men who paid no attention to the market. I knew the market price of the Burlington stock and that seeking to buy it in the market would 582
accomplish nothing.

Q. The directors of the Burlington Railroad Company and the members of the executive committee with which you were dealing, of course, owned some stock, didn't they?

A. I remember the chairman of the executive committee of the Burlington trustees, Mr. Hunniwell, said to me that his father, and I think he said himself and his father, were more interested, and had larger holdings of the Great Northern than they had of Burlington, although Mr. Hunniwell was the hardest man to agree with in the entire board. 583

Q. Well, Mr. Hill, I am afraid you are not answering my question.

A. I am trying to, sir.

Q. I will have to put it again. I want to know if at the time you were dealing with the executive committee you had any knowledge or were given any information as to the holdings of the members of the board and of the executive committee; if you had any information given you as to the approximate amount of their holdings?

A. I think Mr. Perkins was the largest holder, and he held 584
less than two millions; that he was the largest holder of Burlington stock on the list of stockholders.

Q. That is a partial answer, Mr. Hill.

A. That is as far as my knowledge goes.

Q. Then so far as the balance of them was concerned, I understand you to say that you had never known; that you had no information whatever or any knowledge as to even the approximate amount of their holdings.

585 A. None as to their holdings. They gave me information as to where the stock was held largely. I remember their saying that they had, I think, 1,500 shareholders who held less than 5 shares each. The stock was very widely distributed.

Q. Then at the time you started in with your negotiations with the executive committee, this stock was scattered all over this country, in the hands of some 18,000 or 19,000 stockholders?

A. Yes, sir.

Q. And at the time you commenced your negotiations with
586 the executive committee you were given no information or any assurances by that committee as to any particular amount that could be immediately controlled?

A. That is a different question entirely.

Q. That is what I am getting at.

A. I was given to understand by the executive committee that their recommendation would be accepted, at least they felt that it would be very generally accepted by the stockholders of the Burlington and Quincy Railroad Company.

Q. Now, how was the price of the Burlington Railroad Com-
587 pany's stock in your deal, the Great Northern and Northern Pacific deal—how was that price fixed upon? Who suggested that?

A. The matter was the subject of negotiation on several occasions. The books or transcripts of the accounts were produced, showing its earnings—the income—I remember its income as shown was $10,400,000, including the sinking fund, and that was over 10 per cent on the outstanding stock at that time, or about 10 per cent. The Burlington road had a very heavy sinking fund; for many years the miles of main track—something
588 over 8,000—had a bonded debt, less the sinking fund, of about $15,800 a mile, and stock was about $13,000 a mile. Take the Burlington stock at 200 and add to it the bonded debt per mile of the road and it would give the average cost of the Burlington about $42,000 a mile, which was about what it cost us; that is $10,000 or $12,000 a mile less than any of these granger roads are selling at on the market. In other words, the Burlington was the cheapest property altogether, and reached the points we desired to reach and it would cost us less money per mile than it would to have acquired any other.

Q. And you agreed on $200 per share as the actual value of 589
the road?

A. Yes.

Q. Although that was 20 or 30 points higher than the market value?

A. Yes.

Q. Mr. Hill, did you know that as a result of your negotiations with the executive committee of the Burlington Railroad that a pool was formed to buy up the stock and that it did actually buy up a large amount of stock of the Burlington road which finally went into this deal? 590

A. I didn't know that, and I don't know it now. Never heard of it before and don't believe it is true. I know that the officers, Mr. Perkins and Mr. Harris, told me, not together, but separately; Mr. Perkins told me that he was a trustee and that he would not buy a share. Mr. Harris, the president of the company, told me that Mr. Perkins had said to him: "Harris, ordinarily I am glad to see you getting as large interests as you can pay for in the Burlington, but at this time you are president of the company—don't speculate in its shares." Now, under these circumstances I don't think either of those men were con- 591
cerned in any such pool. I think the information you have is wrong. I had no such information or knowledge.

Q. I am not asking you to argue the case; I am asking you for your information.

A. I will apologize for arguing it.

Q. There is no occasion for apology, but I am simply asking you so far as you know, no pool was formed?

A. I don't know of any pool, and I don't believe there was any.

Q. At the time of the consummation of that deal, the stock- 592
holders had an option to take joint bonds of the Great Northern and the Northern Pacific, and turn in their stock on the basis of one share of the Burlington stock for twice its face in these joint bonds?

A. Yes.

Q. Or they could take 20 per cent in cash and bonds for the balance, or they could take their cash?

593 A. I don't recollect the terms of the circular. It was a public matter, and I have not charged myself with the conditions. I suppose the circular could be found, and it would be much better.

Q. Wasn't it in the alternative in that way?

A. I think there was an alternative, but as to the proportions, I don't recollect.

Q. Who financed that deal?

A. Morgan & Co.

Q. J. Pierpont Morgan & Co., of New York?

A. Yes.

594 Q. They furnished whatever money was necessary, or might be necessary, to carry through that deal?

A. Well, there was an underwriting party, who furnished the money.

Q. Who was that; a large number?

A. Yes; I think they invited others, as is customary——

Q. Were you a party to that underwriting?

A. I think I was a party to it, and through me several others.

Q. Of your friends and associates?

A. Yes; I don't know that I held any of the underwriting
595 for myself. I know some of it was offered to me, and I think I turned it over to a number of my friends.

Q. And was that underwriting executed to J. Pierpont Morgan & Co.?

A. Yes; they would issue the underwriting, similar to the underwriting circular of yesterday.

Mr. KELLOGG. I don't think we wish to ask any questions now.

Mr. GROVER. We ought to have the testimony written out if there is time, and if we want to examine, then we can examine.

596 Mr. LANCASTER. That will be satisfactory.

CHARLES S. MELLEN, after being first duly sworn, testified as follows in answer to questions propounded by Mr. Lancaster:

Q. You are the president of the Northern Pacific Railway Company?

A. I am.

Q. And have been for how long?

A. Since the 1st of September, 1897.

Q. You are a member of the board of directors of that company? 597

A. I am.

Q. And have been for how long?

A. Since I was elected president.

Q. In 1897?

A. Yes.

Q. And since your election you have resided in St. Paul?

A. Yes.

Q. And reside there now?

A. Yes. 598

Q. We have introduced this map in evidence, and I will ask you a few things in reference to the Northern Pacific line. What are the eastern termini of the Northern Pacific system?

A. Ashland, Superior——

Q. In the State of Wisconsin?

A. Yes. Superior, Duluth, Stillwater, St. Paul, and Minneapolis.

Q. And what are the western termini?

A. Portland, Oreg.; Tacoma, Seattle. There are various points known as western termini—that is, that take terminal 599 rates, but those are the main termini.

Q. I am speaking of the actual termini. The terminal rates are rather fictitious—that is, when you speak of the termini in that sense it is arbitrary.

A. Well, I think the answer to that question is fairly stated by Portland, Tacoma, and Seattle.

Q. That is what I mean, the actual points on the Western slope.

A. Well, our lines go farther west than that, but those are generally considered the termini. 600

Q. And you have a line running from Minneapolis and St. Paul to Duluth and West Superior?

A. Yes, sir.

Q. You have a line running westward to Moorhead and Fargo, Moorhead in this State and Fargo in North Dakota?

A. Yes.

Q. And to Grand Forks, in North Dakota, and East Grand Forks, in Minnesota?

A. Yes.

601 Q. And you have a line running also westward to Breckenridge, in the State of Minnesota?

A. Yes, sir.

Q. And you have a line to Morris, in the State of Minnesota?

A. Yes.

Q. You have no lines south of that?

A. No.

Q. The general direction of your main lines westward is through the States of Minnesota, North Dakota, Montana, Idaho, and Washington?

602 A. That is the general course.

Q. Are those lines of the Northern Pacific and the lines of the Great Northern, for a large part of the territory through which they run and to many of the points which they reach, parallel and competing lines?

A. They are.

Q. And with reference to the State of Minnesota, Mr. Mellen, are not the Northern Pacific and the Great Northern lines almost generally parallel and competing lines?

Mr. KELLOGG. Do you mean all of the lines?

603 Mr. LANCASTER. Practically all of them.

A. Many of the lines are parallel and competing.

Q. From what State does the wheat shipments come into the State of Minnesota and West Superior in Wisconsin?

A. Over the Northern Pacific?

Q. Over both lines.

A. Over the Northern Pacific they come from North Dakota and from the province of Manitoba and from points within the State of Minnesota.

Q. And on the Great Northern?

604 A. Well, they come from the same States, and from others.

Q. That is, they come some from South Dakota?

A. Yes, sir.

Q. And also some from Manitoba, on the Great Northern?

A. I would not say as to Manitoba.

Q. As to a very large percentage of the wheat shipments from the West to Duluth and West Superior, and to Minneapolis and St. Paul, are not the Northern Pacific and the Great Northern parallel and competing lines?

A. In the transportation of wheat?

Q. Yes. 605

A. Yes, they are.

Mr. KELLOGG. I suppose the same understanding may be had as to his testimony, that all of it is considered as objected to as irrelevant and immaterial, and for the reason that the complaint does not state a cause of action, and it need not be repeated to each question.

Mr. LANCASTER. The same objection that you had before, Mr. Kellogg.

Q. Are you able to give us an approximation, Mr. Mellen, of the percentage of wheat shipments in which they would 606 apply?

A. It would be purely a guess.

Q. But as definite as you can make it would be to say that to a very large proportion of it those lines are competing lines for that traffic?

A. There is very active competition for a large portion of the traffic, if that is what you mean.

Q. More than half of it?

A. I wouldn't care to state a percentage.

Q. It is true, Mr. Mellen, as to a very large percentage of 607 the wheat traffic in North Dakota and Manitoba and in Minnesota?

A. I would state that as to North Dakota and Minnesota. I would not state it as to Manitoba, for I don't think there is any competition.

Q. So far as North Dakota and Minnesota are concerned, the Northern Pacific and Great Northern are, and always have been, so far as you know, competing lines?

A. Yes.

Q. And how is it, Mr. Mellen, as to general traffic from the 608 western coast eastward, and from the east westward?

A. There is active competition between the two lines for the business.

Q. And always has been?

A. Always has been, so far as I know.

Q. And as to practically all of the through traffic—from the western termini to the eastern termini, and vice versa—those lines are parallel and competing lines?

609 A. I wouldn't say that.

Q. I don't think I ought to say parallel. I ought to say they were competing lines.

A. I wouldn't say they were competing lines as to all the traffic. I would say they were competing lines as to a large portion.

Q. As to transportation between Minneapolis and St. Paul, and Duluth and West Superior, and as to all traffic originating in Minneapolis and St. Paul and going by way of the lakes eastward, are the two lines, the Northern Pacific and Great North-
610 ern, competing lines?

A. There is active competition between the head of the lakes and the Twin Cities. As to the business east of there——

Q. I don't mean competition beyond those points.

A. Oh, as to business between the head of the lakes and the Twin Cities, there is active competition.

Q. Whether the freight is merely to stop at Duluth or to go on eastward?

A. Well, I think there is a distinction to be drawn there, a decided distinction. There is not such active competition
611 between the two railroads as to business that goes east that takes the steamers on the lakes. That is more a competition between the carriers on the lakes and the east.

Q. Well, is there to some extent, competition between the two lines as to that trade?

A. Why, speaking for the Northern Pacific, it forms a link in a line from which there may be competition, but the Northern Pacific interest is very small. It concerns a portion of a link of a through line on which there is competition, but the Northern Pacific interests are unimportant.

612 Q. On the shipments of coal from the east to Minneapolis and St. Paul, and points west of us, are not the Great Northern and Northern Pacific Railway lines competing ones?

A. They compete for coal between the head of the lakes and those cities, certainly.

Q. Mr. Mellen, please take this book I now show you. I would like you to give a list of the present directors of the Northern Pacific Railway Company.

A. The present directors of the Northern Pacific are George

F. Baker, Edward H. Harriman, Brayton Ives, D. Willis 613
James, John S. Kennedy, Daniel S. Lamont, Charles S. Mellen, Samuel Rea, William Rockefeller, Samuel Spencer, Charles Steele, James Stillman, Eben B. Thomas, Hamilton McK. Twombly, and W. P. Clough. Mr. Clough's name is not on there.

Q. Can you, by taking that, give us the names of the directors on May 9, 1901?

A. I think so.

Q. If you will, I wish you would.

A. Edward D. Adams, Robert Bacon, George F. Baker, 614
Dumont Clark, Robert M. Galloway, Brayton Ives, D. Willis James, John S. Kennedy, Daniel S. Lamont, Charles S. Mellen, Walter G. Oakman, Samuel Spencer, Charles Steele, James Stillman, and Eben B. Thomas.

Q. Subsequent to May 9, 1901, did any of the directors resign, that is, before the annual meeting in October?

A. There did, several.

Q. And will you give us the names of those, Mr. Mellen?

A. The following resigned July 23, 1901: Edward D. Adams, Dumont Clark, Robert M. Galloway, Walter G. Oakman, and 615
Samuel Spencer.

Q. Do you know the circumstances under which those gentlemen resigned?

A. Only by hearsay. I received their resignations and presented them to the board for acceptance. There were no reasons given.

Q. And of your own knowledge, Mr. Mellen——

A. I only have the same knowledge that you have—what I have seen through the public press.

Q. And of your own knowledge you do not know the reasons 616
for their resignation?

A. Only as I have learned it through the public press.

Mr. KELLOGG. You don't know of your own knowledge?

Mr. LANCASTER. That is a satisfactory answer and entirely so. Those resignations were in writing?

A. I think so. I have the impression that they were, but I am uncertain regarding one. I have the impression that Mr. Spencer was present and resigned in person.

617 Q. And was the meeting at which the resignations were presented held in New York?

A. It was.

Q. And were you present?

A. I was.

Q. And at that meeting certain directors were elected to take the places of those resigned?

A. They were.

Q. And for the sake of clearness I wish you would give us the names now, so we may have them in the record, right before
618 us, of those who took the place of those who resigned.

A. I can not give you the names of the ones who took the places seriatim, but I can give you the names of the five.

Q. Certainly; what I mean is how many were there resigned?

A. Five.

Q. Now, can you give me the names of the five who were elected at that meeting to take their places?

A. I can and will. The men who were elected July 23, 1901, were: Edward H. Harriman, James J. Hill, Samuel Rea, William Rockefeller, and Hamilton McK. Twombly.

619 Q. Now, can you state, Mr. Mellen, when James J. Hill resigned from the board of directors?

A. I can approximately.

Q. Well, that is near enough.

A. On or about November 13, 1901.

Q. It must have been after the 13th, wasn't it?

A. It was on or about that time, and it may have been—the resignation may have been—a day or two later, probably was; but I fix it on or about that time, because that was the only meeting I recall of his having attended—November 13. He
620 resigned about that time, I don't think at that meeting, but within a day or so.

Q. I want to fix it that it must have been either at that meeting or subsequent to the meeting.

A. I think it was subsequent to the meeting, but only a day or so. That is my recollection.

Q. And that meeting of the directors, Mr. Mellen, to which you refer, of November 13, 1901, was held after the annual meeting of the stockholders?

A. My impression is that was the first meeting after the annual meeting and was the meeting for organization. 621

Q. And at the annual meeting of the stockholders held in October, that was, wasn't it, Mr. Mellen?

A. Yes; I think so.

Q. Mr. Hill was elected, among others, a director, was he not?

A. I so understand it. But I was not present at the annual meeting of the stockholders.

Q. Now, after Mr. Hill's resignation, who was elected to take his place? 622

A. Mr. W. P. Clough.

Q. Mr. Clough had previously resigned as a director of the Great Northern Railway Company, had he not?

A. Well, that I could not say. I only know as Mr. Hill made the statement here.

Mr. GROVER. That is the fact.

Mr. KELLOGG. That is the fact.

Mr. LANCASTER. May we have that as an admission, that W. P. Clough had previously resigned as a director of the Great Northern Railway Company and was elected by the board of directors subsequent to November 13, 1901, as a director of the Northern Pacific Railway Company to take the place of Mr. James J. Hill, resigned? 623

MR. KELLOGG. Yes; he resigned as a director and officer.

Mr. LANCASTER. May it also be taken as an admission here, to save us proving it, otherwise, that Mr. W. P. Clough, prior to November 13, 1901, had been a vice-president and director and officer of the Great Northern road for several years?

Mr. GROVER. Yes.

Q. Mr. Mellen, can you give us the names of the executive officers of the Northern Pacific Railway Company? 624

A. I am president; Daniel S. Lamont, vice-president; Henry A. Gray, comptroller; Charles A. Clark, treasurer; George H. Earle, secretary and assistant treasurer; Richard H. Relf, assistant secretary; Francis Lynde Stetson, general counsel in New York; Charles W. Bunn, general counsel in St. Paul. Those are the executive officers.

Q. Where are the principal offices of the Northern Pacific Railway Company kept and maintained, Mr. Mellen?

625 A. In St. Paul.

Q. Where are the records of the company kept?

A. At the secretary's office in New York—secretary and assistant treasurer, Mr. Earle.

Q. And does the company maintain an independent office in New York City?

A. It does; at 49 Wall street.

Q. And Mr. Earle has entire charge of the office there?

A. No; the vice-president, Daniel S. Lamont, has general charge.

626 Q. But Mr. Earle, as secretary and assistant treasurer——

A. Has charge of matters within the province of those duties.

Q. And I understand these records of the stockholders' meetings and the records of the directors' meetings are kept by Mr. Earle?

A. In New York?

Q. In the New York office?

A. Yes.

Q. Have you duplicates of those records in your St. Paul office?

627 A. I have.

Q. Of the stockholders' meetings and also the directors' meetings?

A. I won't say as to the stockholders, but of the directors, yes. I am of the impression we have the stockholders, but I am not sure.

Q. And those are in the possession and custody of the assistant secretary, Mr. Relf?

A. They are.

Q. Where are the stock books kept?

628 A. They are kept in New York.

Q. All the stock is registered and transferred on the books of the company in New York?

A. Yes.

Q. Do you have duplicates?

A. I do not.

Q. Do you have not exactly a duplicate, but do you keep any record of the transfers, a duplicate record in St. Paul?

A. Absolutely none.

Q. So that both the stock books, the certificate books, and the 629
stock ledgers are kept in New York?

A. They are.

Q. And you have no minutes or duplicate copies, or anything of the kind, in St Paul?

A. Absolutely none.

Q. Mr. Mellen, did you have anything to do with the negotiations leading up to the purchase by the Northern Pacific Railway Company and the Great Northern Railway Company of the stock of the Chicago, Burlington and Quincy Railroad Company?

A. I did not. 630

Q. Did you participate in any of the conferences or negotiations leading up to such purchase?

A. To the best of my recollection I did not.

Q. Were you consulted by anybody with reference to such purchase?

A. I knew of such negotiations being in progress and was asked my opinion regarding certain features, like the value of the property, and so forth, which I gave.

Q. What individuals, to your knowledge, Mr. Mellen, had these negotiations in charge, representing the Northern Pacific 631
and the Great Northern?

A. I think it was handled by the Northern Pacific through its executive committee.

Q. Will you give us the names of the executive committee?

A. I have given them.

Q. I don't think I asked you that.

Mr. KELLOGG. Yes, you did, and he gave them.

Mr. BOUTELL. That was the executive officers.

Mr. KELLOGG. Oh, I guess you didn't.

A. The executive committee now and the executive commit- 632
tee at the time of the negotiation are different.

Q. Give me the executive committee as it was, please.

A. On what date in particular?

Q. From January 1, 1901, on until the purchase.

A. From January 1 until July 1? Is that late enough?

Q. Yes.

A. From January 1 to July 1 the executive committee were: Edward D. Adams, Robert Bacon, George F. Baker, Brayton

633 Ives, and Eben B. Thomas, with the president ex officio, and in his absence the vice-president.

Q. Who conducted the negotiations on the part of the Great Northern?

A. I don't know. I have only general information. I have no personal knowledge.

Q. You say that you were consulted with reference to the value of the Burlington. By whom?

A. By the members of my executive committee.

Q. Do you know when that purchase was definitely decided
634 upon by the Northern Pacific and the Great Northern?

A. Only as I attended the meeting of the directors wherein the purchase was approved.

Q. And was that matter laid before the board of directors at a meeting which you attended?

A. It was.

Q. And when was that?

A. Well, I am a little confused as to dates, but my impression is some time in April, 1901.

Mr. GROVER. It was before the 4th of April.

635 A. It may have been, but it was on or about that time. I wouldn't say it was not the 31st of March, nor the 1st of April, but it was about the 1st of April.

Q. At that time had the negotiations proceeded so far that a definite proposition had been received from the executive committee of the Burlington road?

A. I can not say that there was any definite proposition from anybody to sell the stock of the Burlington road laid before the board. If I recall correctly, the proposition before the board was whether they should buy the Burlington stock at a price
636 mentioned, but what authority the proposition to buy had that it would be accepted, I did not know then and I do not know now.

Q. Was there any written report submitted to the board of directors at that meeting?

A. There was a typewritten memorandum submitted which was in the form of a preamble and a resolution of authority.

Q. Well, Mr. Mellen, at that time you presided at that meeting?

A. I did.

Q. And at that time did you understand that a definite 637
proposition had been made by the trustees or the executive committee of the Burlington road to the Great Northern and the Northern Pacific as to the precise terms upon which that stock could be obtained by the latter roads?

A. I did not understand there was a definite proposition from the Burlington road. I did understand that if the Northern Pacific undertook to buy in connection with the Great Northern stock of the Burlington road at the price named, the executive committee of the Burlington road would recommend to its stockholders that they accept such price. 638

Q. Now, that matter was submitted to the board of directors in the form of a typewritten preamble and resolution, was it not?

A. To the best of my recollection, yes. All of our business is handled in that way. It is prepared so as to detain the directors as little time as possible.

Q. ———

A. I wasn't attaching any particular importance to the manner at all.

Q. Up to the time of that meeting in April, 1901, had you 639
known anything of the negotiations?

A. Yes, by conference with my executive committee.

Q. Did you recommend and approve of that purchase, Mr. Mellen?

A. I did.

Q. I mean at the meeting; and voted for it?

A. I recommended it both as a director, stockholder, and president, and voted for it.

Mr. LANCASTER. Is there any objection to our offering in evidence the fifth annual report of the Northern Pacific as 640
Exhibit H?

Mr. KELLOGG. No; subject to the objection that it is irrelevant and immaterial.

Mr. LANCASTER. We will offer it in evidence.

Q. Mr. Mellen, that deal with the Burlington was concluded on or before the 1st of July, 1901, was it not?

A. I think so, substantially.

641 Q. And, as a matter of fact, it was concluded very shortly after this meeting to which you refer, wasn't it?

A. No; I don't understand it. The meeting to which I refer, on or about the 1st of April, was a meeting practically to confer authority by the Northern Pacific to make a trade which was made subsequently.

Q. But it was actually made very shortly afterwards, wasn't it?

A. That depends on what you would call making a trade. The bonds were not delivered, I think, until some time in Sep-
642 tember, all of them.

Q. But the terms were agreed upon very shortly after that meeting, were not they?

A. I think so.

Q. And the matter concluded as rapidly as possible?

A. Yes.

Q. So that you knew, in fact, prior to May 9, 1901, that the Northern Pacific and the Great Northern had practically closed that deal, and either had or would get possession of practically all of the stock of the Burlington Railroad Company?

643 A. I expected they would.

Q. I mean by that that the negotiations had proceeded to that point where it was a practical certainty that they would go through?

A. So far as the committees were concerned, yes; but the action of the committee was dependent upon the deposit of the stock, and my impression is there was a later date set than May 9 within which the stock was to be deposited; or in case a sufficient amount was not deposited, the trade fell through.

Q. Did you, Mr. Mellen, of your own knowledge, at any
644 time, know of the request on the part of Mr. Harriman, representing the Union Pacific, to be allowed to join in the purchase of those bonds?

A. I did not. I knew nothing of it.

Q. Was such a request reported to you at that time?

A. Not at that time.

Q. Was it later?

A. Only as I have gathered it from the Interstate Commerce Commission reports and Mr. Hill's testimony there and Mr. Harriman's.

Q. You have never received any notice of it officially? 645

A. It never reached me officially in any way.

Q. Were you in New York during the week of May 9, 1901?

A. No; I left there the Sunday night before May 9, for St. Paul.

Q. And were you there a few days after May 9?

A. No; I don't think I was in New York again until the June meeting. I was in St. Paul May 9, I know.

Q. Did you attend any of the conferences held between Mr. Hill and Mr. Harriman, either at Mr. Harriman's office or J. Pierpont Morgan & Co.'s offices, or Kuhn, Loeb & Co.'s 646 offices, or anywhere else, which resulted in the giving by Mr. Harriman of a proxy to J. Pierpont Morgan & Co. to vote his stock in the Northern Pacific Railway Company?

A. To the best of my knowledge I did not attend any such conferences.

Q. And do you have now any present recollection of taking any part in the negotiations by which that result was obtained?

A. I feel confident that I had no part in any of those negotiations.

Q. And were you in New York during the time such nego- 647 tiations were going on?

A. To the best of my recollection I was not.

Q. When did you first learn of the deposit by Mr. Harriman of the proxy to vote his stock with J. Pierpont Morgan & Co.?

A. Well, it was a few days before the annual meeting, I think. It is my custom to attend the directors' meeting, which occurred the second Wednesday in each month, and my recollection would be that I was in New York about the second Wednesday in October and learned before I left there. I left before the annual meeting. The annual meeting was October 648 1, was it not, this year?

Q. I don't know just what date it was.

A. I know at the time I was there, prior to the annual meeting, I was told by one of the firm of J. P. Morgan & Co. that they had Mr. Harriman's proxy; that Mr. Harriman had turned in his proxy.

Q. Were you in New York the 23d of July, 1901?

A. Yes.

649 Q. And that was the meeting at which five directors resigned and at which five were elected?

A. Yes.

Q. Did J. Pierpont Morgan & Co., or did J. Pierpont Morgan individually, or any one representing him, name those directors or nominate them?

A. Not to me.

Q. Did you understand that J. Pierpont Morgan & Co. suggested those names and requested the other directors to elect them?

650 A. It was my general understanding, but not the result of anything any member of the firm told me.

Q. You understood that those gentlemen's names whom you have given as having been elected on that day, among the number James J. Hill and E. H. Harriman, had been suggested and approved by J. Pierpont Morgan?

A. I did.

Q. And you voted for them upon the understanding that that was satisfactory to J. Pierpont Morgan's interests?

A. No, I voted for them for they were entirely satisfactory
651 to me and no objection.

Q. Do you mean to say that you had no conference with J. Pierpont Morgan & Co. or any of the parties with reference to the selection of those names?

A. I mean to say exactly that.

Q. How long before the meeting of July 23, 1901, did you know that those names would be presented?

A. About fifteen minutes before the meeting was assembled; it might have been five.

Q. That came to you absolutely as a new proposition at that
652 meeting?

A. The package for the meeting was laid in front of me, and in opening the package I found the resignation of the directors and I presented the resignations to the board. I forget who nominated. As each resignation was accepted a nomination was made for the vacancy and the question was put and they were elected.

Q. And there was no opposition to any?

A. Not the slightest.

Q. Had you seen a list of the names of those who were 653
nominated in that way?

A. I had not.

Q. Previous to the meeting?

A. No.

Q. You understood that there was some reason for the resignation of those five men and some reason for the election and appointment of those to take their place?

A. I read the newspapers regularly, and I saw this was in the newspapers.

Q. In the management and control of the affairs of the 654
Northern Pacific and in the election of the directors of that company, do you get your information from the newspapers to the point of governing your conduct by them?

A. My conduct was not affected at all by the information in the newspapers.

Q. You didn't vote for those men on the supposition that they were hostile to the interests which previous to that time had controlled the destinies of the Northern Pacific?

A. I voted for these men because I considered them excellent
men for the position and I couldn't find any reasonable objec- 655
tion to urge against their election.

Q. And that could have been said of hundreds of other names?

A. And I undoubtedly might have voted for a hundred others had they been proposed and been equally unobjectionable.

Q. Did you at that time know who suggested those names?

A. Why, I had read the newspapers.

Q. Did you learn that from anybody else?

A. Only general talk.

Q. General talk with whom? 656

A. Everybody.

Q. Including J. Pierpont Morgan?

A. No; I don't think I met him at all.

Q. Did you meet his partners?

A. Why, they were members of the board and present at the meeting, two of them.

Q. Is it not true that at that time you had learned of a truce between the Harriman and the Hill-Morgan interests and the

657 fact that Mr. Morgan was to nominate the directors of the Northern Pacific Railway?

A. I read it in the newspapers.

Q. Hadn't you learned it anywhere else?

A. I had had no official information of any description, except what I got through the press and by talking with Colonel Lamont and other people whom I came in contact with.

Q. You voted for those five names that were nominated in the way you have detailed strictly upon their merits and without any previous understanding?

658 A. I had no understanding.

Q. Wait a moment. You have already testified to that, and I say you voted for them strictly upon their merits individually, without reference to any understanding that they had been suggested by J. Pierpont Morgan?

A. I think I know what you want, and I am perfectly willing to state that I supposed they were nominated by Mr. Morgan; I hadn't the slightest doubt of it, but I didn't know anything about it. Nobody told me that fact.

Q. Well, you relied upon the information that you got from

659 the newspapers, did you, Mr. Mellen?

A. I don't think I did.

Q. You were not, of course, a mind reader?

A. Not exactly, but I voted for those men because there was no objection to them, and because I generally understood that they had been nominated in accordance with the newspaper reports by Mr. Morgan, and there seemed to be no objection on the part of anybody to their election, and there was none on my part.

Q. The partners of J. Pierpont Morgan, at least one of them,

660 were present and taking part in the proceedings of the board?

A. I am pretty sure there were, but the record would show better than my memory.

Q. There were at that time two partners of Mr. Morgan?

A. Yes, sir; Mr. Bacon and Mr. Steele.

Q. James J. Hill never had been a director of the Northern Pacific?

A. Not till that day.

Q. He was at that time president of the Great Northern 661
Railway Company?

A. He was.

Q. At that time did you know that, under the laws of the State of Minnesota, he was not eligible as a director of the Northern Pacific?

Mr. KELLOGG. That is objected to; he is not a judge of the laws of the State of Minnesota.

Mr. LANCASTER. I don't ask him to be. I ask him whether or not he did know of such a law in the State of Minnesota.

Mr. KELLOGG. I object to it. He may have known what 662
the statute was, if he ever read it. What the law is is a question for the court and not for Mr. Mellen to decide.

A. I was advised after the meeting that he was ineligible. Indeed, he told me so himself.

Mr. KELLOGG. He declined to serve?

A. He said he should decline to serve.

Q. But he lingered until fall?

A. He didn't attend any meeting until November 13, after he had been elected by the stockholders.

Q. It was certainly a radical change in the policy of the 663
Northern Pacific Railway Company up to that time, was it not, to place on the board the head and front of its chief rival?

A. It was certainly the first time to my knowledge that the president of the Great Northern had been a director of the Northern Pacific.

Q. You knew at that time that Mr. Harriman was the head and front of the Union Pacific interests, did you not?

A. I so understood it.

Q. And his name was among the list nominated at that meeting? 664

A. It was.

Q. And the Union Pacific was at that time a competitor of the Burlington, which your road had just purchased a half interest in?

A. The Union Pacific was a competitor of the Burlington.

Q. Well, that was a radical change in the policy of the road, was it not?

665 A. There never had been any Union Pacific man, that I was aware of, director of the Northern Pacific up to that time.

Q. The Union Pacific was also to a considerable extent a competitor of the Great Northern and Northern Pacific, was it not?

A. Well, it was a part of a line that was a competitor. The Union Pacific strictly is not a competitor.

Q. Didn't it strike you as being rather a remarkable thing, Mr. Mellen, that all at once five men should resign and five put in their places and that two of them should be the leading spirits
666 in two rival lines?

A. It struck me as a very remarkable time and a time to do rather remarkable things.

Q. It struck you as a remarkable thing at a remarkable time?

A. It struck me as being a remarkable time and it was necessary to do something, and I supposed somebody had undertaken to do the best thing they could.

Q. You supposed and understood that there was a good reason for putting on the board of the Northern Pacific the
667 president and a director of the Great Northern, did you not?

A. I never gave that matter the slightest thought.

Q. Now, Mr. Mellen, shortly after that you learned that Mr. Harriman was elected a director of the Burlington Railroad, did you not?

A. In the same way I learned a lot of things, through the newspapers; I had no personal knowledge.

Q. And, later on, he was elected a director of the railway company. You learned that fact?

A. I have learned it in the testimony here.

668 Q. Mr. Mellen, are you able to give the names of the gentlemen who constituted the voting committee or the voting trust of the Burlington stock?

A. I didn't know there was any, except this agreement here which you have.

Q. There is a provision for one in there. Mr. Hill didn't know.

A. I will tell you this: I know when the annual meeting of the Burlington road occurred the question of representation of

the Northern Pacific was referred to the executive committee, 669
and just what action was taken by the committee I am not certain; I don't think I was present when the matter was acted upon.

Q. Mr. Mellen, when did you first learn of any proposed action with reference to the retirement of the preferred stock of the Northern Pacific Railway Company?

A. I have heard that discussed at various times during my whole connection with the property, but the question of the imminent retirement of it was discussed on or about the time of the dissolution of the voting trust, along, I should say, early in 670
the winter of 1901, and I can not say that it was particularly discussed then; I heard it mentioned.

Q. Well, when did you first learn of some proposed action to be taken with reference to the retirement of the preferred stock on January 1, 1902?

A. The first official information I had was, of course, the action of the board of directors. I had heard Mr. Morgan say it was going to be retired. I talked of it occasionally with various directors and asked the question if it was to be retired and if they were proposing to retire it, and the answer from all 671
sources seemed to be that it would be retired on the 1st of January.

Q. Now, at that time did you understand that there would have to be issued, in order to retire that stock, $75,000,000 of certificates of indebtedness?

A. I understood there would have to be $75,000,000 raised, and I knew there would have to be some kind of security issued to raise that money.

Q. What did you understand at that time was the particular reason for retiring that preferred stock? 672

A. It was to make the common stock more valuable and to help the corporation by getting rid of the preference which existed on the preferred.

Q. And also getting rid of Mr. Harriman?

A. I never heard that discussed.

Q. Did you hear a rumble anywhere?

A. I heard more rumbling to-day about it than ever before.

Q. Didn't you read the newspapers during that time?

673 A. Yes.

Q. And you never heard anything about it till to-day?

A. I didn't see very much in the newspapers about it.

Q. Do you mean to say that you never heard anything about that till to-day?

A. I say I heard more of it to-day than any other time and gave it more attention.

Q. You knew, Mr. Mellen, at that time that Mr. Harriman held, either in his own right or representing other interests, more than a majority of the capital stock outstanding of the
674 Northern Pacific Railway Company, didn't you?

A. I never knew how much stock Mr. Harriman or people in his interest held until the publication of the annual report of the Union Pacific disclosed the fact.

Q. And that disclosed the fact that the Union Pacific held $78,104,000?

A. Substantially that. I don't mean to be understood as having no general knowledge through the press and through hearsay and all that; I had seen a great deal in the press of claims and counterclaims as to the control of the property by
675 ownership of stock, but what the facts were I never knew.

Q. Did you learn from any source outside of the newspapers as to how much stock Mr. Hill and J. Pierpont Morgan & Co. held of the common stock?

A. Only from Mr. Hill, Mr. Harriman, Mr. Morgan, Mr. Bacon, and various people; a matter of hearsay entirely.

Q. You say you did hear from them?

A. Oh, certainly. I am in the habit of meeting them every few days.

Q. You understood that J. Pierpont Morgan & Co. and Mr.
676 Hill and associates held a clear majority of the common stock?

A. I understood they claimed so.

Q. And you understood perfectly well that by the retirement of the preferred stock that Mr. Harriman and his interests would be retired from the control of the Northern Pacific Railway Company?

A. I understood the moment I learned with reasonable sureness that Mr. Morgan and his friends and Mr. Hill and his friends controlled over 40,000,000 of the common stock that they controlled the company.

Q. They didn't control the company, Mr. Mellen, until the 677
preferred stock was retired, did they?

A. Yes; but I was aware all the time from my connection with the company of the right of the company to retire the preferred stock.

Q. You understood that as a condition precedent to their controlling the road they must get rid of the preferred stock?

A. That I knew they had the power to do at any time.

Q. And you knew that in order to control the company with their 40,000,000 of common stock that they must retire the preferred? 678

A. I knew if the preferred stock was not retired it had the right to vote the same as the common.

Q. Mr. Mellen, were you consulted by anybody with reference to the retirement or the proposed retirement of the preferred stock which was to take place on January 1, 1902, previous to the meeting of the board of directors which passed the resolution?

A. I saw drafts of the resolution which were presented to the board on November 13, some time previously. I know they were submitted to me for correction and suggestion, and I knew 679
of the proposed method of raising the money for the retirement of the stock and of the offering of rights to the stockholders to subscribe for the new securities, and was conferred with. I heard that through Mr. Bacon, through Mr. Steele, through Colonel Lamont, and through Mr. Stetson, the counsel. I suppose you would call that conferring with me.

Q. You understood that the purpose of retiring the preferred stock was for the purpose of giving the common stockholders the absolute control of the company?

A. I understood that the retirement of the preferred stock was 680
for the interest of the company, and I knew necessarily the result must be that the common stock would control if the preferred stock was retired.

Q. And you understood that as a part of this transaction, and in order to finance it and carry it through, an issuance of the certificates of indebtedness to the extent of $75,000,000 by the Northern Pacific Railway Company would be necessary?

681 A. Certainly.

Q. And you understood the provisions with reference to the subscriptions for those certificates?

A. Certainly.

Q. And with reference to their being converted into common stock?

A. Yes, sir.

Q. And the provisions with reference to turning in the common stock of the Northern Pacific in exchange for Northern Securities Company stock?

682 A. I didn't know anything about that except in this general way. I had no personal knowledge. I never saw any circular. I never exchanged any stock. I have absolutely only the same knowledge that you have or any other citizen that comes in contact with people who have these transactions at heart, and through the columns of the public press.

Q. On November 13, 1901, when this meeting was held, the meeting of the board of directors approving of the retirement and authorizing the retirement of the preferred stock, didn't you know that the Northern Securities Company was organized?

683 A. On or about that time; whether it was organized then or not I can't say as to that. On or about that time I heard of it.

Q. Didn't you understand at that time that the Northern Securities Company was a necessary adjunct to this scheme of retirement?

A. I never knew that it had anything to do with it.

Q. And you had nothing to do with the organization of the Northern Securities Company?

A. Not the slightest.

Q. Not consulted in reference to it?

684 A. Not the slightest.

Q. Did you own at the time of the meeting common stock in the Northern Pacific?

A. I did.

Q. Any considerable amount?

A. One hundred shares, I think.

Q. And did you subscribe for the certificates of indebtedness?

A. I did.

Q. Did you convert them into common stock?

A. I did. 685

Q. Did you convert your common stock into Northern Securities Company stock?

A. No; I hold all of it yet. I undoubtedly shall.

Q. You are one of the very few who have not surrendered up to date?

A. I have not; but I have told Mr. Hill he could have it any time he wanted it. He said it didn't make any difference; to keep it if I wanted it.

Q. He has got 152,000,000 or 153,000,000; more than enough.

A. That is true. He said he didn't care anything about it. 686 It is a sort of sentimental matter with me to hold on to it.

Q. The same as it is with Mr. Hill to hang on to two or three million of the Great Northern?

A. Very likely. I wish my sentiment was large enough to hold that amount.

Q. Mr. Mellen, prior to May 9, 1901, had the Northern Pacific under contemplation any extensions of its lines?

A. Yes, I think so. It has extensions in contemplation all the time.

Q. And have the extensions, or any of those extensions that 687 you had under contemplation prior to May 9, 1901, been abandoned by the road?

A. Not to my knowledge.

Q. And have those extensions been undertaken by the railroad company up to date?

A. Some of them are in progress.

Q. And what has been done with the balance?

A. It is not exactly the time of year, you know, to progress with those matters; it is a little early in the season. They are still in that state that they can be taken up when the weather 688 will permit.

Q. Has there been any action with reference to the abandonment or proposed abandonment of any of the extensions which were on tap May 9, 1901?

A. I think the situation is precisely the same to-day as it was May 9, 1901.

Q. That is, there has been nothing done, do you mean?

A. Yes, there has been something done between May 9 and

689 the close of the season. This is not the time of year, you understand, we would naturally be doing anything in the line of extensions.

Q. Wouldn't you undertake something between May and cold weather?

A. We have done a great deal; we have completed several extensions and we are at work on others.

Q. Mr. Mellen, who financed the retirement of the preferred stock?

A. My recollection is the Standard Trust Company.

690 Q. Who paid the Standard Trust Company for financing that deal?

A. I am very sure the Northern Pacific has never paid anything up to the present time, and I am unaware of any obligation it is under to pay anything.

Q. So far as the Northern Pacific Company itself is concerned, you are sure that it has never paid anything, and you are not aware up to the present time of any indebtedness incurred by it in that transaction?

A. That is the best of my recollection.

691 Q. Is it your understanding that the Standard Trust Company undertook that for nothing and carried it out for nothing?

A. I never had any understanding about that other than the contract which I signed with the Standard Trust Company. That constitutes all the understanding I have in the premises.

Q. That was a transaction, was it not, primarily of the Northern Pacific Railway Company?

A. Yes.

Q. And didn't you as president of the company make any inquiries as to the expense of the part being taken by the

692 Standard Trust Company?

A. That was a matter handled during my absence from New York and by members of the executive committee, and the contract required my signature as president and was approved in due form by counsel and the committee and I executed it. I had nothing to do with the transaction whatever; never met an officer of the Standard Trust Company.

Q. And the matter of the expense of financing that deal never has been called to your attention as president of the company or otherwise?

A. It never has reached my attention. I do not mean to be 693
understood as saying there may not have been expense in connection with that transaction, but I mean to be understood as saying they have not been called to my attention.

Q. Mr. Mellen, do you know who financed the Burlington purchase?

A. J. P. Morgan & Co., I think.

Q. Do you know what they received for that undertaking?

A. I couldn't recall; I don't recall.

Q. Do you know that the Northern Pacific paid half of the expense of that proceeding? 694

A. I am very sure they did.

Q. Can you ascertain the amount of that?

A. My impression would be that would be in New York, that information.

Q. I suppose you mean by that the assistant treasurer?

A. It naturally would have been handled by the vice-president, in New York. It was a transaction at that end.

Cross-examination by Mr. KELLOGG:

Q. Why did you approve of the purchase of the Burlington?

A. I thought it was a good thing for the Northern Pacific. 695

Q. Mr. Mellen, is there any difference in the management of the Northern Pacific road before and the management since the organization of the Northern Securities Company?

A. None whatever.

Q. Or any difference in the management of the Northern Pacific and its policies before and since the time Mr. Harriman was put on the board?

Mr. LANCASTER. You have opened up something we have not gone into at all.

A. I know of no change. 696

Q. Well, was there any understanding?

A. None that has come to my knowledge.

Q. Speaking about competition, Mr. Mellen. Now, take between the head of the lakes and Minneapolis and St. Paul, the rates of the Great Northern and the Northern Pacific are the same, are they not?

A. Yes.

Q. Must be the same?

697 A. Yes.

Mr. BOUTELLE. That is objected to as incompetent, irrelevant, and immaterial, and I move to strike out the answer.

Q. You said there was active competition. Do you mean by that each road is struggling to get all the business it can?

A. Yes.

Q. And that competition is active to-day, is it?

A. Yes, sir.

Q. Now, is it possible in railroad management for the rates between the same points to be different over one line from
698 another line between the same points?

Mr. BOUTELLE. The same objection.

A. Yes; if you want the business all to go by the line with the lowest rate.

Q. If each company does business, the rates have to be the same?

A. Substantially the same.

Q. As between all competing points between the Northern Pacific and the Great Northern the rates are the same, are they not?

699 A. They are.

Q. And have always been the same since you have been there?

A. So far as I know.

Q. Then you mean by competition each line is struggling by soliciting business and getting business to get all it can?

A. Yes; offering superior facilities and bringing pressure to bear and influence, personal and otherwise, and every way you can.

Redirect examination by Mr. BOUTELLE:

700 Q. Do you mean to say that the conditions that you have just testified to were due to business conditions, to natural conditions, or to agreements and understandings reached between traffic managers and officials of the lines?

A. Both.

Q. Well, isn't the main factor in the conditions you have testified to the fact that the roads, for the purpose of preventing competition, have made a tacit agreement to maintain certain rates?

A. No. 701

Q. That is not the fact?

A. No.

Q. Did you hear the testimony taken before the Interstate Commerce Commission?

A. I did.

Q. Did you hear the testimony of Darius Miller, who was the vice-president formerly of the Great Northern?

A. I did.

Q. Did you hear Mr. Miller testify that rates were demoralized during 1901 and came together during the fall? 702

A. Yes.

Q. Was that the fact?

A. I don't know.

Q. Isn't it frankly the fact that rates are demoralized?

A. Yes; not particularly so in the territory served by the Northern Pacific.

Q. Isn't that because they have usually had an agreement and understanding to maintain rates?

A. There is no agreement except a general conference we have to have with everybody that does a competing business. 703 We have to know what our neighbors are doing.

Q. I don't mean a formal agreement, but a tacit understanding as to rates.

A. There is only the general understanding that nobody will do anything that affects his neighbor unfavorably without advising the neighbor before doing it, and that agreement is no different with the Northern Pacific and the Great Northern than it is with the Northern Pacific and the Chicago and Northwestern, or any other railroad connecting, competitive, or otherwise.

Q. I understand that, but the basis of those conditions is this 704 general agreement or understanding to which you have testified?

A. There is no general agreement or understanding, if you mean by an understanding any agreement by which any party is bound for five minutes.

Q. I do not at all. I mean that those conditions are due to the fixing of rates by mutual understanding.

A. No.

Q. What do you mean by understanding, a contract?

705 A. No; we have no contracts.

Q. Are not the rates, and have they not been for a number of years between the Northern Pacific and the Great Northern, understood between those companies and maintained to a certain given point?

A. The rates between the Northern Pacific and Great Northern are frequently misunderstood, I am very sorry to say, to the detriment of both companies and the public, and I find no difference in the conditions to-day from what I found when I came here, and I don't expect there will be any difference in
706 the conditions if I should stay here for ten years to come.

Q. I will ask you whether or no the foundation for the rates and the maintenance of the rates is not due to a tacit understanding or agreement or conference, whatever you may term it, between the officials of the lines to keep the rates up?

A. No. I should attribute it to the better judgment of railroad managers to-day as compared with the days when different customs prevailed.

Q. When different customs prevailed each road mapped out its own rates and proceeded its own independent way, didn't it?

707 A. I don't know. I have been railroading for thirty-three years and I don't know of any difference in the way of doing business to-day from when I started.

Q. What did you refer to a few moments ago when you said the old way?

A. The better judgment of men. They have found that they must do business, as they must live, in good-fellowship with their neighbors.

Q. What does that good-fellowship consist in?

A. In being decent and behaving themselves.

708 Q. And one step further, in maintaining rates, doesn't it?

A. Why, yes, in this sense. It means maintaining rates, that they shouldn't cut rates, make secret cuts; but there is no understanding or agreement to prevent any railroad from putting out a tariff that the judgment of its officers felt was necessary; but there is that courtesy among officers to-day that didn't exist; that if we were to put out a tariff to-morrow that affected my neighbor, before that became effective I would courteously notify my neighbor I contemplated such action.

Q. And that is precisely, in a general form, what the rail- 709
roads have been attempting to do by specific agreements for and during the last eight or ten years, isn't it?

A. I don't know.

Q. You were familiar with the Trans-Missouri Traffic Association?

A. I used to be a member of it.

Q. You knew something about the detail of that agreement?

A. Yes.

Q. Now, in a general way, while not carried out in the same amount of detail, this good judgment that you speak of and 710
good-fellowship is practically the same thing so far as rates are concerned, isn't it?

A. I don't think so. There, under that agreement, if there was to be a change in rates, all the parties had to get together and confer, and if one party objected the rate could not go in.

Q. I am asking you about results, not the minor details. Doesn't it result in the same?

A. The results to-day are a great deal better than they used to be.

Recross-examination, by Mr. KELLOGG: 711

Q. The rates, of course, have to be published?

A. Yes.

Q. And you have to publish those rates a certain time before they go into effect under the law?

A. Yes.

Q. Do you know of any way that the Great Northern can have a published tariff or have a rate that is less that the Northern Pacific between two common points and the Northern Pacific get any business?

A. No, I don't know how it can be done. 712

Q. Isn't it a positive necessity that makes rates between the same termini of competing railroads the same? Isn't it a positive necessity?

A. Yes.

By consent of all parties, further proceedings were adjourned until February 21, 1902, at 10 o'clock.

The following is a copy of volume 2 of special examiner's transcript in Peter Power case, containing the testimony of

713 J. S. Kennedy, G. W. Perkins, W. P. Clough, Jacob H. Schiff, Charles Steele, and J. P. Morgan, and here offered by complainant as original evidence in this case:

JOHN S. KENNEDY, after being first duly sworn, testified as follows, in answer to questions by Mr. Lancaster:

Q. Your name is John S. Kennedy?

A. Yes.

Mr. KELLOGG. The defendant objects to any testimony and to each and every question and answer on the ground that it is incompetent, irrelevant, and immaterial, and that the bill in
714 equity states no ground for equitable relief and no cause of action against the defendant company, and further, that no relief can be had in this cause affecting the interests of the Northern Securities Company without said company, or any of the stockholders of the Northern Pacific Railway, each being made parties to the bill. Now, may it be stipulated that this objection may be renewed as to every question?

Mr. LANCASTER. Certainly.

Mr. KELLOGG. May not be renewed, but may be considered as made to each and every question.

715 Mr. LANCASTER. Certainly.

Q. Mr. Kennedy, you reside in New York?

A. Yes.

Q. And have for many years?

A. Yes.

Q. And you have been a stockholder of the Great Northern Railway Company since its organization?

A. Yes.

Mr. KELLOGG. That is especially objected to as wholly irrelevant to this issue.

716 Q. You may answer, Mr. Kennedy.

A. I have answered this.

Q. Have you ever been a director in the Great Northern Railway Company?

A. No, sir; never.

Q. You have always been a large stockholder in the Northern Pacific since its reorganization?

A. Yes.

Q. And you have been a director in the Northern Pacific 717
Railway Company since its reorganization.

A. Yes, since its reorganization.

Q. How long have you been a director in the Northern Pacific?

A. I think, according to my recollection, it was two years ago last summer that I was elected.

Q. I asked you if you had been a stockholder in the Great Northern Railway Company, and you stated that you had. You have been one of the largest individual stockholders in the Great Northern road since its reorganization in 1889, have you 718
not?

A. I have been a large stockholder; whether one of the largest, I can not say.

Q. Is it not a fact that you and Mr. Hill and Lord Mount Stephen and Lord Strathcona and George F. Baker have been the largest individual stockholders of the Great Northern Railway Company?

A. I think probably we have.

Q. You are also at the present time a director in the Northern Securities Company? 719

A. Yes.

Q. Can you state the date of your election to the board of directors of the Northern Securities Company?

A. I can not. I think it was some time in November.

Q. You are also a director in the Chicago, Burlington and Quincy Railway Company?

A. Yes.

Q. And do you remember the date of your election as such director?

A. I do not; it was some time, I think, in the autumn, or lat- 720
ter part of last year, but I do not remember the date.

Q. In 1896, upon the reorganization of the Northern Pacific Railway Company, did you and Mr. Hill, Mr. Baker, D. Willis James, Lord Mount Stephen, and Lord Strathcona purchase in the neighborhood of $26,000,000 of Northern Pacific stock?

A. I don't remember the amount that was purchased, nor who all the parties that were united in the purchase, but there was a block of stock sold at that time, and I took an interest in the purchase.

721 Q. Do you remember the amount, Mr. Kennedy?

A. I do not.

Q. Approximately?

A. Not even approximately.

Q. Mr. Hill, in his testimony, referred to you and Mr. Baker—George F. Baker—and D. Willis James, Lord Mount Stephen and Lord Strathcona, and J. A. Livingston, J. W. Sterling, and Oliver Payne, and, I think, Mr. Cannon, as being the associates in the Great Northern, and also his associates in the purchase of a large block of the Northern Pacific at the
722 time of the reorganization. Is that your recollection, that you gentlemen were associated together?

A. As far as I am concerned it was not purchased by an association. I was told that a block of stock was purchased, and I was asked to take an interest in it, which I did, but who all the parties were that purchased it I don't know.

Q. Did you take an equal interest, or did you buy a certain portion of that stock yourself individually?

A. I don't remember how it was divided up, but I got a certain portion of it. I was asked to take a certain portion of that
723 stock, and I took it and paid for it.

Q. Do you remember Oliver Payne and H. W. Cannon as being two of the associates?

A. I don't know; I never had any communication with them on the subject, or either of them.

Q. Did you have your dealings, Mr. Kennedy, directly with Mr. Hill in that matter?

A. I don't remember whether it was Mr. Hill or Messrs. Morgan, but I think I paid the money for the stock to the Chase National Bank. I was asked to pay there.

724 Q. Well, do you remember having negotiated with Mr. Hill in connection with this purchase of this Northern Pacific stock upon the reorganization?

A. All I remember is that he told me that Messrs. Morgan & Co. wished to dispose of a certain block of stock, and he asked me if I would take an interest in it, and after I conferred with him I told him I would.

Q. Now, did you hold that stock continuously down to November and December, 1901?

A. I held the greater part of it. I sold a little of it some 725
time after, but by far the larger portion o :t I held right along and hold it now.

Q. Can you give us approximately the amount ot stock you yourself took in 1896?

A. I think the amount I took was between 39,000 and 40,000 shares of the common, and I can't recall the amount of the preferred, but I think 3,000 or 4,000 shares. It may be more, but as near as I can remember I think it was 3,000 or 4,000 shares.

Q. That was in 1896?

A. I don't remember the exact date. I think it was about 726
that time.

Q. Did you sell any of the common which you got at that time prior to May 9, 1901?

A. I did, but a very long time ago.

Q. And any considerable amount?

A. No; not a very large amount.

Q. Could you give us approximately the amount which you sold?

A. I can't—not more than 2,000 or 3,000 shares—maybe 4,000. 727

Q. About what number of shares of the common stock did you hold between the 1st of May and May 9th, 1901?

A. Thirty thousand.

Q. Of the common?

A. Of the common.

Q. Did you at that time hold any of the preferred?

A. Yes.

Q. And about how many?

A. Eight thousand shares.

Q. During the time that you have been a stockholder in the 728
Great Northern from 1889 down to the present time, or down, we will say, to December 31, 1901, has Mr. Hill held your proxy upon all that stock?

A. I have always given him my proxy for an election.

Q. And he has always, to your recollection, now, has always had this proxy at every annual election?

A. So far as I can remember, unless I was absent in Europe. Some of those years I was not here to give it, but as far as I remember he has always had my proxy for every election.

729 Q. Personally you have never attended the stockholders' meetings of the Great Northern?

A. No, sir, I never did; at least I have no recollection of it. I do not think I ever did.

Q. I think you stated two years ago you were a member of the board of directors of the Northern Pacific during the year 1901?

A. Yes.

Q. When was the proposed purchase of the Burlington first brought to your attention?

730 A. It was some time in the month of March.

Q. 1901?

A. 1901.

Q. Was it brought to your attention before the matter was submitted to the board of directors?

A. I heard that negotiations were proceeding with a view of making the purchase, and, so far as I know, before it was brought before the board of directors.

Q. You knew the plan of purchase, did you not, before it was submitted?

731 A. I knew indefinitely, and I may explain to you here that negotiations were proceeding when I went to Europe and I was not here when the matter was consummated.

Mr. KELLOGG. What board did you refer to?

Mr. LANCASTER. The board of directors of the Northern Pacific.

Q. I am referring to the board of directors of the Northern Pacific, Mr. Kennedy.

A. I so understood.

Q. Mr. Kennedy, did Mr. James J. Hill consult with you in
732 reference to the proposed purchase of the Burlington?

A. He did.

Q. And the general plan of the purchase was outlined by him to you?

A. The general plan was outlined by him to me. What he thought of doing, or thought could be done.

Q. And at that time you were a director of the Northern Pacific and a large holder of stock in the Northern Pacific?

A. Yes.

Q. And also a large holder of stock in the Great Northern? 733

A. Yes.

Q. I understand you to say you were absent in Europe at the time the matter was submitted to the board of directors of the Northern Pacific?

A. Yes; I was absent in Europe.

Q. At that time what were your individual holdings in the Great Northern?

A. At that time my individual holdings in the Great Northern, I think, were about 96,000 shares.

Q. What time did you return from Europe, Mr. Kennedy? 734

A. I returned from Europe on Saturday, I think it was the 8th of June.

Q. Did you purchase any Northern Pacific in the spring and early summer prior to June—did you purchase any additional stock?

A. No, sir; not a share.

Q. Did you sell any?

A. Not a share.

Q. Prior to your departure for Europe—I think you gave us the date that you left for Europe? 735

A. I left on the morning of the 2d of April.

Q. Prior to your departure for Europe on the 2d of April, had you had any conversation with Mr. James J. Hill in reference to the syndicate purchasing a majority of the common stock of the Northern Pacific?

A. No.

Q. Had the matter been discussed by you at all with Mr. Hill?

A. I have no recollection of the discussion of any such matter as that? 736

Q. Was such a thing suggested to you by Mr. Hill?

A. No, sir; I have no recollection of him making any such suggestion.

Q. At the time Mr. Hill suggested a purchase of the Burlington, the joint purchase of the Burlington by the Great Northern and Northern Pacific, was the matter of the control of the Northern Pacific discussed by Mr. Hill with you?

A. No, sir; it was not. I think the impression he gave me

737 was that he and some other gentlemen in England, Lord Strathcona and others, and Messrs. Morgan & Co. had substantially the control of the road.

Q. And was that shortly prior to your going to Europe?

A. Yes; prior to my going to Europe.

Q. Will you give us all the names, Mr. Kennedy, that you understood Mr. Hill to refer to as having a majority of the common stock of the Northern Pacific?

A. I can't give you all the names. I can mention some of them.

738 Q. Give those that you remember.

A. There was himself and myself, and there was Mr. D. Willis James and Lord Strathcona and Lord Mount Stephen; but as to the others I could not say.

Q. You don't remember his mentioning any others?

A. I don't remember his mentioning any others.

Q. But you do remember his telling you at that time that these gentlemen whom you have named, together with himself and yourself, had a controlling interest of the common stock?

A. The impression he gave me was that with our holdings 739 we had a majority of the common stock of the company—that is my impression. I do not say he stated so. I say that is the impression I gathered from what conversation took place. It is only an impression.

Q. Among the associates he mentioned J. Pierpont Morgan & Co. were included?

A. I understood that they were holders of the stock, but when you talk of associates I don't know what you mean by that.

Q. Mr. Hill used the term, Mr. Kennedy, that is here 740 referred to—myself and his associates—and he stated that yourself and Lord Strathcona and Lord Mount Stephen, and George F. Baker and D. Willis James, and possibly one or two others, constituted what he called his associates.

A. We were simply individual holders, the same as shareholders in any other company.

Q. You mean by that that you were acting in harmony so far as the voting of your stock was concerned?

A. It was a harmonious body and each were stockholders

in the company, and everything was going harmoniously amongst us. 741

Q. As a matter of fact, you each, for a number of years, acted together in entire harmony?

A. Yes.

Q. Both with reference to the Great Northern and Northern Pacific?

A. Yes.

Q. At the time of your departure, or previous to your departure for Europe, Mr. Kennedy, had you any information that Mr. Harriman, or Kuhn, Loeb & Co., representing Mr. 742 Harriman, or representing the Union Pacific, were endeavoring to buy up a majority of stock of the Northern Pacific?

A. None whatever.

Q. When did you learn of such an attempt?

A. The first I learned of such an attempt was when I was in France, about the early part of May—I forget the particular date.

Q. Did you learn that from Mr. Hill?

A. No, sir.

Q. Did you learn it from Mr. Morgan? 743

A. I did; I did not know who the parties were, and he didn't tell me who the parties were, but that there were parties apparently endeavoring to get control of the company.

Q. Did you have a personal interview at that time with Mr. Morgan, Mr. Kennedy?

A. I did.

Q. Did Mr. Morgan at that time inform you that Mr. Hill and his associates had agreed not to sell any of their common stock?

A. He did not; at least I have no recollection of his saying 744 anything of the kind.

Q. Were you requested by Mr. Morgan to make any disposition of your holdings of common stock?

A. No, sir.

Q. Did you volunteer the statement at that time that you would not make any disposition?

A. I told him I would not, and I could not if I would. I was in France, I wasn't here to deliver the stock if I sold it.

Q. The stock was in New York?

745 A. The stock was in New York.

Q. This you say was the first part of May?

A. The early part of May; I can't fix the date—it probably was about, I should think, the 5th, 6th, or 7th of May—I can't remember the precise date.

Q. Did Mr. Morgan inform you at that time that his firm had purchased a large block—two blocks—two separate blocks of stock in the Northern Pacific?

A. No, sir; I have no recollection of his saying anything to me about that.

746 Q. Did you, prior to May 9, agree to purchase any of the stock of the Northern Pacific?

A. No, sir.

Q. Did Mr. Morgan inform you that he was purchasing common stock for Mr. Hill?

A. No, sir; he did not.

Q. Did he inform you that he was purchasing it for himself?

A. I have no recollection of his saying anything about making purchases at all.

Q. Did Mr. Morgan say anything to you at that time about
747 purchasing the stock in Europe for himself and Mr. Hill and their associates?

A. No, sir; he never said a word to me of the kind.

Q. And you don't recall now that he mentioned Mr. Harriman?

A. I don't remember his mentioning Mr. Harriman's name.

Q. Did he inform you that it was the Union Pacific that was trying to purchase it?

A. No, sir; all that I remember about it is that there were parties evidently purchasing the stock in New York, and he
748 seemed to think it was with a view of getting control.

Q. As I understand you, then, at that time, Mr. Kennedy, you didn't have any idea who the parties were?

A. No.

Q. You don't know whether they were connected in any way with the Union Pacific or the Oregon Short Line?

A No, sir; I did not know who they were.

Q. And Mr. Morgan didn't volunteer any information in that respect?

A. I can't recall the slightest reference to anything of that 749
kind.

Q. Well, very soon after that you did learn that it was Mr. Harriman, or Kuhn, Loeb & Co., acting with Mr. Harriman and the Union Pacific?

A. After Mr. Morgan left I learned that in the newspapers; it was in the London Times—in the cable correspondence of the London Times; it had very full cable news every day, and I saw it there.

Q. Upon your return from Europe, Mr. Kennedy, did you acquire additional common stock in the Northern Pacific? 750

A. Not immediately upon my return.

Q. How soon after?

A. It was some time in the autumn; I think it was the month of August.

Q. From whom did you get that stock?

A. From J. P. Morgan & Co.

Q. Did you get that stock from him individually or in connection with Mr. Hill?

A. I got the stock from J. P. Morgan & Co. and paid J. P. Morgan & Co. for it. 751

Q. How many shares of the common did you purchase at that time?

A. I purchased 10,000 shares.

Q. How did you come to make that purchase, Mr. Kennedy?

A. I was in New York, and I was told that they wished to sell some of their stock, and I was asked if I would take any of it, and I agreed to take 10,000 shares.

Q. Had Mr. Hill spoken to you about this purchase prior to your making the purchase?

A. He admitted to me that J. P. Morgan & Co. would like 752
to dispose of some of their holdings.

Q. Did you understand at that time, Mr. Kennedy, that J. P. Morgan & Co. had purchased $16,000,000 or $18,000,000 of the stock, par value of the common, between May 1 and May 9, 1901?

A. I had no knowledge as to when they acquired it or how they acquired it.

Q. You do know, however, that J. P. Morgan & Co. had

753 purchased a very considerable amount of that stock shortly previous to May 9, 1901, did you not?

A. I don't know when they purchased it.

Q. Well, did you not purchase this $1,000,000 par value, or 10,000 shares, of Mr. Morgan at Mr. Hill's suggestion and request?

A. Mr. Hill asked—I believe suggested—if I would like to purchase any more stock, and said that they had some which they were willing to part with, and I told him that I would purchase some of it, and finally I agreed to take 10,000 shares.

754 Q. Do you know, of your own knowledge, that other gentlemen whom you have mentioned here as associates—D. Willis James, Lord Strathcona, Lord Mount Stephen, and Mr. Hill—about the same time purchased from J. P. Morgan & Co.?

A. That I didn't know anything about.

Q. Do you know now whether or not they made purchase about the same time you did from J. P. Morgan & Co.?

A. All I remember is Mr. James telling me he had taken some of the stock about the same time I did—I think in October. I might say to you, to save you trouble, that when I

755 returned on the 8th of June I left the city again on the 10th of June, and except for three or four days in the beginning of August I was not here again until the beginning of October.

Q. Did you negotiate for the purchase of this stock from J. P. Morgan & Co. personally, Mr. Kennedy?

A. I bought it from that firm and I paid them for it, as I have already stated.

Q. I mean did you conduct the negotiation yourself, or did Mr. Hill for you?

A. Mr. Hill spoke to me about it, and I told Mr. Morgan, or

756 some of his partners, I would take the stock. Mr. Hill had suggested they wanted to sell some, and I would take that much.

Q. Mr. Kennedy, when was the first suggestion made to you or by you with reference to the organization of a Central Securities Company or a Holding Securities Company? I don't know as the name was agreed upon at that time.

A. Such a thing had been talked of for a long time—some years, I think; but at the time it was first spoken of to me it only had application to the Great Northern Railway stock.

Q. When you say a long time you mean—— 757

A. Some years.

Q. How many years?

A. I can't recall how many; it was a matter Mr. Hill had talked to me about and I to him about repeatedly.

Q. What was the purpose and object of the securities company that was to be formed that you first discussed? Will you state in your own way just what the object and purpose of that company was?

A. It was simply to hold the stock which some of the principal stockholders held in one block. 758

Q. Will you give the names of the principal stockholders?

A. I have already done so, so far as I can.

Q. Then they are the same gentlemen, Mr. Kennedy, whose names you have just given here?

A. Yes, and others; I can't recall them all.

Q. And there were others included in the list, then?

A. I never saw a list, but it was talked about that the principal stockholders way back for many years, that they were getting old and might pass away, and in order to carry on the continuous policy of the company it might be well to keep the stock 759 in one block.

Q. Those gentlemen had controlled the management, had they not, of the Great Northern road for many years?

A. I don't know what you mean by control.

Q. Well, they had had a majority of the stock, had they not?

A. I don't think they had a majority, but they had a considerable amount of it; I don't know whether it was a majority.

Q. Hadn't those gentlemen, Mr. Kennedy, dictated the policy of the Great Northern road for many years?

A. There wasn't any dictation about it; they were stock- 760 holders, and were working in harmony, and had a large holding in the property so far as we were shareholders, and had a right to vote; we voted and elected our directors.

Q. And you had voted together?

A. I always sent my proxy to Mr. Hill, and I suppose the others did the same. I had no knowledge on the subject.

Q. You are unable to state whether or not those gentlemen whose names you have mentioned there controlled or held a majority of the stock in the Great Northern or not?

761 A. I can not say.

Q. Now, since 1889, Mr. Kennedy, so far as you know, had there been any opposition to the policy of the road as Mr. Hill had been conducting it? Had there?

A. No; so far as I know.

Q. And Mr. Hill in connection with yourself and other persons whose names you have given here suggest the names of the directors?

A. No, sir; I never did.

Q. Didn't?

762 A. No, sir.

Q. There never had been any contest over any election of directors of the Great Northern road to your knowledge?

A. Not so far as I know.

Q. Was it the object and purpose of this securities company to own and hold a majority of stock in the Great Northern as originally outlined?

A. There was no determination what it would be. The object was to offer the stockholders an opportunity to come in when the thing was first talked of some years ago; it was thought
763 of forming a holding company to hold the stock of the principal holders, and I don't remember who, but it was suggested to offer every stockholder the same opportunity. The idea was to give them an opportunity to come in or not, just as they pleased.

Q. Do you mean to say, Mr. Kennedy, that the plan has matured so far as it related to the Great Northern road was concerned was to form this securities company and give every stockholder a chance to turn in his stock to the Northern Securities Company?

A. Yes; if he chose to do so.

764 Q. And to take in return therefor stock of the Northern Securities Company?

A. Yes, sir; that was not the original plan.

Q. I understand.

A. But as finally consummated.

Q. I don't mean as finally consummated, Mr. Kennedy, but up to the time when you and Mr. Hill first discussed the question of taking in the Northern Pacific, up to that time had you matured your plan to that point where you would allow all the

stockholders of the Great Northern to come into the securities company? 765

A. I don't remember when that was determined; but it was finally determined to offer them that opportunity.

Q. Would there have been any object, as you understand it, in having formed the Northern Securities Company merely for the purpose of having all of the stock of the Great Northern turned into that company? Would you simply have another company without any particular object?

A. I don't understand your question.

Q. As I understand you, Mr. Kennedy, the original proposition was to form a central company for the purpose of holding the shares of some of the old stockholders who had for many years acted in harmony and together? 766

A. Yes.

Q. That is correct, is it?

A. Yes.

Q. Now I want to know, if prior to the time when you had agreed upon a company for the purpose of taking in the Northern Pacific, you had agreed among yourselves not to allow all the stockholders of the Great Northern, if they saw fit to come in and turn in their stock to the Northern Securities Company and take stock therefor? 767

A. I can't tell when that thing was determined on, but it was determined on finally, as I have already told you, and gave an opportunity to all the stockholders to come in if they wished to do so.

Q. Let me suggest this: Didn't they determine to give an opportunity for all the stockholders of the Great Northern to come in? Didn't that agreement on your part and your friends come up after you had made up your mind to take in the stockholders of the Northern Pacific? Isn't that the way that came about? 768

A. Well, I can't remember the time when it was done.

Q. Do you remember when the matter of taking in the Northern Pacific stockholders was first suggested?

A. I don't remember when it was first suggested.

Q. Approximately?

769 A. It was some time in the autumn of last year.

Q. You at that time knew that Mr. Hill, yourself, and J. P. Morgan & Co., and these other gentlemen whom you have mentioned as your associates, you knew at that time that those gentlemen held a majority of the common stock of the Northern Pacific, did you not?

A. I didn't mention these gentlemen as my associates. You say that.

Q. Well, I used Mr. Hill's language. I will call them Mr. Hill's associates.

770 A. Call them anything you like but my associates.

Q. All right, we will not dispute about that. [The question was read to the witness.]

A. I was so informed.

Q. Now, do you remember who suggested taking in the stockholders of the Northern Pacific?

A. I do not.

Q. Now, Mr. Kennedy, is it not a fact that in the autumn of 1901 Mr. Hill, J. P. Morgan & Co., D. Willis James, George F. Baker, Lord Strathcona, and Lord Mount Stephen held a

771 majority of the stock of the Great Northern and of the Northern Pacific?

A. I can't speak as to a majority of the Great Northern; I I don't think they hold a majority of the Great Northern; I am pretty sure they don't, but we did hold a majority of the stock of the Northern Pacific; at least, I was so informed.

Q. Now, at that time the suggestion came up of making a securities company, organizing a securities company for the purpose of carrying the stocks of you gentlemen in both roads, did it not?

772 A. Yes, sir.

Q. And later on it was decided to throw the privilege open to any and all stockholders of the Great Northern, was it not?

A. Yes, sir; I think that was it.

Q. It was the expectation and purpose of you gentlemen at that time, when you conceived the idea of organizing the Northern Securities Company, to acquire the stocks of both roads. I say it was your expectation and intention and purpose to have the new securities company acquire a majority of the stocks of

both roads, the Great Northern and the Northern Pacific, was it not? 773

A. It was our intention to have a majority of the Northern Pacific, but as to the Great Northern, it was simply an intention to let the members in who chose to come in, and it remained to be seen whether it would be a majority or minority.

Q. Why did you plan on getting a majority of the Northern Pacific and not of the Great Northern, Mr. Kennedy?

A. Well, my idea was in consequence of what took place last May; we didn't want to be subject to such an attack as took place last year. 774

Q. You wanted to have a majority of the stock of the Northern Pacific where you could absolutely control it?

A. Yes, sir.

Q. Under all circumstances?

A. Under all circumstances.

Q. And so far as the Great Northern road was concerned, it was regarded as practically certain to all intents and purposes that Mr. Hill, yourself, J. Pierpont Morgan, and George F. Baker controlled the Great Northern?

A. I don't remember anything of the kind ever coming up. 775

Q. Mr. Kennedy, it was practically certain that Mr. Hill, yourself, and a few others controlled the Great Northern?

A. I suppose we had enough stock to have controlled an election if there had been no combination against us.

Q. You had no fears, Mr. Kennedy, that the Union Pacific nor the Canadian Pacific, nor any other railroad company could go into the market and buy up a majority of the Great Northern?

A. I don't remember thinking anything about it.

Q. Well, why did you distinguish? You say you wanted a majority of the Northern Pacific where you could absolutely control it so as to prevent another such occurrence as that of May 9. 776

A. Yes.

Q. Weren't you equally anxious to prevent the possibility of such an occurrence with reference to the Great Northern?

A. I think those who were called Mr. Hill's associates had enough stock to prevent anything of that kind.

Q. That is what I am getting at, so that when you planned

777 absolutely to hold a majority of the Northern Pacific and have that turned into the securities company, and to turn in the stock of yourself and Mr. Hill's associates in the Great Northern, you knew that you were controlling enough stock of the Great Northern so it could not be purchased by a rival interest?

A. I don't know that absolutely.

Q. You felt pretty certain of it?

A. I thought it was probable.

Q. You were just as anxious to prevent an attempt to buy up a majority of the Great Northern by a rival interest as you
778 were to prevent an attempt to buy up a majority of the Northern Pacific, weren't you?

A. I didn't want an attack in either case.

Q. That is what I am getting at—that is, a purchase by a rival interest of a majority of the stock of either the Great Northern or the Northern Pacific was a thing which you were trying to prevent, was it not?

A. Yes, sir; that was our idea; at least, that was my idea; I speak for myself.

Q. And wasn't that idea discussed, Mr. Kennedy, between
779 you and Mr. Hill and others at the time of the organization of the Northern Securities Company?

A. I have no recollection of any discussion on that point.

Q. You say you had that idea; didn't you discuss that matter with Mr. Hill?

A. No; I don't remember any discussion of it.

Q. Didn't you hear any reference made by any of your friends, or by Mr. Hill's associates with reference to the object and purpose of preventing another attack on either the Great Northern or the Northern Pacific?

780 A. I remember that being talked of in connection with the Northern Pacific, but I have no recollection of it in connection with the Great Northern.

Q. It was a fact, Mr. Kennedy, that so far as your own feelings went you were perfectly satisfied that a successful attack could not be made on the Great Northern?

A. I was satisfied of this, that if we held the controlling majority of the stock of the Northern Pacific the chances were remote that they would make an attack on the Great Northern.

Q. Now, it was finally determined, Mr. Kennedy, after it 781
was decided to take in a majority or more of the stock of the Northern Pacific, to throw open the privilege to all the stockholders of the Great Northern to go into the Northern Securities Company?

A. Yes, sir.

Q. And was that done for the purpose of placing a majority of the stock of the Great Northern in the Northern Securities Company, as well as a majority of the Northern Pacific?

A. I think not. The idea was to give the Great Northern stockholders who might desire to come in an opportunity to 782
come in, that they might not feel that they were not fairly treated if certain persons went in and other persons left out.

Q. Now, you gentlemen, Mr. Morgan, Mr. Hill, and his associates and yourself, at the time you conceived and agreed upon the plan of organizing the Northern Securities Company, agreed among yourselves to turn in a majority of the stock of the Northern Pacific into the securities company, did you not?

A. I don't remember of any special agreement made on that subject. I think it was understood they would turn it in.

Q. So as to place a majority of the Northern Pacific abso- 783
lutely in the Northern Securities Company?

A. Yes, sir; that was my idea.

Q. And so far as you know that was the idea of the other gentlemen associated with you?

A. I suppose it was. I have no information on that point.

Mr. STETSON. Northern Pacific common or preferred, or what?

Q. Common. Was it the purpose or intention of you gentlemen at the time you organized the Northern Securities Company to place the stock of that company upon the market for miscellaneous purposes? 784

A. I don't remember that being suggested or discussed.

Q. Was it the object or purpose of the Northern Securities Company—that is, was it talked over and agreed among you gentlemen that the Northern Securities Company was to acquire other stocks beside the Great Northern and Northern Pacific?

A. That was spoken of as a possibility.

Q. But the primary object and purpose was to acquire the stocks of the Great Northern and Northern Pacific?

785 A. That was the first object.

Q. And that was practically the only object that was discussed, wasn't it, Mr. Kennedy, at that time?

A. Well, there were discussions about what might take place afterwards in regard to other properties, but nothing definite was arrived at; but such things were suggested as a possibility.

Q. You were a director, Mr. Kennedy, of the Northern Securities Company?

A. Yes, sir.

Q. And you stated, but I have forgotten, when you were
786 elected; I think, in November?

A. I think it was some time in November.

Q. Have you attended the meetings of the board of directors of the Northern Securities Company since its organization?

A. I attended one meeting of the directors.

Q. And only one?

A. Only one of the directors; possibly two meetings of the executive committee.

Q. Are you a member of the executive committee?

A. Yes, sir.

787 Q. How much stock of the Great Northern Railway Company has been turned in and exchanged for the stock of the Northern Securities Company?

A. I don't know.

Q. You know approximately, don't you?

A. No, sir; I don't.

Q. Well, do you know whether it is 50,000,000, or 75,000,000?

A. It would be a mere guess; I don't know.

Q. Well, have you turned in all of your stock, Mr. Kennedy?

788 A. Yes, sir.

Q. And when?

A. I turned it in shortly after the formation of the company.

Q. And you had at that time 96,000 or so?

A. About 96,000 of the Great Northern and 40,000 of the Northern Pacific.

Q. Do you know, Mr. Kennedy, how much of the Northern Pacific stock, the common, has been turned in in exchange for Northern Securities Company?

A. Only by hearsay; I understand about 150,000,000 out of 789
155,000,000.

Q. Haven't you heard anything about the number of shares of the Great Northern turned in?

A. No, sir.

Q. Haven't you made any inquiry?

A. No, sir; I have been out of town. I have not been in the office for the past four weeks.

Q. Was there a large amount of stock of the Great Northern turned in immediately after the organization of the securities company? 790

A. I don't know how much was turned in. I turned in mine, and I heard that others had turned in stock, but how much I do not know.

Q. Is it a fact that that stock, yours and your friends, was turned in immediately after the organization of the company?

A. I don't know how soon it was. I turned mine in very soon after the organization of the company.

Q. Has there been any stock of the Great Northern Road turned into the Northern Securities Company since the 31st day of December, 1901? 791

A. I don't know.

Q. Have you ever attended a meeting of the executive committee where it was decided and determined not to receive stock of the Great Northern?

A. I have no recollection of such a matter being suggested at any meeting I have attended.

Q. Has it ever come to your knowledge, Mr. Kennedy, that the stock that has been offered by holders of the Great Northern has been turned in in blank?

A. I know nothing whatever about that. 792

Q. Do you know of any stock of the Great Northern Road being held by people outside as trustees of the Northern Securities Company?

A. No, sir; I never heard of such a thing.

Q. Mr. Kennedy, are you able to state, of your own knowledge, that a man holding Great Northern stock can go to the Northern Securities Company to-day and turn in his stock at $1.80 and get stock of the Northern Securities Company?

793 A. I don't know, sir, whether he can or can not. I think, in a circular that was issued, a time limit was put on it. Whether that has been extended or not I don't know.

Q. How long has it been since you attended a meeting of the executive committee?

A. It must be more than a month ago. I left the city on the 19th of February, and I have not been to the company's office since, nor attended any meetings since.

Q. Mr. Kennedy, up to the time of the last meeting, did you know that the stock which had been turned in or offered, all
794 stock which had been offered by holders of the Great Northern, had been received by the securities company, and held by the securities company; do you understand what I mean?

A. No; I don't understand what you mean.

Q. I suppose, Mr. Kennedy, the stock which you yourself turned in was indorsed to the Northern Securities Company, was it?

A. Yes, sir; I transferred it to them.

Q. Now, the other stock, as you understood it at the time, that was turned in immediately on the organization of the com-
795 pany was transferred by the holders direct to the Northern Securities Company?

A. I suppose so.

Q. Now, I want to know if up to the time of the last meeting, which you say was about a month ago, which you attended——

A. No; I said I went out of the city a month ago, and I do not remember when the last meeting previous to that time was. I think it must have been one or two weeks before.

Q. Well, up to the time of the last meeting that you attended, had the stock which had been tendered to the Northern Securities
796 Company, by different holders, been indorsed direct to the securities company?

A. I don't know that, sir; I know nothing about it. I have no knowledge of that matter and know nothing about it.

Q. Mr. Kennedy, did you have anything to do, as a member of the board of directors or as a member of the executive committee, with electing some of the vice-presidents for the purpose of transferring the stock or issuing stock?

A. I remember there were certain persons appointed to sign

certificates of stock, but I can not recall the names. I remember it came up. I think at a meeting of the executive committee. 797

Q. Do you remember how many you appointed?

A. I do not remember, but I remember there were some appointed in case they might be needed and I think they were never used.

Q. Were there four appointed?

A. I do not remember.

Q. But you do remember the fact that there were some gentlemen appointed? 798

A. Yes, sir.

Q. Simply to issue stock?

A. To sign certificates.

Q. Do you know, Mr. Kennedy, that stock has been turned in and delivered to the Northern Securities Company in blank and without being indorsed and the stock of the Northern Securities Company issued in payment for it?

A. I have no knowledge of it and never heard of such a thing.

Q. And you are not aware that any such stock to any amount has ever been turned in by anybody and so held by the Northern Securities Company? 799

A. No, sir; I never heard of such a thing.

Q. Do you know, Mr. Kennedy, whether or not there are any outsiders holding Great Northern stock which in reality belongs to the Northern Securities Company?

A. I do not, sir.

Q. Did you have anything to do with the purchase of the Northern Pacific common made by Mr. Hill of J. P. Morgan & Co. in November or December of last year. 800

A. No; nothing to do with that.

Q. Did you know, Mr. Kennedy, of Mr. Hill's purchasing some eleven or twelve millions of the Northern Pacific Company of J. P. Morgan & Co.?

A. I remember his telling me he had purchased a block of stock, but I do not remember the amount.

Q. Was it not somewhere in the neighborhood of ten or twelve millions?

801 A. I really can not remember.

Q. But you had nothing to do with that?

A. Nothing to do with it.

Q. And took no part in it?

A. I told you I took 10,000 shares; that is all the stock I took.

Q. That was earlier, was it not?

A. That was in August. What was purchased since then I know nothing about.

Q. You purchased no other stock of the Northern Pacific
802 from August to the present time?

A. No, sir; not a single share. Well, I will not say that. Of course I got my share of the certificates that were issued to the common stockholders. I got that, certainly, if you call that a purchase, but I purchased no stock in the market.

Q. At the time of the retirement of the Northern Pacific preferred you took advantage of the subscriptions offered to holders of the common?

A. Yes, sir; I did.

Q. And you turned in those certificates directly to the
803 Northern Securities Company, and took your stock from the Northern Securities Company?

A. No; my recollection is that I turned them into the Great Northern Railroad Company, and took the certificate of stock and transferred that.

Mr. STETSON. You mean the Northern Pacific?

A. Yes; I mean the Northern Pacific, and then turned the stock into the Northern Securities Company.

Q. Was the stock of the Northern Pacific Company actually issued to you, Mr. Kennedy, personally?

804 A. My recollection is it was.

Mr. LANCASTER. Was that uniformly done, Mr. Stetson?

Mr. STETSON. I think so. I do not know. This was a stockholders' transaction, and I do not know anything about it.

Q. Well, so far as your recollection goes, Mr. Kennedy, you would state that the Northern Pacific Company issued to you your proportionate share of the new issue of common stock?

A. They issued my proportionate share of certificates of indebtedness, which were convertible into common stock.

Q. Now, did they issue the common stock? 805

A. My recollection is that I surrendered those and got the common stock, and I sold that to the Northern Securities Company and got their certificates for it.

Q. So, originally, your proportionate share of common stock was issued to you personally?

A. That is my recollection.

Q. And turned in by you to the Northern Securities Company?

A. Yes, sir.

Q. And in return therefor you received your proportionate 806 share of the new stock of the Northern Securities Company?

A. That is the transaction as I remember it.

Q. Mr. Kennedy, were you consulted by Mr. Hill with reference to the purchase of Mr. Harriman's stock, or the stock held by the Union Pacific or the Oregon Short Line, in the Northern Pacific?

A. I was not.

Q. Did you know anything about such purchase?

A. No; nothing whatever about it.

Q. Did you know anything about any agreement between 807 Mr. Hill or his representative and Mr. Harriman or Kuhn, Loeb & Co. with reference to the disposition of the common stock held by Mr. Harriman?

A. I knew nothing at all about it.

Q. Did you know anything about the purchase by Mr. Morgan of any of the Harriman stock in the Northern Pacific?

A. All I remember is hearing—I don't know whether from Mr. Hill or J. Pierpont Morgan—that that interest had agreed to turn in their stock; but that is all I know about it and all I remember about it. 808

Q. Had agreed to turn it into what?

A. I think to turn it in to J. P. Morgan & Co. I think it was sold to J. P. Morgan & Co., as I remember it.

Q. So that you did know, during the summer or fall of 1901, that the Harriman interests were to dispose of their holdings in the Northern Pacific to J. P. Morgan & Co.?

A. I remember hearing something said about it; but that is all. I knew nothing about it, except that they had turned their stock in to J. P. Morgan & Co.

809 Q. Didn't Mr. Hill confer with you about financing or assisting in financing that transaction?

A. No, sir; he never consulted me, nor said anything with regard to it. He may have mentioned the matter casually, but I have no recollection of it.

Q. Did you know how much of the common stock of the Northern Pacific Mr. Harriman had?

A. I remember hearing that he, or parties whom he represented, had about $37,000,000 of the common stock; I think a fraction over.

810 Q. And that common stock, you understood, was to be taken by J. P. Morgan & Co.?

A. I have no recollection what was to be done with it, except I understood arrangements had been made with J. P. Morgan & Co.

Q. Now, you returned from Europe June 8, you stated?

A. Yes, sir; that is my recollection; the second Saturday in June. I think it was the 8th.

Q. Were you present at a meeting of the board of directors of the Northern Pacific, held on July 23, 1901?

811 A. I was not, sir; I was not in the city then, as I have already told you.

Q. Were you consulted with reference to the resignations which took place at that time, July 23, 1901?

A. No, sir; I was not.

Q. You know, as a matter of fact, there were four or five resignations on the board?

A. Yes; of course I knew that.

Q. And you were consulted with reference to who should be put on in place of those men?

812 A. No, sir; I was not.

Q. You had nothing whatever to do with the substitution or election of the new men?

A. Nothing whatever.

Q. When did you first learn that Mr. Harriman was put on the board?

A. I first saw it in the newspapers.

Q. Did you attend the annual meeting of the Chicago, Burlington and Quincy Railroad Company at the last annual meeting?

A. No, sir; I did not—not the Chicago, Burlington and 813
Quincy Railroad Company.

Q. Railway Company?

A. I was not aware that they had had an annual meeting. If they had, I had not heard of it.

Q. I guess that is so; that is the new company. Did you have anything to do with suggesting the name of Mr. Harriman for a director on the Chicago, Burlington and Quincy Railway Company?

A. No, sir; nothing whatever.

Q. Do you know how he happened to be placed on the board? 814

A. I do not know.

Q. Do you know how he happened to be placed on the board of the Northern Pacific on July 23, 1901?

A. I do not know, except I believe he was nominated by Mr. Morgan. I think there was some understanding that Mr. Morgan was to constitute the board, after the troubles of last May, and in nominating some new members of the board he named Mr. Harriman as one of them. That is all I know about it.

Q. Did Mr. Morgan nominate him for a director of the Chi- 815
cago, Burlington and Quincy Railway Company?

A. I don't know.

Q. You don't know how he came to be nominated there?

A. I do not.

Q. He was not a large holder in the Chicago, Burlington and Quincy, was he?

A. I do not know what he holds.

Q. As a matter of fact, the Northern Pacific and Great Northern holds all the stock of the Chicago, Burlington and Quincy Railway Company, don't it; they were the joint owners of all 816
the stock of that company?

A. Whatever stock was issued, I believe they were the joint owners, but I know nothing about the details.

Q. You did not understand that Mr. Harriman was interested in any way, shape, or manner in the Burlington road?

A. I don't know what his interest is.

Q. Well, you understood, Mr. Kennedy, that the Chicago, Burlington and Quincy Railroad Company—that all of that stock

817 had been put up and was placed as collateral to the joint bonds of the Northern Pacific and the Great Northern Railroad in the hands of the Central Trust Company?

A. I understand that a large majority was put up and placed in the hands of the Standard Trust Company——

Q. That is right——

A. And a joint bond was issued by the two companies, the Northern Pacific and Great Northern, in payment.

Q. When you say a large majority, you mean 98 or 99 per cent?

818 A. I do not know what the percentage is, but practically the whole of it.

Q. Did you understand that Mr. Harriman held any of the balance of the 1 or 2 per cent?

A. I had no knowledge on the subject.

Q. You knew that Mr. Harriman was made a member subsequent to May 9, 1901, of the Chicago, Burlington and Quincy Railroad Company, too?

A. I was not aware of that.

Q. Didn't you know that Mr. Schiff was also made a mem-
819 ber of the board of directors of the Chicago, Burlington and Quincy Railroad Company?

A. I think he is a member of that board.

Q. And did you know that Mr. Mortimer L. Schiff was also a member of the board of directors of the Chicago, Burlington and Quincy Railway Company?

A. Yes, sir.

Q. And knew he was the son of Jacob H. Schiff?

A. Yes, sir.

Q. Do you know of your own knowledge how either Mr.
820 Harriman or Mr. Schiff, Mortimer or Jacob H., came to get on those boards?

A. I do not.

Q. You don't know that either one of them held any stock in either of the roads?

A. I know nothing on that subject whatever.

Q. You knew that Mr. Harriman was a member of the board of directors of the Northern Securities Company?

A. Yes, sir.

Q. And also Mr. Jacob H. Schiff? 821

A. Yes, sir.

Q. Did they turn the Northern Pacific common in exchange for the stock of the Northern Securities Company?

A. I don't know what they turned in.

Q. Do you know whether or not they were stockholders of the Northern Securities Company?

A. I think they must be, or they would not be on the board of directors.

Q. Do you know whether they held merely enough to qualify or are large holders? 822

A. I don't know.

Q. Were you consulted with reference to their being on the board?

A. No, sir.

Q. Don't know about them being placed on the board?

A. I think at the time the board was elected the list was submitted to me of the names to be on the board, and their names were on that list.

Q. Who submitted the names to you?

A. As near as I remember, I think it was Colonel Clough. 823 I won't be certain; I think it was.

Q. Did you make any inquiries as to why Mr. Harriman or Mr. Schiff were on that board?

A. No, sir.

Q. You didn't understand that either one of those gentlemen were interested in the Northern Pacific, did you?

A. As an impression, I would say my impression was that they were interested in the Northern Securities Company through stock that had either belonged to them, or a portion belonged to them, that had been transferred to the Northern Securities Com- 824 pany, but I don't know; I have no knowledge on the subject.

Q. Didn't Mr. Harriman sell his stock to J. P. Morgan & Co. in the Northern Pacific in the fall previous?

A. I understood he had, or the greater portion of it.

Mr. STETSON. You are continually referring to the summer and fall. Ask Mr. Kennedy the direct question whether he knows the time.

Q. Do you know the time, Mr. Kennedy, when Mr. Harriman sold his stock in the Northern Pacific to J. P. Morgan & Co.?

825 A. I do not.

Q. Approximately?

A. I think it was some time in the autumn last year.

Q. Did you understand, Mr. Kennedy, that at the time the Northern Securities Company was organized, and this board of directors, and this list submitted to you by Mr.—Colonel Clough——

A. Or whoever it was——

Q. I know, but you suggested him.

A. I qualified that.

826 Q. Do you know whether or not at that time Mr. Harriman was the owner and holder of any stock in the Northern Pacific Railway Company?

A. He must have been a holder of stock, because he was a director.

Q. I mean anything more than to qualify as a director.

A. That I don't know.

Q. Did you know whether or not Jacob H. Schiff held or owned any stock in the Northern Pacific Railroad Company?

A. I don't know that, either.

827 Q. Now, Mr. Kennedy, was not there some explanation given to you as to why E. H. Harriman and Jacob H. Schiff were submitted on that list to you as directors in the Northern Securities Company?

A. I have no recollection of anything being said to me about it.

Q. You do not remember anything being said?

A. No, sir; except they were suggested as directors.

Q. Did you know that there had been any understanding or agreement with reference to the Union Pacific and the Great Northern and the Northern Pacific and the Burlington with

828 reference to the division of territory, etc.?

A. No, sir.

Q. Didn't you ever hear from your associates or from any source that any such understanding had been reached?

A. No, sir; I know nothing whatever about it.

Q. Well, in this list that was submitted to you, the name of James J. Hill appears?

A. Yes.

Q. He was a large stockholder, and had been for many years, in the Northern Pacific and Great Northern?

A. Yes, sir; I believe so. 829

Q. And in that list, John S. Kennedy—that is yourself?

A. Yes, sir.

Q. You had always been a large owner in the stocks of both roads?

A. Yes.

Q. George F. Baker was also on that list?

A. Yes, sir.

Q. He had been a large owner and holder of stock in both roads?

A. I don't know about the Great Northern, but he had been 830 in the Northern Pacific.

Q. And D. Willis James had also been a large holder?

A. Yes.

Q. And you understood that George W. Perkins and Robert Bacon were both members of the firm of J. P. Morgan & Co.?

A. There is a Mr. Perkins and a Mr. Bacon, both members of that firm.

Mr. LANCASTER. It is conceded, is it not, that G. W. Perkins is a member of the firm of J. Pierpont Morgan & Co.?

The WITNESS. I don't know his initials. 831

Mr. STETSON. There is a firm of J. P. Morgan & Co., but not J. Pierpont Morgan & Co.

Q. You understood at that time that both Mr. Perkins and Mr. Bacon were members of the firm of J. P. Morgan & Co.?

A. Yes.

Q. And that J. P. Morgan & Co. were large holders and owners of Northern Pacific stock?

A. I supposed they were.

Q. You knew Samuel Thorne?

A. Yes. 832

Q. Was he an owner and holder of stock of the Northern Pacific and Great Northern?

A. I don't know about Northern Pacific. He was in the Great Northern.

Q. And Daniel S. Lamont?

A. I don't know whether he held stock in the Great Northern, but he did in the Northern Pacific.

Q. Colonel Clough?

833 A. I don't know about his holding. He was a stockholder in the Great Northern for years.

Q. And Mr. Lamont had been identified with the Northern Pacific?

A. Yes, sir.

Q. And James Stillman—who was he?

A. President of the City Bank. I supposed everybody knew him.

Q. No; I don't know him. Was he a stockholder, Mr. Kennedy?

834 A. He must have been a stockholder of the Northern Pacific, because he is a director. What his holdings are I know nothing about.

Q. He had been a stockholder of the Northern Pacific Railway Company?

A. He must have been, because he was director from the time of reorganization and since.

Q. He has been actively identified with the Northern Pacific for several years?

A. I don't know whether he has been or not. He has been
835 a director; that is all I know.

Q. At the time when this list was shown to you it contained names of men who had been to a greater or less extent identified as directors or large stockholders in both the Northern Pacific and Great Northern, except Jacob H. Schiff and E. H. Harriman?

A. I don't know whether the others were largely connected with both roads or not. I don't think you have mentioned all the names.

Q. Nicholas Terhune. I find he is a transfer agent of the
836 Great Northern Railway Company.

A. Yes, sir.

Q. I never heard of him before, and I find that counsel of the Northern Pacific never did so. I conclude that he has not been very active with either of them?

A. I don't know.

Q. Do you know who he is?

A. He is transfer agent and holds some official position in the Great Northern office.

Q. I think I have named them all, Mr. Kennedy, except 837
E. H. Harriman and Jacob H. Schiff, and I say that all of those men had been either actively identified with the Northern Pacific or Great Northern in its management or had been large stockholders in those roads, excepting those two men.

A. Mr. Schiff was a large stockholder in the Great Northern, and was, at the time you refer to, a director in the Great Northern.

Q. Did you know what time he resigned?

A. I do not know that he ever resigned, but at the last election his time had expired and somebody else was elected in his 838
place—last autumn.

Q. He was a director, then, up to the time——

A. Of the last election, and had been for some time previously.

Q. I omitted George C. Clark. Do you know who he is?

A. Yes. He is Mr. Clark of the firm of Clark, Dodge & Co., bankers.

Q. Was he an owner and holder of stock in either road?

A. I don't know; I suppose he was, but I don't know.

Q. You don't know anything about that?

A. I do not. 839

Q. Well, you understood that at the time you saw this list here of names proposed, including Mr. Harriman and Mr. Schiff, that there was a complete understanding between the rival interests of the Union Pacific on one side and the Great Northern and Northern Pacific and Burlington on the other?

A. I had no information on the subject.

Q. And you made no inquiry?

A. No.

Q. You accepted the list as all right, without making in- 840
quiries?

A. Yes, sir; I accepted it as all right, and that they were the men to be elected, and that it was all right.

Q. You say that Mr. Schiff had been a director of the Great Northern for some years?

A. I think for two or three years. I think the directors are elected for three years, one-third each year. I think he had been a director for three years and that his term expired last autumn.

841 Q. You knew Mr. Schiff's and Mr. Hill's relations were somewhat unfriendly at that time, didn't you, in the autumn of 1901?

A. I don't know.

Q. Don't you know that their relations had become strained, and badly so?

A. I don't know. Mr. Hill, I believe, dined with Mr. Schiff a while ago. A man would not invite another to dine at his house if they were not friendly.

Q. I am not referring to their making up. I am referring
842 to last fall, and ask you if you know that their relations were not somewhat strained?

A. Yes, sir; I do. I think there had been some friction between them.

Q. Mr. Schiff was a member of Kuhn, Loeb & Co.?

A. Yes, sir; I think he is the senior member of that firm.

Q. And you understood that Kuhn, Loeb & Co. had attempted the purchase of the Northern Pacific stock for Mr. Harriman.

A. I don't know that. I was not here, I told you. I was not here and know nothing about it.

843 NEW YORK, *Thursday afternoon, March 28, 1902.*

JOHN S. KENNEDY, being recalled in behalf of the defendant, testified as follows in answer to questions by Mr. Kellogg:

Q. Mr. Kennedy, referring to your testimony as given by you on direct examination, you stated in substance that Mr. Hill, Mr. Baker, D. Willis James, Lord Mount Stephen, and Lord Strathcona purchased in the neighborhood of 26,000,000 of Northern Pacific stock. Did you mean that those four gentlemen purchased the whole 26,000,000?

A. No, sir; I think I said "about." I could not tell the
844 amount of that block of stock, but I understood that these gentlemen, with others, united in purchasing that stock.

Q. Now, did they unite in a joint purchase, or did each one buy the stock for himself?

A. Oh, each one for himself.

Q. That is, each one bought it separately?

A. I bought mine for myself, and paid for it, and nobody else.

Q. It was an individual holding and not a joint holding? 845

A. Yes, sir; an individual holding. Not a joint holding.

Q. On page 218 of your testimony as paged in the copy that I have, referring to this same Northern Pacific stock which you purchased, your answer is, in substance, that you may have sold a little, and your answer is as follows: "I held the greater part of it. I sold a little of it some time after, but by far the larger portion I held right along and hold it now."

A. I meant I held it till I sold it to the Northern Securities Company.

Mr. BULKLEY. I think he explained that afterwards. 846

Mr. KELLOGG. No; I read it carefully and he didn't explain it.

Mr. BOUTELLE. I think he said he turned it all in to the Northern Securities Company.

Mr. KELLOGG. I guess he intended to say that.

Q. Did you hold any stock in the Northern Pacific jointly with anybody else, or did you have any agreement or understanding with anybody as to how you should handle or sell or vote your stock in the Northern Pacific?

A. No, sir; never did. 847

Q. So far as you held and these other gentlemen, do you know whether they held theirs individually or as joint purchases?

A. I don't know, but I suppose as an individual purchase.

Q. Well, as far as you know, was there any agreement between these gentlemen in their Northern Pacific purchases that they should act together, or sell together, or vote together, or handle it together in any way?

A. There was none on my part. I never heard of any agreement of that sort with anybody.

Q. You referred to the holdings of the company occasionally 848 when you referred to the Northern Securities Company. Did you mean simply to hold stocks or to own it?

A. To own it.

Q. In the transfer or sale of your stock to the Northern Securities Company you sold it absolutely, did you?

A. I sold it absolutely to the Northern Securities Company.

Q. You have no control over it?

A. No control over the stock. I have over the Northern

849 Securities Company stock, of course, but not over the stock that I sold them.

Q. The stock that you received from the Northern Securities Company you own yourself?

A. Individually; yes.

Q. Have you any agreement or arrangement as to how you shall vote or handle that?

A. None whatever. Never heard such a thing suggested.

Q. You stated in your direct examination that the stockholders of the Great Northern Railway Company acted in har-
850 mony. What do you mean by that?

A. I mean by that that, that so far as I am aware, there never was any question at an election, or any question ever came up or a difference between the different stockholders; at every annual meeting when an election was held that the stockholders were perfectly harmonious.

Q. They were satisfied, were they, with the management of Mr. Hill?

A. Satisfied with the management of Mr. Hill.

Q. In referring to the stock that you bought of J. P. Mor-
851 gan & Co., at the suggestion of Mr. Hill, the 10,000 shares, did you buy that individually for yourself or did some one else have an interest in it?

A. I bought it for myself.

Q. The same answers would apply to that——

A. No one had any in it whatever except myself.

Q. On page 229 of the testimony, in stating one of the purposes of the securities company, you said it was simply to hold the stock which some of the principal stockholders held in one block. Did you mean by that that the securities company was
852 to hold it in one block or the principal stockholders of the Great Northern held it in one block?

A. I don't remember saying that, but what I undoubtedly meant was that they were the large shareholders in the Great Northern Railroad, and so far as I know had always sent their proxies to Mr. Hill, and they were agreed to put their stock into this securities company.

Q. You did not mean by that that the large shareholders of the Great Northern held their stock together by any community of interest?

A. No, sir. 853

Q. On pages 233 and 234 of the testimony this question was asked you, Mr. Kennedy:

"Now, Mr. Kennedy, is it not a fact that in the autumn of 1901, Mr. Hill, J. Pierpont Morgan & Co., D. Willis James, George F. Baker, Lord Strathcona, and Lord Mount Stephen held a majority of the stock of the Great Northern and Northern Pacific?

"A. I can not speak as to a majority of the Great Northern; I don't think they held a majority of the Great Northern; I am pretty sure they don't; but we did hold a majority of the stock 854 of the Northern Pacific; at least, I was so informed."

Did you mean that those gentlemen held a majority of the Northern Pacific?

A. Not those gentlemen, but others who were friends of Mr. Hill; who they all were I don't know.

Q. That was the common stock?

A. The common stock.

Q. You didn't mean the total stock?

A. No, no; the common stock.

Q. Did you understand that the formation of the securities 855 company was in any way conditioned upon its acquiring a majority of the stock of both railroad companies?

A. No, sir; no such condition.

Q. Well, was it or was it not decided to form it whether it procured——

A. Whether it procured a majority or whether it did not.

Q. Was there ever any agreement, so far as you know, between the stockholders of the Northern Securities Company that any set of men, so far as you know, were to control the Northern Securities Company? 856

A. I never heard of such a thing.

Q. Or any control over it other than comes through a majority of the ownership of the stock?

A. That is the only way. Each man owns his own stock and can do as he likes with it.

Q. Did you know of any agreement between the majority stockholders of the Northern Pacific Company that they would all turn their stock in or sell it to the Northern Securities Company?

857 A. I know of no such agreement; never heard of it.

Q. So far as you know, did or did not the stockholders act individually as they saw fit?

A. They all acted individually.

Q. In selling their stock to the Northern Securities Company?

A. Certainly; I did, I know, and I suppose all the others did the same.

Q. When you say that Mr. Hill, yourself, and a few others had Great Northern stock enough so that by acting together an election could be controlled, or might prevent an adverse
858 combination, do you mean by that that you owned stock enough to vote a majority of the Great Northern stock, you and Mr. Hill and your friends?

A. No, sir; I did not mean that.

Q. What did you mean?

A. I meant that the affairs of the company had always been conducted harmoniously. I never heard of any trouble at any election, and Mr. Hill and the other gentlemen you have named and myself had such a large amount of stock that it would be very apt to control any election, unless some hostile parties
859 came in and were successful in securing the balance of the stock, which constituted a majority.

Q. Do you know whether the Great Northern stock was what you would call a speculative stock that changed hands rapidly or not?

Mr. BOUTELLE. That is objected to as not proper cross-examination and immaterial.

A. No, sir; it was not a speculative stock.

Q. Now, in the organization of the Northern Securities Company, or previous to the organization of the Northern Securities
860 Company, was there any question made or any discussion that that company was organized for the purpose of acquiring a majority of the stocks of both those railroads for the purposes of maintenance of rates, railroad rates, suppression of competition, or controlling competition or commerce on those roads?

Mr. BOUTELLE. Objected to as not proper cross-examination and incompetent, irrelevant, and immaterial.

A. I have never heard of such a thing. I never heard such a thing suggested in any quarter whatever.

Q. Do you know whether a majority of the stockholders of 861
each of those companies, the Great Northern and Northern Pacific, ever got together and agreed to form the Northern Securities Company? Did you ever hear of anything of that kind?

A. I never heard such a suggestion. I never heard of such a meeting. I don't believe, so far as I can judge, I ever heard of any such meeting having taken place.

Q. Or any agreement between them?

A. Or any agreement between them.

Q. State whether the organization of the Northern Securities 862
Company had any relation to or anything to do with the retirement of the preferred stock of the Northern Pacific.

A. Nothing whatever.

Q. Do you know whether it had any relation or anything to do with the purchase of the Harriman stock?

A. Not so far as I know. I believe it had not, and never heard of such a thing.

Q. Do you know whether Mr. Hill had anything to do with the retirement of the Northern Pacific preferred stock?

A. Not so far as I know. 863

Q. Was the retirement of the Northern Pacific preferred stock undertaken for the purpose of giving the Northern Securities Company an opportunity to acquire the majority of the common stock of the Northern Pacific?

A. It was not.

Q. Was the retirement of that stock a part of any scheme or plan to allow the Northern Securities Company, or anyone else, to obtain a control of the majority of the Northern Pacific stock?

A. No, sir.

Q. Well, what did you understand had been the understand- 864
ing about the Northern Pacific preferred stock from the time of its issue?

Mr. BOUTELLE. Objected to as immaterial, not proper cross-examination, irrelevant, and incompetent.

A. I understood at the time the Northern Pacific was reorganized there was some question about issuing bonds or stock, and it was finally arranged to issue preferred stock with the right of redemption on the part of the company at any time—I

think, for twenty years—on any 1st of January, either in whole or in part.

Q. Now, that voting trust was dissolved about what time?

A. I think it was about the beginning of last year, as near as I remember.

Q. And the annual meeting of the Northern Pacific was in what month? Do you remember?

A. The annual meeting was, I think, early in October.

Q. Why was the directors' meeting which passed the resolution for the retirement of the preferred stock held on the 13th of November, 1901? Do you know?

A. That is the regular meeting day. I think the by-laws provide that the board shall meet on the second Wednesday of every month, and I think that was the regular meeting day.

Q. Was that the first meeting after the election?

A. Yes; I believe that was the first meeting after the election. There was no meeting held in October because it was found they could not get a quorum, so that was passed over, and the first meeting after the election was held the second Wednesday in November. I don't remember the date, but I think it was the 13th.

Redirect examination by Mr. BOUTELLE:

Q. Mr. Kennedy, when you speak of a number of parties who had acted harmoniously with Mr. Hill for a number of years past in connection with the affairs of the Great Northern road, do you refer to the parties whom Mr. Hill mentioned and to whom your attention was called on your direct examination—yourself, Mr. Baker, Lord Strathcona, Lord Mount Stephen, Mr. D. Willis James, Oliver Payne, and H. W. Cannon?

A. I am referring to the stockholders as a whole, not to a few, or those you have named, some of whom I do not know; but I refer to the stockholders as a whole.

Q. Was it a fact, Mr. Kennedy, that those parties whom I have mentioned had acted for years together in the affairs of the Great Northern road?

A. I can only answer you by saying that every meeting, so far as I can remember, when I was in this country, I sent my proxy to Mr. Hill. I had full confidence in him and his management, and I think I testified the other day when I was up

that I believed the other stockholders who had a large majority did the same. 869

Q. You testified on your direct examination that a number of the holders of Great Northern stock who had always acted in harmony had talked over for a number of years the plan and scheme of organizing a securities or holding company. Now, whom do you refer to as those parties?

A. I think my testimony was I had talked with Mr. Hill. I don't remember. I would like to have it read to me if I made such an answer.

Q. Was your familiarity, or understanding, or conference in respect to the organization of a securities company when it was first brought up confined to your talks with Mr. Hill? 870

A. So far as I remember my talks were with Mr. Hill. I may have explained to Mr. James or to some other gentlemen about it. So far as I can recollect now I can only recall conversation with Mr. Hill about it.

Q. Well, you understood at that time, did you not, who those parties were that were going into that holding or securities company?

A. I did not, except I believed Mr. Hill's friends, the gentlemen you have named, and possibly others. 871

Q. On your direct examination, as I recall it, you testified, in substance, that the original plan contemplated taking in a number of gentlemen who had always acted together and in harmony into this holding company, and that afterwards the plan or scheme was enlarged so as to give all stockholders equal opportunity.

A. I believe I testified substantially that.

Q. Now, you must have had in mind at the time that the original plan of forming a securities company was talked over certain parties who were to go into that? 872

A. Well, in talking with Mr. Hill I always took it for granted that some of the gentlemen you have named—and some you have named I don't know—were willing to go into such an organization.

Q. So that it was generally understood between all of you when this plan of forming a securities company was organized that those were the parties that were to go in?

873 A. Those were some of them.

Q. Now, were those the same parties who made the purchase of the $26,000,000 from the Northern Pacific at the time that the latter road was organized?

A. That I can not tell you, for I do not know who they all were. I think I stated in my other testimony that I could not answer that question.

Q. Well, do you know who the parties were, besides yourself and Mr. Hill, who purchased parts of that $26,000,000?

A. The only one I know of is Mr. D. Willis James. He
874 told me he had purchased some. The others I can not speak for at all.

Q. Do you know by whom the purchase of that block of Northern Pacific stock was suggested?

A. I don't know who suggested it. No; I don't know that.

Mr. KELLOGG. Do you mean, suggested to him?

Q. Yes; by whom it was suggested to you.

A. No, sir; I don't remember that.

Q. Do you know by whom the negotiations for that purchase were inaugurated and who conducted the negotiations?

875 A. I don't know, but I think it was Mr. Hill, but I won't be certain.

Q. Aren't you quite positive, Mr. Kennedy, that Mr. Hill engineered that purchase and suggested it, and that it was carried out by you gentlemen who had acted in harmony, as you stated in your cross-examination, from the beginning?

A. I can not say.

Q. Now, coming down to the stock flurry in 1901, who conducted the negotiations with Mr. Morgan for the purchase of the $10,000,000 of stock that was taken up from him?

876 Mr. KELLOGG. He explained that before. He said he bought a million of it at Mr. Hill's suggestion.

A. I told you the whole story.

Q. So that the same parties that you have already referred to were the parties who purchased that additional block of $10,000,000?

A. That I don't know. I only know what I purchased myself.

Q. When the matter of organizing the present Northern

Securities Company—I am not speaking now of the old company that was in the air, but the matter of organizing the securities company that was actually organized—was first brought to your attention, did you gentlemen who considered that subject not know pretty definitely in regard to then present holdings of Northern Pacific stock? 877

A. Of course we knew about how the stock was held.

Q. And was it not then generally understood between you that the parties who were acting with you and had acted with you during this flurry, and who had stood together, were agreed on the general plan or policy of putting their holdings into the securities company? 878

A. I don't recall any general agreement about it.

Q. I am not asking for an agreement, but wasn't it understood that that was the policy, inclination, or purpose, or wish of all of these parties?

A. Personally I supposed the majority of that stock would go into the securities company of the Northern Pacific common stock.

Q. You talked that subject over with Mr. Hill quite thoroughly, did you not? 879

A. I don't know what you would call thoroughly. We talked two or three times about it.

Q. And he informed you that he had conferred with the other parties in reference to it?

A. I have no recollection of his making any such statement as that.

Q. From whom did you obtain your personal impression that all these parties would go into the Northern Securities Company?

A. It was partly from Mr. Hill and partly from conversations with Mr. Perkins or Mr. Steele, of J. P. Morgan & Co. 880 No, I think it was Mr. Perkins.

Q. Of Morgan & Co.?

A. Yes.

Q. So that at the time you planned the organization of this present securities company it was pretty generally understood that all of you gentlemen would put your holdings in there?

A. I supposed they would. I had no positive information on the subject. They were free to do as they pleased.

881 Q. And it was your plan and purpose, and the plan and purpose of those who organized this securities company, to have the stock go in there?

A. If the people chose to sell it. We couldn't compel it.

Q. I understand that; but wasn't that your wish and purpose?

A. We thought it probable that they would. I have testified to that.

Q. And you acted upon that supposition in going ahead and organizing?

882 A. I don't know whether other people did or not.

Q. But you did?

A. That was my idea.

Q. Now, was the plan of retirement of the Northern Pacific preferred explained to you before it was put through?

A. Yes, sir.

Q. Under the plan of retirement adopted by the Northern Pacific Railway Company, you gentlemen who had laid out this plan of Northern Securities Company received a majority of the common stock, did you not?

883 A. When was that? I don't just get that.

Q. I say, when the plan was put through, you received a majority of the common stock.

A. Which plan?

Q. The plan that was actually put through.

A. The plan of redemption of the preferred stock?

Q. Yes, sir.

A. What did you say after that?

Q. I say, you gentlemen received a majority of the stock of the Northern Pacific—of the common stock?

884 Mr. KELLOGG. Whom do you refer to?

Mr. BOUTELLE. I am speaking of these same gentlemen who have been acting together all through. I don't think the witness misunderstands me.

A. I do misunderstand you. I don't think it is clear.

Q. You have already explained to us there was a number of gentlemen that had conferred together in regard to the organization of this Northern Securities Company, and that that discussion——

A. I did not tell you that, sir.

Q. Didn't you state you had talked with Mr. Hill and understood from him that all you gentlemen were favorable to that? 885

A. All which gentlemen?

Q. All the gentlemen I have referred to.

A. I told you some of them I didn't know and couldn't answe

Q. As far as you talked, that was the understanding.

A. That some of those gentlemen were willing to come in.

Q. And that was all?

A. You mentioned gentlemen's names here that I don't know. I never conferred with them. 886

Q. Didn't Mr. Hill state to you and give you to understand so that you felt practically sure that a majority of that stock was going in before the securities company was organized.

A. The impression I got was that a majority would go in, but when you ask for knowledge, I don't know.

Q. Now, Mr. Kennedy, did you understand that the board of directors of the Northern Securities Company, when that company was organized, would handle its property, or operate its property, or use its property in any other or different way from any other similar organization? Explain how similar 887 organizations would do.

A. I can not answer that.

Q. Do you understand that the Northern Securities Company, or its board of directors, would operate or control its property in any other way than any ordinary corporation would?

A. They would certainly control their property under the terms of the charter.

Q. Did you understand that they would control their property in the way that corporations ordinarily control the property that they own? 888

A. I am not familiar with the way corporations control their property.

Q. You have been a member of corporations for a great many years?

A. Yes, sir.

Q. You have been a member of boards of directors of railways for many years?

A. Yes, sir.

889 Q. And been a stockholder in various corporations?

A. Yes.

Q. What I want to know is whether you understood that the Northern Securities Company was going to control its affairs and property any different from any other corporation?

A. I supposed it would control its affairs like any corporation organized for such purposes would do.

Q. Now, what was the purpose?

A. You have got it in the articles of incorporation.

Q. Can you state any peculiarity in its purposes that would
890 take it out of the run so far as control was concerned or proprietorship, or so far as management was concerned?

A. Take it out of what?

Q. The ordinary run of corporations?

A. It would conduct business as corporations organized for similar purposes would do.

Q. Can you suggest any difference between this corporation and any ordinary corporation, so far as operating and controlling its properties are concerned?

Mr. KELLOGG. You are asking Mr. Kennedy's opinions about
891 legal questions.

Mr. BOUTELLE. I don't think so. I think this is legitimate in view of your cross-examination.

MARCH 20, 1902 (2 o'clock in the afternoon).

All parties appeared, pursuant to adjournment, and the following proceedings were had, to wit:

GEORGE W. PERKINS, after being first duly sworn, testified as follows in answer to questions by Mr. Lancaster:

Mr. KELLOGG. The defendant objects to any testimony and to each and every question and answer on the ground that it is
892 incompetent, irrelevant, and immaterial, and that the bill in equity states no ground of equitable relief and no cause of action against the defendant company. Further, that no relief can be had in this case affecting the interests of the Northern Securities Company or any of the stockholders of the Northern Pacific Railway Company without said company and said stockholders each being made parties to the bill.

It is stipulated that this objection may be considered as made

to each and every question without renewing the same as the 893
questions are asked, and it is also stipulated that this may apply to each witness without repeating the objection.

Q. J. P. Morgan & Co. is a copartnership, I believe?

A. It is; it is a private banking house.

Q. Are you a member of the firm of J. P. Morgan & Co.?

A. Yes, sir; I am.

Q. How long have you been a member?

A. About one year.

Q. And you were a member during the summer and—spring and summer of 1901? 894

A. Yes, sir; the late spring and summer.

Q. Had you been connected with that firm prior to the time you were admitted as a partner?

A. No, sir.

Q. Never had any connection with it prior to that time?

A. No, sir.

Q. I understand you were never connected before that time?

A. In no way whatsoever.

Q. Can you give us the date when you were admitted into the firm? 895

A. I can not, but about March of last year.

Q. March of 1901?

A. Yes, sir.

Q. Mr. Perkins, between May 1 and May 9, 1901, did your firm purchase a large number of shares of the Northern Pacific common stock?

A. I believe they purchased more or less. The question of a large amount is relative.

Q. How much Northern Pacific common stock did the firm of J. P. Morgan & Co. purchase during that period between 896
May 1 and May 9?

A. I do not know.

Q. Can you give us the amount so purchased, approximately?

A. No, I can not. I went into the firm in March, as I have stated. During that time—in April and May—I was getting in touch with the general business of the firm, and went abroad about the 1st of July, so that the immediate daily routine of

897 the firm's business was scarcely in my hands at the times you speak of.

Q. At that time—from May 1 to May 9—was Mr. Morgan abroad?

A. Yes, sir.

Q. And when did he return?

A. Early in July.

Q. And what time did he go abroad?

A. I think—I am not certain as to this—I think early in April.

898 Q. Did Mr. Morgan purchase some of the Northern Pacific common stock while he was abroad; that is, purchase it in the market?

A. Not to my knowledge.

Q. You never knew or learned from your partners that such transactions were taking place?

A. No, sir; I did not.

Q. How many shares of the Northern Pacific common stock did the firm of J. P. Morgan & Co. hold on May 1, 1901?

A. I don't know.

899 Q. Do you know approximately?

A. I do not; no, sir.

Q. Will the books of J. P. Morgan & Co. show exactly how much stock they owned on May 1, 1901?

A. I could not say whether they would or not, but you may get to that later on. That is, some other questions.

Q. Will you give the names of the gentlemen constituting the firm of J. P. Morgan & Co.—who constitute it now and who constituted it on May 1, 1901?

A. There has been no change during that time. I could not

900 give all of the firm.

Mr. STETSON. I can.

Mr. LANCASTER. I think we had better have that if you will give it to us.

Mr. STETSON. I will write it out. You go on, and I will fill this in.

Q. Who was in general charge of the firm's business during Mr. Morgan's absence?

A. Mr. Robert Bacon.

Q. And who else next to him?

A. Charles Steele. 901

Q. Mr. Bacon is now abroad, is he not?

A. Yes, sir.

Q. And has been for some time?

A. Since the last fall.

Q. So that Mr. Bacon, as I understand it, was in general charge of the firm's business, and next to him Mr. Steele?

A. Mr. Steele; yes, sir.

Q. Did Mr. Bacon have special charge of the Northern Pacific transactions, Mr. Perkins?

A. So far as they related to our firm's business, do you mean? 902

Q. Yes.

A. Yes, sir.

Q. Did Mr. Steele have anything to do with those transactions, Northern Pacific transactions, at that time?

A. I don't know, as I said, what you mean by Northern Pacific transactions.

Q. The purchase or sale of Northern Pacific stock, purchased for the firm or sold on behalf of the firm?

A. I think not.

Q. You think Mr. Steele had nothing to do with it? 903

A. I think nothing; if he had it was very, very little.

Q. Mr. Perkins, have you any doubt but that the books of your company would show the amount of Northern Pacific interest held by your firm on May 1, 1901?

A. They probably would.

Q. And your books, would they show the purchase between May 1 and May 9, on account of your firm?

A. I can not say as to that.

Q. Well, in the ordinary course of business whatever is purchased for the firm, or by the firm, for its own account, or sold 904 by the firm on its own account, would necessarily appear on your books?

A. I should think so.

Q. I am merely getting at it, Mr. Perkins?

A. Yes; I appreciate it. I was a very new member of the firm, and a great part of that I don't know. I am not definite about that, not being there at the time.

Q. Were you present at any conference held between your

905 firm or any of the members of your firm and Mr. Harriman, Mr. Schiff, Mr. Hill, and a number of others immediately after May 9, a few days after May 9, 1901?

A. No, sir; I was not.

Q. Did the firm of J. P. Morgan & Co. purchase or agree to purchase Northern Pacific common stock of Mr. Harriman, or of Mr. Schiff, or the Union Pacific Railway Company, or of the Oregon Short Line Railway Company subsequent to May 9, and, say, prior to November 1?

A. No; not to my knowledge.

906 Q. As a matter of fact, did the firm of J. P. Morgan & Co. purchase on its own account, or for its own account, or on account of others, Northern Pacific common stock of either Mr. Schiff, Mr. Harriman, or the Union Pacific, or the Oregon Short Line subsequent to May 9, 1901?

A. You have asked to cover up to November 1. What do you mean now? I do not get the difference between the two questions.

Q. I say up to November 1?

A. I have answered that, that they did not.

907 Q. Subsequent to November 1, 1901, did your firm, or any of the members of the firm, for your own account and for the account of other parties, purchase of either Mr. Harriman or Mr. Schiff, or the Union Pacific, or the Oregon Short Line, Northern Pacific common stock?

A. Yes, sir; we did.

Q. And how much?

A. Between $75,000,000 and $78,000,000 to $80,000,000; somewhere along there; I don't remember the exact amount.

Q. Common stock, you mean?

908 A. Yes, sir; I say common. I mean common and preferred.

Q. Your firm purchased from whom?

A. Well, we purchased from, I think, what was commonly known as the Union Pacific interests—Mr. Harriman and Mr. Pierce. I think the stock was in the name of Harriman and Pierce. I am not sure as to that.

Q. And did that purchase which you speak of, which included both common and preferred, amount to about $78,000,000?

A. I think so, between $75,000,000 and $80,000,000.

Q. Did that purchase include, as you understood it at the time and understand it now, all the stock, common and preferred, held by the Union Pacific interests? 909

A. Yes, sir.

Q. And by the Union and Pacific interests you would include Mr. Harriman, Mr. Schiff, and the Oregon Short Line?

A. I don't know that I am bound to testify as to that, but in my own mind I would say, yes, sir.

Q. Well, when you use the term Union Pacific interests in that connection I understand you to mean, Mr. Perkins, both the Union Pacific, a corporation, the Oregon Short Line, and Mr. Harriman and Mr. Schiff? 910

A. As I understand it; yes, sir.

Q. What was the date of that purchase of the entire holdings, both common and preferred, in the Northern Pacific road, from what you term the Union Pacific interests?

A. I can not give you the date, but it was subsequent to the organization of the Northern Securities Company.

Mr. LANCASTER. The Northern Securities Company was organized, I think, November 13, was it not, Mr. Stetson?

Mr. KELLOGG. I think that was the date; the articles were filed on that date. 911

Q. Mr. Perkins, had the firm of J. P. Morgan & Co. any agreement or understanding with either Mr. Harriman, Mr. Schiff, or the officers of the Union Pacific, or of the Oregon Short Line, for that purchase prior to the formation of the Northern Securities Company?

A. Not to my knowledge. I believe not.

Q. Had you any personal knowledge of the negotiations which led up to the actual purchase which you have described?

A. Yes, sir. 912

Q. You were selected by members of your firm?

A. I conducted those negotiations.

Q. Now, when did they commence?

A. I can not give you the date, but after the Northern Securities Company was organized and in existence.

Q. And no negotiations, to your knowledge, were had by your firm with either Mr. Harriman or Mr. Schiff, or any of the officers of the Union Pacific or the Oregon Short Line

913 prior to the actual formation and incorporation of the Northern Securities Company?

A. Not to my knowledge; no, sir.

Q. Were the stocks of the Union Pacific interests, amounting, as you say, to between $75,000,000 and $80,000,000 of both common and preferred stock; were those stocks bought for cash?

A. Partly.

Q. How much?

A. I do not recollect. I should say something like $10,000,000 cash.

914 Q. And the balance, how were they to be paid for?

A. In stock of the Northern Securities Company, if we could get it for them.

Q. All of the preferred stock held by the Union Pacific interests were subsequently retired?

A. Yes, sir.

Q. And was that stock which you purchased from the Union Pacific interests, the preferred stock, was that to be paid for, or any portion of it, by the stock of the Northern Securities Company?

915 A. It is difficult to answer that. There were three separate transactions going on about this time.

Q. What do you mean; with the Union Pacific interests?

A. Well, in a general way, not specially with the Union Pacific interests. Perhaps I should have said two transactions. There was the retirement of the preferred stock of the Northern Pacific and the question of the organization of the Northern Securities Company. Our business was with the retirement of the preferred stock of the Northern Pacific.

Q. Now, do you remember the number of shares of the 916 common stock which was turned over by the Union Pacific interests to your firm?

A. No; it was less than one-half.

Q. About $37,000,000?

A. I think so; something like that.

Q. And the balance of the common stock, amounting to about $41,000,000, was held by your firm, Mr. Hill and Mr. Hill's associates?

A. Something over $41,000,000.

Mr. STETSON. What do you mean by the term associates? 917
You had it out with Mr. Kennedy yesterday, but you have not had it with Mr. Perkins yet.

Q. No. Mr. Perkins, you answered the question that it was held by yourself and Mr. Hill and his associates. Whom did you understand in answering that question his associates to be? That is merely to explain your answer?

A. Mr. Hill and Mr. George F. Baker, D. Willis James, John S. Kennedy, and several other gentlemen. I do not recollect who they all were.

Q. Lord Strathcona? 918

A. Yes, an English gentleman.

Q. And Lord Mount Stephen?

A. Yes, sir; I believe their names were also in the list.

Mr. KELLOGG. You did not want to say that they held the whole 41,000,000?

A. No, I did not understand that.

Mr. BOUTELLE. That is leading the witness a little, Mr. Kellogg.

Mr. KELLOGG. I should not think you gentlemen would raise that question. 919

Q. You understood, Mr. Perkins, at the time of the purchase from the Union Pacific interests that a clear majority of the Northern Pacific common was held by your firm, Mr. Hill and his associates?

A. Well, it hardly seems to me that the word associates is the proper word. People that we knew and were friendly with, and that sort of thing.

Q. Use it in that sense then.

A. Yes, sir.

Q. Now, the common stock that was turned over by the 920
Union Pacific interests was entitled under the retirement scheme to its proportionate share of the new common stock to be issued?

A. Yes.

Q. And that new common stock was issued to those interests; that is representing those interests?

A. Yes.

Q. You bought the Union Pacific interests, both common and preferred?

921 A. Yes.

Q. And you handled the common stock so purchased from the Union Pacific interests as you would any other purchase in your own interests? You used that stock and took your proportionate share of the new issue of common stock?

A. I do not understand that question.

Q. You took the common stock that you purchased from the Union Pacific interests and used it as a basis for subscriptions to the certificates of indebtedness issued by the Northern Pacific Company, didn't you?

922 A. I do not understand that. I am very stupid, but I do not see it.

Q. Mr. Perkins, you purchased the common and preferred stock of the Union Pacific interests, amounting to between $75,000,000 and $80,000,000, shortly after the organization of the Northern Securities Company?

A. Yes, sir.

Q. Now what did you ultimately do with all of that stock?

A. We sold it to the Northern Securities Company.

Q. And when?

923 A. I should say two or three weeks after the company was organized.

Q. And for what?

A. For their stock and for money.

Q. How much money did the Northern Securities Company pay?

A. My recollection is something like $8,000,000 or $10,000,000.

Q. You paid on this purchase from the Union Pacific interests how much cash to the Union Pacific interests? You

924 have already stated that?

A. Yes, sir; I have.

Q. About how much?

A. Something approximating $10,000,000; I do not recollect exactly.

Q. Did you pay to the Union Pacific interests in cash just the amount that you received in cash from the Northern Securities Company on the sale?

A. It is my recollection we did.

Q. In other words, in conducting that sale or purchase from 925
the Union Pacific interests you took the stock into your own hands, and then turned it over to the Northern Securities Company on precisely the same terms that you purchased from the Union Pacific interests?

A. Yes, sir.

Q. Paying to the Union Pacific interests in cash the same amount that the Northern Securities Company paid to you when you turned the stock into them afterwards?

A. Yes, sir; that is my recollection.

Q. Mr. Perkins, did your firm in conducting that purchase 926
from the Union Pacific interests act for yourself as principals or as brokers?

A. We acted for ourselves as bankers. I don't know as you can say as brokers.

Q. Did you purchase that stock upon your own account or did you purchase it as a broker, with a previous agreement with the Northern Securities Company as to what should be done with it?

A. We had no previous agreement with anyone save the Union Pacific people, who wanted us to make this transaction, which we finally completed for them. They were desirous of securing 927
the Northern Securities stock.

Q. And at the time of the purchase from the Union Pacific interests it was understood that you were to turn this stock over to the Northern Securities Company, and the stocks and cash of the Northern Securities Company was to be turned over to you and by you to the Union Pacific interests?

A. If we could get it. If we could make the transaction.

Q. The Northern Securities Company was in existence and had a board of directors at the time you purchased this stock of the Northern Pacific, both common and preferred, was it not? 928

A. Yes, sir.

Q. And had you any arrangement or agreement with the Northern Securities Company with reference to this large purchase from the Union Pacific at the time you made that purchase?

A. We had not, and we almost failed to make the exchange.

Q. So that at the time you made the purchase from the Union Pacific interests, Mr. Perkins, you had no contract or agreement or understanding as to the disposition of that stock to the Northern Securities Company?

929 A. No, sir; not to my knowledge.

Q. And all negotiations with reference to the subsequent disposition of that stock—common and preferred—to the Northern Securities Company were had after the conclusion of the deal with the Union Pacific interests?

A. We did not close any deal with the Union Pacific interests.

Q. Well, at the time you purchased from the Union Pacific interests did you pay part cash?

A. No, sir.

Q. Did you pay any cash at the time you made the deal with
930 them?

A. We undertook to get them a certain amount of stock from the Northern Securities Company—a certain sum of money in exchange for their holdings.

Q. Was this stock absolutely transferred by the Harriman or Union Pacific interests to your firm, or simply transferred to you for the purpose of making a disposition of it to the Northern Securities Company?

A. I do not know what the transfer books will show.

Q. Well, what was the fact?

931 A. I do not know. That would simply be a matter of clerical work.

Q. What was your understanding or arrangement in case you had failed to make a deal with the Northern Securities Company for the turning in of all this stock to it; would you have had it on your hands—78,000,000 or 80,000,000 of preferred stock?

A. No, sir; the Union Pacific would have had it.

Q. So that in that transaction throughout your firm was acting as a broker for the disposition of that stock or for the turn-
932 ing of that stock in or for the sale of that stock to the Northern Securities Company, was it not?

A. I don't know that the word "broker" is the proper word. I don't what you would call it. We were negotiating for the Union Pacific for this transaction, a very common position for us to be in.

Q. I have no doubt of it. I understand that, Mr. Perkins, but you were negotiating a sale of that stock for the Harriman or Union Pacific interests.

A. For something else, if we could get that something else 933
delivered.

Q. And if you had failed to make that sale to the Northern Securities Company you would not have had that stock on hand, but it would have belonged to the Union Pacific interests?

A. I suppose we might have, or take something else for it.

Q. It would have to be a new trade?

A. Further negotiations; yes, sir.

Q. Did your firm, as a matter of fact, agree absolutely to take this stock from the Union Pacific interests and obligate yourselves for the purchase price, regardless of further negotiations 934
with the Northern Securities Company?

A. Hardly, I should think.

Q. Now, in November, 1901, how much Northern Pacific common did your firm hold or own on its own rights?

A. I don't know.

Q. Do you know approximately?

A. I do not.

Q. Did your firm during November or December, 1901, sell some $8,000,000 or $10,000,000 or $12,000,000 of Northern Pacific common to Mr. J. J. Hill? 935

A. I don't know.

Q. If there was any such transaction, you had no personal knowledge of it?

A. No, sir.

Q. Had you anything to do in the conferences or negotiations that were had between leading stockholders of the Great Northern and the Northern Pacific with reference to the organization of the Northern Securities Company?

A. No, sir.

Q. Did your firm, in the summer and fall of 1901, hold stock 936
in the Great Northern Railway Company?

A. I don't know whether we did or not. The Great Northern?

Q. Yes. Did your firm turn in any of the common stock of the Northern Pacific into the Northern Securities Company and take the stock of the Northern Securities Company in payment therefor?

A. I don't know. That was not a part of my business.

937 Q. Does your firm hold or own any of the Northern Securities Company stock?

A. Yes, sir.

Q. And when did they acquire it?

A. I don't know. After the company was organized, I suppose, in November or December. I don't know as to that.

Q. Did they purchase it for cash, or did they exchange Northern Pacific or Great Northern stock for it?

A. I don't know.

Q. Does your firm own any of the stock of the Great North-
938 ern Railway Company now?

A. I don't know whether we do or not.

Q. Well, do they own any of the stock of the Northern Pacific Railroad Company?

A. All these are details of bookkeeping and schedules. It is very difficult to carry in one's mind.

Q. Now, whatever stock the firm of J. P. Morgan & Co. hold in the Northern Securities Company, did they acquire it immediately upon the organization of that company, or within a few weeks thereafter?

939 A. I can not say; no, sir.

Q. Mr. Perkins, I understood you to say that you did not know whether your firm held any Great Northern Railway Company stock at the present time?

A. That is what I said, sir.

Q. You understood me to mean by that to own the stock absolutely?

A. Exactly.

Q. Do you know whether your firm hold a large amount of the Great Northern stock as collateral securities for loans?

940 A. It is impossible to tell.

Q. You don't know?

A. No, sir.

Q. Does your firm hold any of the Great Northern stock at the present time, or since January 1 has it held any as trustee for the Northern Securities Company?

A. I don't know. That would come under the same general list, of course.

Q. You don't know whether it has or has not?

A. No, sir. 941

Q. You are a director of the Northern Securities Company, Mr. Perkins?

A. Yes, sir.

Q. And you were elected a director, when?

A. When the company was organized.

Q. And that was on or about or prior to November 13?

A. About that time. The middle of November, I should say.

Q. Have you attended the meetings of the board of directors since that time?

A. When I have been in the city. 942

Q. Are you a member of the executive committee?

A. No, sir.

Q. Do you remember the names of the executive committee?

A. I don't think I could name them all now.

Q. Has there been a meeting of the board of directors which you have attended within the last four weeks?

A. No, sir.

Q. When was the last meeting which you attended?

A. I do not recollect. It was a number of weeks ago.

Q. Six weeks? 943

A. Yes; I should say more than that.

Q. Probably eight weeks ago, Mr. Perkins?

A. I should think as long ago as that; yes.

Q. You are also a member of the board of directors of the Chicago, Burlington and Quincy Railway Company?

A. Yes, sir.

Q. And you were elected immediately after the organization of that company last summer or fall?

A. I believe so.

Q. Mr. Perkins, you say that you do not yourself know the amount of stock or number of shares in either the Great Northern or Northern Pacific or Northern Securities Company that your firm hold now or held during the summer and fall or early winter of 1901? 944

A. Yes, sir.

Q. Who of your firm does know the number of shares in each of those companies?

A. I am sure I do not know. I am sure I do not know who would know that. It is rather a large organization.

945 Q. Mr. Perkins, is it true that you would be unable yourself to ascertain the number of shares of stock owned by the firm of J. P. Morgan & Co. at the present time in these different companies which I have mentioned?

A. I would not know until I tried as to that.

Q. Is Mr. Steele more familiar with those matters than yourself?

A. I don't know that he would be on the point that you name. The way you put it, it does not occur to me that that information would be wanted by anyone in that shape.

946 Q. Mr. Perkins, do you now know that your firm purchased some 16,000,000 or 18,000,000 of the Northern Pacific Company stock between May 1 and May 9, 1901?

A. No, sir.

Q. You neither knew of that fact at the time nor have you learned of it since. Is that right?

A. I don't know if it was a fact then or now; yes.

Q. You don't know, then, of your own knowledge whether your firm purchased any stock either for its own account or for others; that is, stock in the Northern Pacific Railway Company,

947 during that period?

A. Well, I know in a general way that we purchased Northern Pacific stock. I was only just in the firm and went away immediately after that, you see, and was not in active management of any part of the business at any time you refer to.

Mr. STETSON. I think on this particular question you had better ask Mr. Steele.

The WITNESS. Yes; he was here then.

Q. Mr. Perkins, whenever any stock is bought on account of the firm of J. P. Morgan & Co. for its own account, in the ordi-

948 nary course of business, there would be an entry made of that fact on your books, wouldn't there?

Mr. STETSON. I keep warning you, Mr. Lancaster, that Mr. Perkins don't know any more about it than you do, or I do. If you wait until Mr. Steele comes, he will tell you.

A. It pertains to the bookkeeping department, you see. It is a pretty big organization.

Q. Will you look over that list, so we can have that put into the record as the members of the firm of J. P. Morgan & Co.?

A. I believe that is correct. I would not want to swear that 949
is all the members of the firm, but all those are members.

Q. And those members of the firm against whose names is written Philadelphia are residents of Philadelphia, are they?

A. I believe they are. I have heard they were.

Q. And that list may be taken as a correct list of the members of the firm?

A. I said to the examiner that these gentlemen are all members of the firm, but whether it is all the members of the firm or not, I don't know.

Mr. STETSON. I represent Mr. Perkins and the firm, and also 950
the Northern Pacific Railway Company, of New York. Can you produce Peter Power for examination, your client?

Mr. LAMB. Certainly.

Mr. STETSON. Will you, so we can fill up some of the gaps?

Mr. LAMB. Certainly; I will have him here by to-morrow afternoon.

NOTE.—By stipulation between the parties the following questions and answers by Mr. Perkins are inserted as his cross-examination, to have the same force and effect as questions and answers propounded and given before the master: 951

Cross-examination by Mr. STETSON:

Q. Did any plan or proposition, of which you have any knowledge, for the retirement of the preferred stock have any relation to or any connection with any agreement, or any statements with, by, or to Mr. Hill?

A. Absolutely none.

Q. I ask you the same with reference to Mr. Schiff?

A. I make the same answer.

Q. The same with reference to Mr. Harriman?

A. The same answer. 952

Q. The same question with reference to the formation of the Northern Securities Company?

A. The same answer.

Q. The retirement of the preferred stock, to your knowledge, was wholly independent of these persons and this corporation, and any connection therewith?

A. Absolutely.

953 Q. When was there first brought to your attention the adoption or the formation of any company, whether called the Northern Securities Company or any other name, to hold the stock of the Northern Pacific or the Great Northern Railway Company?

A. The idea of a holding company to hold the stock of the Northern Pacific Company was brought to my attention after my return from Europe in the autumn of 1901.

Q. You have stated that the so-called Harriman stock, purchased by J. P. Morgan & Co., as bankers, was sold to the
954 Northern Securities Company after that company was organized. Can you be any more specific in your statement of the date?

A. My recollection is that the terms of sale were finally agreed upon upon or about Monday, November 18, 1901.

Q. You have stated that you had not completed any arrangement or agreement with the Northern Securities Company with reference to this large purchase from the Union Pacific Company at the time you made the purchase, and you further stated that you had almost failed to make the exchange. What do you mean by that?

955 A. I mean that there was quite a hitch which arose from the fact that in our talk with Mr. Harriman and his friends we had assumed that their holdings of preferred and common stock were somewhat larger than they actually proved to be, and we had negotiated with the Northern Securities Company upon that basis. When they came to deliver the stock, which was the first time that we knew accurately just how many shares of stock they held, it turned out that they did not have so much as we had supposed in the negotiations and had represented to the Northern Securities Company that we could deliver. Of
956 course, the Northern Securities Company refused to take that amount of stock on the same basis that they had agreed upon for the amount which they had supposed was to be delivered. We succeeded in effecting a compromise, under which the Northern Securities Company accepted the amount of stock which Mr. Harriman and his friends were able to deliver. Afterwards a substantial reduction of the price was made, owing to the fact that the amount was not as great as the Northern Securities Company had supposed it would be. This was upon or about Monday, November 18, 1901.

Q. I understand, then, Mr. Perkins, that you did not know, until after the Northern Securities Company was organized, how much Northern Pacific common Mr. Harriman and his friends held? 957

A. That is right.

Q. I understand you, Mr. Perkins, that when the Northern Securities Company was organized the so-called Harriman stock had not been purchased by you or by anyone for that company?

A. That is right.

Q. And, as far as you know, no arrangement for its sale to the Northern Securities Company had ever been made? 958

A. No, sir; there had been some negotiations, but there had been no final agreement.

Q. Well, as far as you know, was there any connection between the organization of the Northern Securities Company and the acquisition of the Harriman stock?

A. None whatever.

Q. Was the fact of the acquisition of a majority of the stock of both or of either the Northern Pacific or the Great Northern Railway Company made a condition of the organization of the Northern Securities Company, as far as you know? 959

A. Not to my knowledge, sir.

Q. Was there any agreement between J. P. Morgan & Co. or J. P. Morgan and his associates, and Mr. Hill and his associates, to organize the Northern Securities Company and to transfer to it the ownership of a majority of the Northern Pacific and Great Northern Railway Company stock?

A. Not to my knowledge.

Q. Was there any agreement of any such character?

A. Not to my knowledge. 960

Q. So far as you know, or as was known to your firm, so far as you know, in the organization of the Northern Securities Company, or in the transfer thereto of the stock of the Northern Pacific Railway Company, or of the Great Northern Railway Company, was there any purpose or intent to suppress competition, or in any way to control competition, or to restrain trade or commerce between the States, or within the States, or within any State?

961 PLAINTIFF'S COUNSEL. That is objected to as incompetent, irrelevant, and immaterial and not proper cross-examination, going into a subject not covered by the direct.

A. I answer there was not.

Q. Or was there any purpose or intent in such organization or in connection therewith, as far as known to you, to regulate rates or to maintain rates upon railroads?

PLAINTIFF'S COUNSEL. The same objection as the last.

A. There was not.

Q. In any plan discussed for the retirement of the preferred
962 stock, was there any question ever raised, to your knowledge, or any doubt expressed, that such retirement should be for the benefit of the common stockholders and effectually and finally should withdraw all interests of the preferred stockholders?

A. No; none to my knowledge.

Q. And the discussion as to the plan for the retirement of the preferred stock, to which you have made reference, concerned only the way of effecting that retirement, and not the terms that should be offered to the holders of preferred stock?

A. There never was any discussion as to anything being offered
963 to the preferred stockholders except par in cash.

Q. As stated in their contract?

A. Yes.

W. P. CLOUGH, after being first duly sworn, testified as follows in answer to questions by Mr. Lancaster:

Q. Mr. Clough, you are a resident of New York City at the present time—an actual resident?

A. My legal residence, I suppose, is yet in St. Paul, Minn.

Q. You are at present one of the directors of the Northern Securities Company?

964 A. Yes, sir.

Q. And you have been such director since the organization of that company?

A. From a time, I think, within a few days afterwards; not from the very beginning of the organization.

Q. You were, prior to the organization of the Northern Securities Company, also a director and vice-president of the Great Northern Railway Company?

A. For a number of years before the Northern Securities Company was organized I was a director of the Great Northern and also its vice-president, but at some date last fall, about the time of the organization of the Northern Securities Company, whether just before or just after I can not remember now, because I do not try to carry it in my mind, I resigned all official connection of every kind with the Great Northern Railway Company and have not been connected with it in any manner since that time. 965

Mr. KELLOGG. Make the same objection and stipulation as to the other witnesses. 966

Mr. LANCASTER. Yes, sir.

Q. You are a vice-president of the Northern Securities Company?

A. Yes, sir.

Q. And have been since shortly after the organization?

A. Since within a few days from the time of the organization I have been fourth vice-president.

Q. You are also a member of the executive committee of the Northern Securities Company?

A. Yes, sir. 967

Q. And as vice-president of the company are you in charge of the office of the Northern Securities Company here in New York?

A. In general charge. I don't think I am in general charge of the office in the sense of having power to decide upon its business affairs.

Q. Who is in charge of the offices of the company here in New York?

A. The board of directors and executive committee.

Q. You have been devoting most of your time, have you not, Colonel, since the organization of the Northern Securities Company, to the affairs of that company? 968

A. A very large part, yes, sir, of every day.

Q. What amount of stock, what number of shares of the Great Northern Railway Company, does the Northern Securities Company hold and own?

A. I do not remember the exact figures, because I do not try to carry those things in my mind. My recollection, subject to

969 correction by examining the data, is that transfers of Great Northern stock to the Northern Securities Company have been completed to the extent of about 50,000 shares.

Q. Fifty thousand?

A. Of about 50,000 shares, yes, sir; where the transfers have been completed.

Q. And when were those transfers completed?

A. At various times, running through the months of November, December, and January.

Q. What do you mean by transfers have been completed, Mr.
970 Clough?

A. The by-laws of the Great Northern Railway Company provide that stock shall be transferred only in a given way, and that is upon the records of the Great Northern Railway Company.

Q. And you mean by that——

A. What I mean is, by the word "completed" that about that number of shares had been transferred to the Northern Securities Company in a way that the Great Northern Railway Company by its by-laws recognizes as transfers, so as to vest
971 the title of the property in the securities company.

Q. Well, now, there has been actually turned in and deposited with the Northern Securities Company a very large number of shares of stock of the Great Northern Railway Company, for which the stock of the Northern Securities Company has been issued in payment, has there not?

A. There are a certain number of other shares of stock, the number of which I did not try to retain in my mind, which have been negotiated for—that is, of Great Northern stock which have been negotiated for—but the transfers of which to the
972 Northern Securities Company have never been completed.

Q. And can you give us an approximate idea as to the amount or number of such shares?

A. I do not try to carry that in my mind.

Q. Well, you have a pretty correct idea, haven't you, Colonel?

A. Why, yes; I am reasonably familiar with the company's business, and still, for many years, being accustomed to deal with numbers and figures very largely, I have omitted the effort to carry numbers in my mind.

Q. Well, do you know whether it is five hundred shares or a million shares? 973

A. Excuse me a moment. I would like to ask the examiner to read my answer as to the number of shares that had been transferred fully of the Great Northern.

The EXAMINER. Fifty thousand.

The WITNESS. I meant five hundred thousand. Fifty million I want to say; just change that.

Q. Colonel Clough, what I would like to get at would be as near a correct estimate as you could give of the number of shares which had been negotiated for by the Northern Securities Company, in which the transfers have not been completed. 974

A. Subject to correction, I should say it must be in the neighborhood of three or four hundred thousand shares.

Q. Of the Great Northern Railway Company?

A. Of the Great Northern Railway Company; yes, sir.

Q. Those shares of stock have been deposited with the Northern Securities Company?

A. Yes, sir.

Q. And has the Northern Securities Company stock in payment therefor been delivered? 975

A. Yes, sir.

Q. To the parties turning them in?

A. Yes, sir.

Q. All that remains to be done then——

A. Either to the party or if they were presented by an agent to the agent of the party; either to or for the party.

Q. All that remains, then, is to have those certificates properly transferred upon the books of the Great Northern Railway Company?

A. All that remains for what do you mean? 976

Q. To completely vest, according to your idea to complete the deal and vest the title absolutely in the Northern Securities Company?

A. According to the by-laws of the Great Northern Railway Company there has been no transfer of those shares at all.

Q. I understand. We will not argue the legal proposition, but I am simply getting an explanation of what you mean when you say there are 500,000 shares in which the transfers have

977 been completed; in other words those transfers have been made according to the by-laws of the Great Northern upon the books of the Great Northern Railway Company?

A. That is what I said; yes sir.

Q. Now, there are about 300,000 shares——

A. Three or four hundred thousand——

Q. Three or four hundred thousand shares which have been turned into the Northern Securities Company, for which the Northern Securities Company has issued its own stock in payment and has transferred that stock to either the parties turning
978 it in or to their agents?

A. Yes, sir.

Q. And I say the only thing now that remains in order to complete those transfers is to have the transfers properly made upon the books of the Great Northern Railway Company?

A. If those shares were transferred to the Northern Securities Company upon the books of the Great Northern Railway Company, then the transfer of the shares of the Northern Securities Company would be completed, if that is what you mean.

Q. Now, Mr. Clough, the capital stock of the Great Northern
979 is $125,000,000, I think?

A. Yes, sir; 1,250,000 shares, of which about 1,230,000 have been issued.

Q. Now, all that amount of stock the Northern Securities Company at the present time holds in completed transfers, and in transfers which are not completed, as you have explained, between 800,000 and 900,000 shares?

A. The Northern Securities Company has the relation to the Great Northern shares that I have mentioned in my testimony before; what those relations are is a matter part of computation
980 and legal inference. I have stated the facts.

Q. I understand, but I am summarizing this matter, Colonel, and I want to know if that does not fairly summarize the statement that the Northern Securities Company now holds and owns all the stock of the Great Northern Railway Company, including the transfers completed and those incompleted, between 800,000 and 900,000 shares?

A. I have stated the facts, and I do not know that it belongs to me to draw any inferences whatever.

Mr. KELLOGG. You can do that, too, Judge Lancaster. 981

Mr. LANCASTER. That is a fair question, Mr. Kellogg. I am simply summarizing the statement.

Q. Has the Northern Securities Company made any request to the Great Northern to have these between three and four hundred thousand shares transferred upon its books?

A. Not that I am aware of.

Q. Are you making requests to have stock transferred from time to time?

A. I don't know that I can speak on that subject.

Q. The transfer books of the Great Northern Railway Com- 982
pany are here at the general offices of the Great Northern Railway Company, are they not?

A. Yes, sir.

Q. And the offices of the Northern Securities Company is in the same building, is it not?

A. Yes, sir; temporarily.

Q. Well, at the present time?

A. Yes, sir; temporarily.

Q. How long, Colonel Clough, has it been since any stock which had been turned into the Northern Securities Company, 983
stock of the Great Northern Company, how long has it been since any of that stock has been properly transferred on the books of the Great Northern Railway Company?

A. I don't know.

Q. Has any of it been transferred since the 1st of January, 1902?

A. I don't know.

Q. Do you have any recollection as to about the time when the last block or lot of stock was so transferred on the books?

A. I have never looked it up, so I could not answer it. 984

Q. I understand you mean by that that you don't know?

A. No, that is it; I don't know.

Q. Do you know of any reason why the Northern Securities Company can not secure a proper transfer of these three or four hundred thousand shares upon the books of the Great Northern Railway Company at any time?

A. I don't know of any reason, if it should request the transfer, why the Great Northern should refuse to make it.

985 Q. Colonel Clough, can you state approximately the number of shares of the common stock of the Northern Pacific Railway Company which has been turned into the Northern Securities Company?

A. It is upward of one hundred and fifty millions, but the precise figures I do not try to carry in my mind.

Q. I asked you the number of shares and you mean one hundred and fifty millions, par value?

A. One hundred and fifty millions par value, which would be about 1,500,000 shares.

986 Q. Mr. Clough, you were a director and vice-president of the Great Northern Railway Company in the spring of 1901. Were you located in New York at that time?

A. Yes, sir, I have been here practically continuously since the middle of March a year ago.

Q. Did you take part in the negotiations which were conducted by Mr. Hill on behalf of the Great Northern, for the joint purchase; that is, the purchase and joint account of the Great Northern and Northern Pacific, of the Burlington?

A. Yes, sir.

987 Q. You were familiar with all the details of that transaction?

A. Yes, sir; practically all of them. Of course there were negotiations that were conducted in places when I was not present, as for instance, in Boston, and I could not say that I was present at all negotiations, but I am familiar with all of the details of the negotiations, and myself on behalf of the Great Northern Company; signed nearly all of the papers in the negotiations as first vice-president.

Q. About what time, Colonel Clough, did you first learn of the attempt on the part of the Union Pacific interests, or Mr.
988 Harriman, or Kuhn, Loeb & Co., to purchase a majority or controlling interest in the Northern Pacific Railway Company?

A. I first heard of it in the forepart of May. I think perhaps as early as the 5th, or 6th, or 7th of May, but I can not undertake to give dates precisely. It might have been two or three days earlier or two or three days later.

Q. Were you present at any conference held between Mr. Hill and Mr. Schiff, or Mr. Harriman, and different members of J. P. Morgan & Co., immediately after May 9?

A. No, sir; I was not present at any conference at which Mr. Harriman or Mr. Schiff or any of those gentlemen were present. 989

Q. Did you know of your own knowledge of the negotiations or what took place leading up to the arrangement that was made to have the Union Pacific interests leave its proxies, or Mr. Harriman or Mr. Schiff leave their proxies with Mr. Morgan?

A. That was a matter directly between the stockholders of the Northern Pacific Railway Company, of which I was not one, and I had nothing whatever to do with it. 990

Q. And as a matter of fact, Colonel Clough, you not only did not take part in any of those conferences and were not present and in fact knew nothing of any such conferences or negotiations?

A. Except as a mere matter of hearsay. I had no personal knowledge. It was entirely outside the line of my duties.

Q. Did you know of your own knowledge how it came about that Mr. Harriman was placed upon the directory of the Chicago, Burlington and Quincy Railway Company and the Chicago, Burlington and Quincy Railroad Company, and of 991 the Northern Pacific Railway Company, and later on directory of the Northern Securities Company?

A. Well, that is putting a great many questions on unrelated topics, disconnected topics, into one. If you will be kind enough to divide those four questions into one and put them one at a time, I will do the best I can to answer them.

Q. I shall be glad to, or you can divide them yourself, Colonel.

A. I prefer to have you do it, Judge, as you are asking the question. 992

Q. That is all right. Do you know, Mr. Clough, how it came about that Mr. Harriman was placed upon the board of directors of the Northern Pacific Railway Company?

A. No, sir.

Q. Do you know how it came about that Mr. Schiff was placed on the board of directors of the Northern Pacific Railway Company?

A. No, sir.

993 Q. Do you know how it came about that Mr. Harriman was placed upon the board of directors of the Chicago, Burlington and Quincy Railway Company?

A. In a way, I do.

Q. Well, will you state it?

A. Yes, sir. I can give you my understanding of why he was put there. The membership of the board of directors of that company was discussed several times by the parties in interest, and an endeavor was made to select men to occupy that position whose knowledge of the railway business and whose
994 place in the financial world would make their services on the board valuable to the Burlington Company and Burlington property, and my understanding was that Mr. Harriman was selected for the reason it was supposed that he was a suitable man under those conditions.

Q. Can you explain how it came about that Mortimer L. Schiff was placed on the same board, along with Mr. Harriman?

A. Mr. Mortimer L. Schiff is a member of the firm of Kuhn, Loeb & Co., which is one of the largest financial houses in this country, and it had previously and since considerable dealings
995 with the securities of the Burlington property, and it was considered that a representative from that house on the board of the Burlington would be of valuable assistance to it in its financial matters. That is my understanding.

Q. Did you understand that there was any arrangement, or understanding, or agreement, shortly after May 9, 1901, by which Mr. Harriman, representing the Union Pacific interests, was to give a proxy to Mr. Morgan and to allow Mr. Morgan to name the directors of the Northern Pacific Railway Company, and also to place Mr. Harriman upon the board of the Northern
996 Pacific Railway Company, and also upon the Chicago, Burlington and Quincy Railroad Company and Railway Company? Do you know of any such agreement or understanding between Mr. Hill, Mr. Morgan, Mr. Harriman, and Mr. Schiff, or any of those gentlemen?

A. I don't know of any such arrangement or understanding, and I have never heard of any.

Mr. KELLOGG. You mean as to all those parties you never heard of it?

The WITNESS. That is the question he asked me. I am 997
answering the question he asked me.

Q. Did you understand that there were any arrangements at the time, shortly after May 9 or about May 9, at the time Mr. Schiff and Mr. Harriman agreed to turn over their proxies to J. P. Morgan & Co., that either Mr. Harriman or Mr. Schiff should be placed upon the board of directors of the Northern Pacific Railway Company?

A. I heard, and I believe it to be a fact, that stockholders in the Northern Pacific Railway Company, some time in May, 1901, agreed to give their proxies to Mr. Morgan for the next annual 998
meeting of the Northern Pacific Railway Company. I never heard of any arrangement that ran any further than that simple proposition.

MARCH 24, 1902.

Mr. BOUTELLE. Mr. Kellogg, in connection with Mr. Clough's examination, may it be stipulated that you gentlemen will furnish for us a copy of the by-laws of the Northern Securities Company?

Mr. KELLOGG. Oh, yes.

Mr. CLOUGH. I will either give you a printed copy of the 999
by-laws or a copy of that pamphlet of the Interstate Commerce Commission, one of the two, but it will be correct.

(It was stipulated that the same was to be sent to the special examiner, to be marked "Complainant's Exhibit K.")

W. P. CLOUGH, being recalled in behalf of the complainant, testified as follows to questions by Mr. Boutelle:

Q. Mr. Clough, what is the number of directors of the board of the Northern Securities Company?

A. Fifteen.

Q. And are they reelected, one-third every year? 1000

A. Yes.

Q. That is, there are three classes, the third, second, and first, so to speak?

A. For the first board, and after that five go out each year and are replaced by five others.

Q. Can you give us, Mr. Clough, the names of the directors of the first board who would be in the third-year class?

1001 A. I don't remember that; I can get it, though.

Q. Will you furnish us a list of the directors by classes showing the third, second, and first year's class?

A. I will.

Q. And, Mr. Examiner, that may be attached or incorporated as Plaintiff's Exhibit M—that list to be furnished?

Mr. KELLOGG. Yes.

By consent of all parties further proceedings were adjourned until March 21, 1902, at 2 o'clock in the afternoon.

NEW YORK, *Thursday afternoon, March 28, 1902.*

1002 W. P. CLOUGH, being recalled for further examination in behalf of the complainant, testified as follows in answer to questions by Mr. Lamb:

Q. Colonel Clough, I think you have already testified that you are the vice-president of the Northern Securities Company?

A. I am one of the vice-presidents; yes, sir. There are four.

Q. And you are familiar with its affairs, of course?

A. I think I am quite familiar with its affairs; still I don't try to carry all the details in my mind.

Q. You testified on your direct examination that the North-
1003 ern Securities Company held a large block of stock of the Great Northern Railway Company which had not been transferred of record on the books of the Great Northern Company.

A. Whatever I testified to in that respect the minutes of the special examiner will show.

Q. Do you remember your testimony?

A. I do in a general way.

Q. Well, do you remember testifying to that?

A. I remember that I testified to the fact that all pur-
chases by the Northern Securities Company of about 500,000
1004 shares of Great Northern stock had been completed, and that negotiations were in progress for the acquisition of about 300,000 or 400,000 more which had not yet been completed.

Q. Well, you testified that that had not been transferred of record?

A. That is what I testified; yes, sir.

Q. When was the last dividend declared by the Great Northern Railway Company?

A. It was paid on the regular dividend day, which was at or 1005
about February 1 of this year. The Great Northern regular dividend days are February, May, August, and November.

Q. Did the Northern Securities Company receive that dividend?

A. I am not called on to state that, am I?

Mr. KELLOGG. It is objected to as incompetent, irrelevant, and immaterial—nothing to do with this controversy.

Q. Will you answer it?

A. No; I will not answer it. I decline to answer it.

Q. Was the dividend of this stock not transferred of record 1006
and paid to the Northern Securities Company?

Mr. KELLOGG. That is objected to as incompetent, irrelevant, and immaterial.

Mr. BOUTELLE. That is the stock you have already referred to as not completed, Colonel?

A. That I decline to answer.

By Mr. BOUTELLE:

Q. Colonel Clough, it was testified to by Mr. Hill on his examination in this case, that, according to his understanding, the Northern Securities Company had given a proxy or proxies 1007
for voting its holdings in the Great Northern and Northern Pacific, but Mr. Hill was unable to state who held that proxy or the parties composing it. Can you give us that information?

A. Yes, sir.

Q. Will you state that so the examiner can get it down?

A. Yes, sir. There have never been any meetings of stockholders of either the Northern Pacific or Great Northern companies since the acquisition by the Northern Securities Company of stock in either of those companies, but as a corporation can 1008
only act by proxy, and such a proxy was deemed necessary, or advisable at least, to come from the board of directors of the Northern Securities Company, and as that is a large board and somewhat difficult to get a quorum together, the board has provided, temporarily, and until further action on its part, because the proxies are purely temporary, that at meetings of the stockholders of the Northern Pacific Railway Company its proxies shall be Charles Steele, George F. Baker, jr., and A. B. Hep-

1009 burn, of New York City, or whichever one or more of them shall happen to be present at the meeting. My memory is not so good as to the names of the proxies of Great Northern stock, but, subject to correction, it is that proxies for Great Northern stock are James N. Hill, Edward Sawyer, and E. T. Nichols, which or whichever one or more of them should be present.

Q. Now, Colonel, can you give us approximately when that action was taken?

A. It was some time after the securities company had acquired the stocks of each of these two companies.

1010 Q. Has there been more than one action or resolution adopted as respects these proxies?

A. There never has been but one set of proxies created so far in respect to either company, and the proxies that I have mentioned were those that were first created and have since stood. But they are all revocable, of course, at any time, like all other proxies, and can be changed whenever convenient.

Q. Colonel, can you state how much of the Northern Securities Company stock has been issued—the total amount, approximately?

1011 A. Yes; it is about $350,000,000—in that neighborhood. It may be a little more or little less.

FRIDAY AFTERNOON, *March 21, 1902.*

At 2 o'clock in the afternoon all parties convened, pursuant to adjournment, and by consent of the solicitors for the respective parties and the witness subpœnaed, further proceedings were adjourned until the following afternoon, March 24, 1902, at 2 o'clock.

MONDAY AFTERNOON, *March 24, 1902.*

All parties appeared, pursuant to adjournment, represented by
1012 the same solicitors, and the following proceedings were had, to wit:

JACOB H. SCHIFF, after being first duly sworn, testified as follows, in answer to questions by Mr. Boutelle:

Q. Mr. Schiff, you are a member of the firm of Kuhn, Loeb & Co., of this city, are you not?

A. I am.

Q. And how long have you been connected with that firm?

A. About twenty-seven years. 1013

Q. Located during all the time and doing business in this city during that time?

A. Yes.

Q. You are a member of the board of directors of the Union Pacific Railroad?

A. I am.

Q. When were you elected to that position, approximately?

A. As far as I can remember, it was the latter part of 1897.

Q. You are also a member of the board of directors of the Chicago, Burlington and Quincy Railway Company? 1014

A. Yes; I am.

Q. And your son, Mortimer L. Schiff, is a member of the board of directors of the Chicago, Burlington and Quincy Railroad Company?

Mr. BULKLEY. It is just the reverse.

Q. Is it the reverse?

A. Yes; I think it is the reverse.

Q. You are a member of the board of the railroad and your son of the railway. Is that right, gentlemen?

Mr. CLOUGH. That is right. 1015

Q. You are also, Mr. Schiff, a member of the board of directors of the Northern Securities Company, are you not?

A. I am.

Q. When were you elected to your official position in the Burlington?

A. As far as I can recollect, in the latter part of 1901.

Q. And when were you elected as a director of the Northern Securities Company?

A. I believe also in the latter part of 1901.

Q. You were formerly, I believe, Mr. Schiff, a member of the 1016 board of directors of the Great Northern Railway Company?

A. I was.

Q. You or your firm have been comparatively large holders of the stock of that company for a number of years, have you not?

A. We have.

Q. What is the amount or what was the amount of your holdings in the stock of the Great Northern Railway Company in 1901, approximately?

1017 A. As far as I can recollect, I have not been a holder of stock in the Great Northern Railroad Company after the summer of 1901.

Q. And will you give it a little more exact as to time? The month, I mean.

A. I can not.

Q. And when you say you were not a stockholder in the Great Northern, do you include your firm?

A. Yes, sir.

Q. Your firm has not been a stockholder of the Great Northern
1018 Railroad Company for many years, so that the holdings of Great Northern securities have been your individual holdings?

A. Instead of my partners'.

Q. Did you retire from the board of directors of the Great Northern Railway Company at the same time that you disposed of your holdings?

A. My term of office expired last autumn.

Q. Did you formally resign from the Great Northern board, Mr. Schiff?

A. There was no necessity for my resignation.

1019 Q. That was not my question. Did you formally resign?

A. Not as I remember.

Q. Are you positive in regard to that?

A. I think I am.

Q. In 1896, Mr. Schiff, you were one of a number of gentlemen interested in the Great Northern who bought comparatively large holdings in the Northern Pacific, were you not?

A. I do not think I was.

Q. Were you not one of Mr. Hill's associates, either you or your firm, in a purchase of some $26,000,000 of the Northern
1020 Pacific common stock in 1896, at the time of the reorganization?

A. I do not think that was in 1896; I think that was in 1897, as far as I can remember.

Q. Then, as a matter of fact, in 1897 you were one of a number of parties interested in Great Northern who purchased a comparatively large block of the Northern Pacific common?

A. I think I was.

Q. And do you recall what gentlemen were associated with you in that purchase?

A. There was no one associated with us. 1021

Q. Do you recall who the gentlemen were, the gentlemen connected with the Great Northern, who purchased Northern Pacific stock at that time?

A. I do not.

Q. Was Mr. Hill one?

A. Mr. Hill can tell you best.

Q. Do you know?

A. Mr. Hill simply invited us to buy some stock and we bought it for ourselves.

Q. I understand that, but what I wish to get at is who were 1022 the gentlemen that thus bought for themselves besides you?

A. I do not know.

Q. You know as a matter of fact that Mr. Hill took a portion of that, do you not?

A. I do not recollect.

Q. You know as a matter of fact that Mr. Kennedy took a portion of it, do you not?

A. I do not know.

Q. Do you mean that you are unable to tell any one besides yourself who took any part of that $26,000,000? 1023

A. I am unable.

Q. How much of that $26,000,000 did you take at that time?

A. As far as I can recall, $2,500,000.

Q. And how long did you continue to hold that?

A. I do not recollect.

Q. Have you no recollection upon that subject at all?

A. No.

Q. Do you hold it at the present time?

A. No.

Q. Did you hold it in 1901? 1024

A. No.

Q. It was all sold previous to that time, was it?

A. Yes, sir.

Q. Mr. Schiff, had you or your firm at any time previous to your election as a member of the board of directors of the Burlington been a holder or holders of Burlington securities?

A. Yes.

1025 Q. Of what character?

A. Of stock and bonds.

Q. When did you hold that stock?

A. For several years we have had some Burlington stock as far as I know.

Q. And how much did it amount to?

A. I should think as a maximum, 20,000 shares.

Q. And was that prior to the time of the purchase of the Burlington by the Great Northern and Northern Pacific combined?

1026 A. It was.

Q. Was that an individual holding or a firm holding?

A. It was an individual holding.

Q. In 1900, the latter part of the year, or the early part of the year 1901, was your firm or you individually engaged in the purchase of Burlington stock in the market?

A. We were.

Q. For whom were those purchases made at that time?

A. I decline to disclose the business of Kuhn, Loeb & Co.

Q. You refuse to answer, then, I understand, for whom you
1027 purchased the stock at that time?

A. Unless I am so directed by the court.

Q. How much stock, Mr. Schiff, did your firm purchase in the Burlington at that time?

A. Twenty thousand shares for itself.

Q. No; I am speaking of how much outside of your individual purchases?

A. I decline to answer unless directed by the court.

Q. As a matter of fact, Mr. Schiff, your firm acted as the representative of the Harriman or Union Pacific interests in
1028 the purchase of that stock, did they not?

A. It did not.

Q. Well, for whom did they act?

A. I decline to answer unless I am compelled to by the court.

Q. At whose instigation or request were those purchases made by your firm?

A. I might as well say to you here that I shall decline any answer, as it was the business of Kuhn, Loeb & Co.

Q. If you simply answer the question, or decline to answer 1029
specific questions——

A. I have given you my answer.

Q. You decline to answer?

A. I decline to answer any questions as to the business of Kuhn, Loeb & Co. except directed by the court.

Q. Now, will you kindly answer the question just asked you or decline to answer that question?

A. You have received my answer already.

Q. You decline to answer that question, do you?

A. You have received my answer already. 1030

Q. Those purchases, Mr. Schiff, were made by you or your firm in an effort or attempt to buy up, in behalf of the Union Pacific Railway, or allied interests, a controlling interest in the Chicago, Burlington and Quincy, were they not?

A. They were not.

Q. Were they made in behalf of any railroad interests?

A. They were not.

Q. Were they made in behalf of the interests of your firm alone?

A. You have received my answer on that. 1031

Q. I don't think we have, Mr. Schiff. I would prefer that you should decline if you think my question is improper.

A. They were made for our firm and some of its customers.

Q. And that is as definite an answer as you care to make to my question, is it?

A. It is.

Q. When did you ascertain, Mr. Schiff, that the Great Northern and Northern Pacific were in the market attempting to acquire control of the Burlington?

A. I do not know as I ascertained that at any time. 1032

Q. You know now as a fact that the Great Northern and Northern Pacific purchased a very large majority of the stock of the Burlington, do you not?

A. I do know it now.

Q. Now, do you recall when your information to that effect was first obtained?

A. After they had acquired it.

Q. Was that the first intimation you obtained in reference to the matter?

1033 A. The first positive information.

Q. You did receive some information that was not positive, did you not?

A. I did receive information that large amounts were bought—large amounts of the Chicago, Burlington and Quincy stock were bought.

Q. And at about that time, Mr. Schiff, you had a conference with Mr. Hill, did you not?

A. Yes.

Q. And at about that time your interests and connection with
1034 the Great Northern were severed, were they not?

A. They were not.

Q. How long subsequently were your interests with the Great Northern severed?

A. As a director, I should say six or seven months subsequently.

Q. And as a stockholder?

A. I do not recall.

Q. Was it before or subsequently?

A. Subsequently.

1035 Q. And you are unable to state how long subsequently?

A. I do not recollect.

Q. Did you, Mr. Schiff, at any time subsequent to the acquisition by the Great Northern and Northern Pacific of a controlling interest in the Burlington represent the Union Pacific interests?

A. I have been a director of the Union Pacific since 1897 and am still.

Q. I mean, Mr. Schiff, did you represent them as a banker or broker in the market?

1036 A. We never represented the interests of the Union Pacific as a banker or broker.

Q. Did you represent the interests of the Oregon Short Line in the market?

A. We never represented the interests of the Oregon Short Line in the market.

Q. Did you ever represent the interests of Mr. Harriman in the market?

A. I decline to answer.

Q. Or Mr. Harriman and Mr. Pierce? 1037

A. I decline to answer.

Q. After your ascertainment of the fact of the Burlington purchase by the Great Northern and Northern Pacific combined did you have any connection or take any part in the attempts by the Harriman interests or the Oregon Short Line interests or the Union Pacific interests in attempting to put into that purchase and to take interest in it?

A. I did not.

Q. Do you know whether your firm did or not?

A. They did not. 1038

Q. Were you aware of the fact at that time, Mr. Schiff, that the Union Pacific interests or the Harriman interests or the Oregon Short Line interests—they all mean practically the same to us—sought to obtain a part in the Burlington purchase and to come into the Burlington purchase, so to speak?

A. To help you out I might as well say to you, if you ask the question whether Kuhn, Loeb & Co. sought to obtain part in it; yes, they did.

Q. Kuhn, Loeb & Co. did?

A. Yes. 1039

Q. Was that, Mr. Schiff, an individual or firm matter, or was it in behalf of customers of the firm?

A. As an attempted transaction it was an original transaction, and was at that time only intended for Kuhn, Loeb & Co.

Q. And had no reference and no connection with any of the customers of the firm at that time?

A. It had not.

Q. Did it subsequently?

A. Well, it was never carried into effect.

Q. Were those negotiations, Mr. Schiff, exclusively conceived and carried on as a matter of the interest of your firm alone? 1040

A. They were.

Q. Without any connection with either the Harriman interests, the Oregon Short Line interests, or the Union Pacific interests?

A. They were.

Q. That request, I believe, was refused, Mr. Schiff?

A. It was.

1041 Q. In any event you did not obtain that interest?

A. No.

Q. How long after that, Mr. Schiff, did your firm go into the market to buy up Northern Pacific after the refusal to permit you to come into the Burlington deal?

A. I do not exactly recollect.

Q. For whom were your firm acting when the Northern Pacific transactions in the purchase of the Northern Pacific common and preferred?

A. For themselves.

1042 Q. Were there no other interests for which they were acting in those purchases?

A. No.

Q. How much of that stock did you purchase in the spring of 1901, and previous to May 9?

A. As far as I can recollect, about $78,000,000.

Q. And that was an individual purchase of your firm?

A. Yes.

Q. Are you aware, Mr. Schiff, that the report of the board of directors of the Union Pacific, of which you appear to be a

1043 member, states that that was the purchase by the Oregon Short Line financed by the Union Pacific?

A. Yes.

Q. What was the connection then? Did they take it off from your hands?

A. We sold it to them.

Q. You went into the market, then, individually?

A. Yes.

Q. Or as a firm?

A. Yes.

1044 Q. Without any connection with the railway interests?

A. Yes.

Q. Or the Harriman interests?

A. Yes.

Q. And immediately upon obtaining this stock you transferred it to the Union Pacific or the Oregon Short Line?

A. Not immediately.

Q. How long?

A. I do not recollect.

Q. Well, you can give us approximately? 1045

A. Some weeks.

Q. And there was no connection between your purchase of the stock originally and your sale or transfer to the Oregon Short Line?

A. There was not.

Q. How was this stock that you purchased divided as common and preferred?

A. As far as I can remember, about $37,000,000 common and about $41,000,000 preferred.

Q. Making $78,000,000 in all; and that entire block of stock, 1046 common and preferred, was within a few weeks transferred to the Oregon Short Line?

A. It was the Union Pacific or Oregon Short Line.

Q. After the transfer by your firm to the Union Pacific or Oregon Short Line, did you have any further connection with the handling or disposition of that stock?

A. I had not.

Q. Did you attend at any conference at which the subject of the disposition of that stock was up?

A. I did not. 1047

Q. Did you attend at the conference at Mr. Morgan's office, either on May 9 or shortly subsequent, at which the matter of leaving the selection of the board of directors to Mr. Morgan was passed on?

A. I did not attend any conference at Mr. Morgan's office.

Q. Did you attend any conference at anybody's office where that subject was brought up?

A. Yes.

Q. Where was that conference held?

A. At Mr. Harriman's office. 1048

Q. You had at that time disposed, as I understand it, of all of your interest in this stock?

A. I am not quite certain of that, but I believe so.

Q. What was the reason or occasion of your being present at that conference, Mr. Schiff?

A. There was a great strain in the financial markets, and the conference was held in an endeavor to find ways and means how public apprehension could be allayed.

1049 Q. Who was present at that conference?

A. Mr. Harriman, I believe Mr. Steele, I think Mr. Hill, and myself.

Q. Was the subject of that conference confined to the matter of adjusting the matter of the board of directors of the Northern Pacific?

A. It was confined to the discussion of finding ways and means by which the public apprehension could be allayed.

Q. Was that all there was to it, beyond the selection of Mr. Morgan to appoint the directors of the Northern Pacific?

1050 A. As far as I can recollect, yes.

Q. Was the matter of the holdings of the Northern Pacific brought up or discussed by the factions that had been attempting to get control?

A. Only passingly.

Q. Will you give us how that was brought up passingly, as you describe it, and what was said in reference to that?

A. I can't recollect.

Q. Was it at the conference, Mr. Schiff, that you stated that you or the Harriman interests claimed to have a controlling in-

1051 terest in the Northern Pacific under your purchase?

A. I listened. I made no statement.

Q. You made no statement?

A. No, sir.

Q. Was such a statement made at that conference by anybody representing the Union Pacific interests?

A. Possibly, but I do not recollect. It was a passing conversation. It was a general conversation.

Q. Do you recall what was said in answer to that claim?

A. I do not recollect.

1052 Q. Was it at that conference that Mr. Steele or Mr. Bacon stated that they did not admit that the Union Pacific interest held a majority?

A. I do not recollect that any such statement was made.

Q. Were you present at any conference at which that subject was brought up and discussed?

A. As far as I can recall, it may have been stated that Mr. Hill and his friends held control of the common stock of the Northern Pacific.

Q. What I want to ascertain, Mr. Schiff, is this: At which of 1053
these conferences was there a show down of holdings or a discussion of the question of the holdings of these two factions?

A. I do not believe there was at any time a show down, as you call it.

Q. At any of these conferences were there no statements made by either party or by either faction as to their holdings?

A. Not to my recollection.

Q. Was no statement made in your presence as to the holding of the Hill and Morgan factions, if I may so call it?

A. Not to my recollection. 1054

Q. How many conferences did you hold before the matter of the disposition of the Union Pacific interests in Northern Pacific were finally decided upon?

A. I can't understand your question.

Q. Well, were there several conferences between Mr. Harriman and yourself and Mr. Hill and Mr. Morgan, or their interests?

A. I do not remember more than two at which I was present.

Q. Now, the first one you have given us; will you give us what transpired at the second? 1055

A. The second was simply a continuation of the first.

Q. Well, let's have it a little more in detail.

A. I have told you all I know about it.

Q. Was it at that conference that the question was brought up, Mr. Schiff, in regard to proposed Burlington extension into Union Pacific territory?

A. That question, to my knowledge, was never brought up.

Q. You never heard that brought up?

A. No.

Q. When did you hear Mr. Hill make a statement that they 1056
were not developing in Union Pacific territory?

A. I do not recollect.

Q. Do I understand, Mr. Schiff, that you were only present at two conferences at or about this time?

A. As far as I can recollect, I was only present at two regular conferences. Business men meet almost every day, but conferences—I only recollect two.

Q. I understand it perfectly, Mr. Schiff, but what I want to

find out is—you can term it a conference or a business man's meeting—but I want to ascertain when those discussions, or conferences, or talks that were had between the Hill-Morgan side of this controversy and the Union Pacific side relative to the settlement of their differences and the adjustment of them took place.

A. I only recollect two distinct conferences, as you call them, at which I was present.

Q. Well, do you recollect having any talks with Mr. Hill or Mr. Morgan in reference to the disposition of Union Pacific holdings?

A. Mr. Morgan was in Europe.

Q. Well, when I say Mr. Morgan, I mean any of the members of J. P. Morgan & Co.?

A. I do not recollect that I had any such talk.

Q. Had no conferences or interviews with them at all?

A. Not as to the disposition of what you call the Northern Pacific holdings.

Q. Did you have any conferences or interviews with them relative to the affairs of the Northern Pacific?

A. I had not.

Q. Did you have any talks or interviews with them relative to the policy in the Burlington?

A. I had not.

Q. Did you have any part, or take any part, Mr. Schiff, in the negotiations which resulted in the Union Pacific selling out their Northern Pacific holdings?

A. I did not.

Q. You had nothing to do with that?

A. I went to Europe late in July and did not return until the latter part of October.

Q. Did any member of your firm, as far as you know, have anything to do with it?

A. Nothing at all.

Q. When do you say you returned?

A. During October.

Q. At that time do you know whether the Union Pacific had disposed of their Northern Pacific holdings?

A. I do not think so.

Q. Did you take any part personally, or did your firm, in the 1061
arrangements that were ultimately consummated for the selling of the Union Pacific holdings?

A. We did not.

Q. You had nothing whatever to do with that?

A. No.

Q. Were you cognizant with the facts connected with those transactions?

A. With which transaction?

Q. The sale by the Union Pacific of its Northern Pacific holdings. 1062

A. I became cognizant of them when it was brought before the board of the Union Pacific Railroad Company.

Q. That is, you are speaking now of the matter of the sale by the Union Pacific being brought before the board?

A. That is what I stated—the Union Pacific or Oregon Short Line.

Q. To whom did the Union Pacific sell its holdings in the Northern Pacific?

A. As far as I can recall, to Messrs. J. P. Morgan & Co.

Q. Was that sale made for cash? 1063

A. Partly cash and partly securities.

Q. When was the matter of the sale brought before the board of the Union Pacific?

A. As far as I can recall, in November of 1901.

Q. And was that the first intimation you had in relation to the subject of the sale?

A. It was the first positive information; yes.

Q. Well, what other information did you have, Mr. Schiff?

A. Simply that negotiations were going on.

Q. And when did you obtain knowledge that negotiations 1064
were going on?

A. Shortly before they actually culminated.

Q. And that sale was made, you say, to whom?

A. To Messrs. J. P. Morgan & Co., as far as I know.

Q. Well, when you say as far as you know—the matter was submitted to the directors of the Union Pacific, was it not?

A. It was so stated that it was.

Q. How much cash entered into the consideration of the sale, Mr. Schiff?

1065 A. As far as I can recollect, some nine or ten millions.

Q. And how much securities?

A. I believe something over eighty millions.

Q. And in what form were those securities?

A. Stock of the Northern Securities Company.

Q. And that sale was actually consummated about that time?

A. As far as I can recollect, yes.

Q. Now, in that transaction as reported and passed upon by the board of the Union Pacific, were there any other conditions attached? Was there anything agreed upon in reference to the
1066 representation by parties connected with the Union Pacific?

A. Nothing whatsoever, as far as I know.

Q. Was anything said about the composition of the board of the Burlington?

A. Not at that time.

Q. When was it said first to your knowledge?

A. When the board were about to be elected.

Q. And when was that, as near as you can fix it?

A. Somewhere between the 1st of November, 1901, and the 1st of January, 1902.

1067 Q. Was the matter of your representation on the Burlington fixed by your election to those boards before you sold out the stock to J. P. Morgan & Co.?

A. So far as I can recollect it was not.

Q. Are you positive in regard to that?

A. I am quite positive.

Q. Was anything said in regard to your representation on the board of the Northern Securities Company?

A. As far as I can recollect, nothing was said.

Q. Was that brought up at any time to your knowledge in
1068 connection with this sale of the Union Pacific holdings?

A. Not in connection with that sale—certainly not.

Q. When was it first brought up?

A. I think Mr. Hill asked me whether I would be willing to go on the Northern Securities Company board.

Q. And at the time that he asked you if you would be willing to go on the Northern Securities Company board were these negotiations for the Union Pacific holdings in progress?

A. I can't recollect that.

Q. Does your firm hold at the present time any stock in the 1069
Burlington Railroad or the Burlington Railway Company?

A. My firm does not.

Q. Do you individually?

A. Yes.

Q. And to what extent?

A. In the Burlington Railroad Company?

Q. And to what extent?

A. A small amount.

Q. Do you know of any movement or action in the market during the early winter of 1901 looking to the buying up of the 1070
Burlington Railroad stock?

A. I do not.

Q. Do you know whether there was an attempt to buy, outside of the purchases that you made yourself, the stock upon the market?

A. In the early winter of 1901?

Q. Yes, sir.

A. I do not.

Q. Do you know, Mr. Schiff, when the first negotiations were had between Mr. Harriman, or parties representing the Union 1071
Pacific interests, for the sale of their holdings in Northern Pacific?

A. I do not know. I was away from the office.

Q. Do you now know when the first negotiations were had?

A. I do not.

Q. Do you know with whom those negotiations were had?

A. I presume with J. P. Morgan & Co.

Q. That is based upon the fact, I suppose, that they ultimately bought the stock?

A. Yes. 1072

Q. It is a mere presumption. Do you now know how early the negotiations opened between Harriman and J. P. Morgan & Co. for the sale of the Northern Pacific holdings?

A. I do not.

Q. Do you know anything about the details of those negotiations?

A. I do not.

Q. Were you never informed in reference to those other than you have given here?

1073 A. I was not.

Q. Mr. Schiff, returning to the first conference that you had with the Morgan and Hill interests, about May 9, will you state what was said relative to Mr. Morgan being made the arbitrator for the purpose of designating the board of directors of the Northern Pacific?

A. Yes. As I have already said to you, the apprehensions of the public were great, and Mr. Morgan was in Europe. It was said we all had confidence in Mr. Morgan's fairness and good judgment, and that we would leave it to him, how the
1074 board of the Northern Pacific should be constituted; absolutely to him.

Q. That was the substance of it?

A. Yes.

Q. Was there anything said at that time relative to the composition of the board?

A. There was not.

Q. When did you first learn of the plan of retirement of the Northern Pacific preferred?

A. When the directors acted upon it.

1075 Q. Was that the first information you had relative to that?

A. I learned in a general way from members of the Stock Exchange that the directors contemplated retiring the preferred stock, but knew nothing actually about it until it had been retired.

Q. You were not consulted in any way relative to the plan that was adopted?

A. No.

Q. And you don't know whether Mr. Harriman, or Mr. Harriman's interests, were consulted in reference to that plan?

1076 A. You had better ask Mr. Harriman. I don't know.

Q. I am asking you, Mr. Schiff?

A. I do not know.

Q. Do you know now, or did you know then, why the plan of retirement was adopted in such a way as to cut the preferred stockholders out of any right to subscribe for convertible certificates?

A. The directors of the Northern Pacific Railway claimed that the company had the right to retire the stock, and they retired it, as I understand.

Q. That is the way you understand it, is it? The board of 1077
directors of the Northern Pacific at that time were recognized to be friendly to the Morgan interests, were they not?

A. I do not know.

Q. You do not know that?

A. No; I am not here to express opinions, I think.

Q. I understand that perfectly. Were you informed at any of the conferences you had that if it were necessary to carry out the plan of retirement of the preferred stock the board of directors would postpone the annual election over January 1?

A. I did not. 1078

Q. You never heard anything about that, nor heard it brought up?

A. No, sir.

Q. Do you know how the Harriman interests, after purchasing 78,000,000 of the Northern Pacific, changed their policy and sold that entire interest out? How they happened to do that?

A. I am not aware that the Harriman interest bought any.

Q. Well, the Union Pacific or Oregon Short Line. I say the Harriman interests, because I understand Mr. Harriman was 1079
the spokesman and representative all through, to save repeating those three terms.

A. They sold out because they thought it was a good thing. The Oregon Short Line and Union Pacific no doubt sold it out because they thought it was a good thing to take a profit on their stock.

Q. I see. How did you happen, and what was the occasion of going into the market at that time, Mr. Schiff, and buying in that 78,000,000 of stock?

A. Because I thought—my firm thought—it was a very val- 1080
uable thing to acquire, if it were possible.

Q. And the purpose of that purchase was to obtain a controlling interest in the Northern Pacific, was it not?

A. Not immediately.

Q. Well, ultimately?

A. As large an interest as possible.

Q. Ultimately that was the object?

A. As large an interest as possible.

1081 Q. And was it sold to the Union Pacific or Oregon Short Line for the same purpose?

A. It was sold because we received a good offer for it from the Oregon Short Line or Union Pacific.

Q. Was it not claimed by the parties who purchased that interest, Mr. Schiff, that they had obtained a control of the Northern Pacific thereby?

A. Kuhn, Loeb & Co. had bought, as I said, 78,000,00 of stock; the total capital was 155,000,000.

Q. Was it not claimed by the Union Pacific Railway that
1082 they had by that purchase acquired a controlling interest in that stock of the Northern Pacific?

A. I do not know that the Union Pacific Railway ever made any claim at all.

Q. Well, then we will substitute the Oregon Short Line?

A. Or the Oregon Short Line.

Q. You do not know that a claim of control was ever made by them?

A. I have told you before that I left for Europe at the end of July last year, and did not return until October.

1083 Q. Wasn't the matter, Mr. Schiff, of the relative interests and the control fully decided and disposed of to the satisfaction of the Oregon Short Line interests, and you and Mr. Harriman before you left for Europe, as to who had the actual control of the Northern Pacific?

A. There was nothing at all decided.

Q. And no conferences were held at which you were present?

A. I have told you already of the two conferences at which I was present.

Q. Those were the entire ones, were they?

1084 A. As far as I can recollect, yes.

Q. Previous to the time that you left for Europe, had the matter of the retirement of the preferred stock been brought up?

A. That is a very vague question.

Q. You left for Europe in July, 1901?

A. Yes.

Q. Now, previous to the time that you left—we will say between the 1st of May and the time of your departure—had the matter of the retirement of the preferred stock been discussed or brought to your notice?

A. Not that I know of. 1085

Q. What's that?

A. By whom.

Q. By anybody?

A. That is rather a peculiar question. I am discussing every day questions with people of which I don't remember anything.

Q. Yes; but suppose you give us your recollection in regard to that?

A. If you will ask me a definite question I can answer then. If you ask me vague questions I can not answer them.

Q. Was the matter of the plan of retirement of the preferred 1086 stock of the Northern Pacific brought to your attention between May 1 and the time you left for Europe?

A. By whom?

Q. By anybody. I will find out from whom by you.

A. Yes; I think I was down at the end of Florida last winter, and somebody spoke about the Northern Pacific preferred stock. That is the only answer I can give such a question.

Q. Who was the somebody?

A. I don't remember.

Q. Was that matter made the subject of any conference here 1087 in New York?

A. No.

Q. And you, before you went away, had no information nor no knowledge that it was intended to retire the preferred stock?

A. I had not.

Q. And the plan had not been brought to your notice?

A. It had not.

Q. Had any plan or had the fact of the intention to retire the preferred stock been brought to your notice?

A. It had not. 1088

Q. Mr. Schiff, when was the subject of the organization of the Northern Securities Company first brought to your attention?

A. When I saw it in the newspapers.

Q. That is a little bit indefinite.

A. The actual organization?

Q. Was the matter of the organization of the Northern Securities Company brought up at either of the conferences that you attended with Mr. Morgan or Mr. Hill?

1089 A. No; Mr. Hill had spoken to me years ago that he intended to form such a company.

Q. Yes, we have heard of that; but I am speaking about this——

A. Why do you ask me, sir?

Q. Between May 1 and the time you left for Europe?

A. No.

Q. Nothing had been said in regard to the organization of the holding company?

A. No.

1090 Q. Mr. Schiff, I asked you, did I not, when you were first requested to become a member of the board of directors of the Northern Securities Company—at what time?

A. Somewhere between the 1st of November and the end of December, 1901.

Q. Did you have anything to do with the organization of the Northern Securities Company?

A. I had not.

Q. And your first connection with the company or with the affairs of the company was when you were requested to go on as

1091 member of the board?

A. It was.

Q. Have you attended any meetings of the board of directors of the Northern Securities Company?

A. I have.

Q. Are you a member of the executive committee?

A. I am not.

Q. How many meetings of the board have been held?

A. I do not know.

Q. How many have you attended, Mr. Schiff?

1092 A. I think three or four.

Q. When was the matter of your becoming a member of the board of directors of the Burlington Railroad first brought to your attention?

A. As far as I can recollect, between the beginning of November, 1901, and the end of December.

Q. And who brought that matter to your attention?

A. I do not recollect.

Q. Was it Mr. Hill?

A. Possibly; but I do not recollect. 1093

Cross-examination by Mr. STETSON:

Q. Did you say that you held some of the stock of the Burlington Railway?

A. I think I hold 10 shares.

Q. Ten shares?

A. I think.

Q. Not a hundred?

A. I don't think—I don't know; I don't think so.

Q. No one has advised you how much it is necessary to keep out to bring a suit? 1094

A. No.

Mr. BOUTELLE. There is no objection to that last question.

Q. Mr. Schiff, did we correctly understand you as saying that your first purchase of the stock of the Northern Pacific Railway Company was an individual purchase by you, and not as a part of a syndicate?

A. That is correct.

Redirect examination by Mr. BOUTELLE:

Q. Mr. Schiff, I will ask you one more question. Would the books of your firm show on whose account the purchases made 1095 of Northern Pacific were made; that is, whether on firm account or for customers?

A. I have already stated to you that they were made for the account of Kuhn, Loeb & Co.

Q. Does that appear upon the books?

A. Yes.

Q. I am not asking what does appear, but would the books show whether it was a firm transaction or a transaction for a customer?

A. Yes. 1096

Q. And who is the party in charge of the records of your firm, or the books of your firm, that would show that fact?

A. One of the bookkeepers; I don't know exactly which one.

Q. Who is the head bookkeeper of the firm?

A. Mr. Holden.

Q. And his initials or first name?

A. I do not know.

1097 CHARLES STEELE, being first duly sworn, testified as follows to questions asked by Mr. Boutelle:

Mr. Steele, you are a member of the firm of J. P. Morgan & Co., of this city?

A. I am.

Q. And how long have you been a member of that firm?

A. Since early in 1900.

Q. Were you in this city during the first six months of 1901?

A. I was.

Q. We have got somebody that was here, finally.

1098 A. I think I was here most of it.

Q. Did you have any part in representing your firm in the transaction connected with the purchase of the Burlington road by the Great Northern and Northern Pacific?

A. I had some little to do with it; yes.

Q. And when did your connection with that begin—at what time?

A. I could not give you the exact date; it was, I think, in the early winter. The first connection I had with it was an interview with the committee in Boston who represented the

1099 Burlington road; that was along in the early winter.

Q. In the early winter?

A. Yes; in the early part of the year 1901.

Q. Now, did you represent your firm in the further negotiations that were had in respect to the purchase of the Burlington; did you act for your firm in that matter?

A. No; I did not act directly.

Q. Who did act for your firm in that transaction?

A. Mr. Bacon was the principal actor.

Q. Mr. Bacon, I believe, is in Europe now?

1100 A. He is, unfortunately. I should say, Mr. Boutelle, I was with Mr. Bacon almost every day, and I could give you the results.

Q. Well, were you cognizant of the details of the transaction as it progressed?

A. Not any of the minute details.

Q. Your firm financiered that deal, did they, Mr. Steele? That is, your firm furnished the money for putting that deal through?

A. No; I should hardly say that. May I explain what the 1101
arrangement was?

Q. Certainly.

A. The result finally reached was that the gentlemen who constituted the committee of the Burlington road issued a circular to the shareholders stating that options would be given to take joint bonds of the Great Northern and Northern Pacific for their stock, or to take part in cash, or to take all cash, provided a certain amount accepted the offer. It was made a condition by the Burlington committee that $50,000,000 of cash should be provided as part of the negotiations for the purchase 1102
of the entire amount of stock. My firm organized a syndicate who agreed to provide that amount of cash.

Q. That is, you had what is ordinarily termed an underwriting agreement?

A. To the extent of $50,000,000 of the bonds.

Q. Now, you had the negotiations, did you, Mr. Steele, with the committee or trustees or directors of the Burlington road?

A. I had one meeting with the committee. That was the only personal part I took in it.

Q. And who was that committee? 1103

A. Mr. Hunnewell, Mr. Paine, Mr. Forbes, and Mr. Olney.

Q. Mr. Perkins?

A. Mr. Perkins.

Q. Five?

A. Yes.

Q. Do you know Mr. Paine's first name?

A. I am not sure about that.

Mr. STETSON. Charles J.

Q. When was that Burlington transaction completed, Mr. Steele? 1104

A. I could not recollect the date. It would be shown by the circular which that committee issued. It was completed just prior to the issuance of that circular.

Q. You mean subsequent, do you not?

A. You said the negotiations.

Q. Did I say the negotiations? I meant to say, when was the purchase consummated?

A. I think within a month or six weeks after the circular was issued.

1105 Q. At the time negotiations were being had for the purchase of the Burlington, at that time was the composition of the Burlington board under advisement, to your knowledge?

A. It was not, sir.

Q. Do you mean it was not, to your knowledge, or it was not in fact?

A. It was not, to my knowledge. I think I should have known of it if it had been.

Q. Do you know how much cash actually went into that Burlington transaction?

1106 A. My recollection is that a large part of the $50,000,000 went in.

Q. And that was furnished by the underwriters?

A. Yes.

Q. Do you know who furnished the consideration for that underwriting agreement?

A. The Great Northern and Northern Pacific Railway companies.

Q. Combined?

A. Combined.

1107 Q. Do you know, Mr. Steele, how much stock of the Burlington had been bought up previous to the time of the issuance of the circulars by the trustees or committee, as you have termed them, in the market?

A. So far as I am aware, there was none whatever, Mr. Boutelle.

Q. As a matter of fact, had there not been during the forepart of that year or the late winter of the year previous an attempt made by the Union Pacific to buy up the Burlington?

A. I do not know, sir.

1108 Q. Had there not been eight or nine million bought up in that manner.

A. That I can not tell.

Q. Do you know the occasion, or what it was started the Great Northern and Northern Pacific to make this attempted combined purchase?

A. I don't know what you mean by a combined—oh, a combined purchase of the Burlington?

Q. Of the Burlington?

A. I think I do. It was their desire to procure a connection 1109
with the east and southeastern country, which was the largest market for the agricultural, timber, and mineral products of the Burlington and Northern Pacific roads.

Q. Those conditions had existed for some time previous as well as that particular time, had they not, Mr. Steele?

A. They had, sir.

Q. Can you explain what was the immediate occasion—why it was that just at that time this combined purchase was attempted?

A. There was no other reason than that I have stated that I 1110
know of.

Q. By whom, Mr. Steele, was the matter of the proposed purchase first brought to your attention?

A. I couldn't say. I think the suggestion arose probably in our own office; as far as I know that was the first suggestion made about it.

Q. Then it originated in J. P. Morgan & Co.'s office?

A. Yes.

Q. You were largely interested, or your firm was, at that time 1111
in the Northern Pacific?

A. We had a substantial interest; yes.

Q. And you also had an interest by representation that was very considerable, did you not, through foreign connection and clientele?

A. Well, up to that time, if I may explain, Mr. Boutelle, the 1st of January, 1901, the stock of the Northern Pacific road was embraced in a voting trust, of which there were five trustees, of whom Mr. Morgan was one. The voting trust elected the directors each year, and there had been no occasion to ask for proxies, if that was what was in your mind, so I could not say 1112
we had any representation.

Q. When was that voting trust dissolved?

A. January 1, 1901.

Q. That was after the annual election held in the fall of 1900?

A. Yes.

Q. And as I recall it, the annual elections of the Northern Pacific are in October, are they not?

1113 A. That is my recollection; they are in the autumn at any rate.

Q. Was there to your knowledge a pool or syndicate formed for the purchase of Burlington stock previous to the time of those negotiations with the committee or trustees?

A. Absolutely there was not to my knowledge.

Q. Did I ask you, Mr. Steele, in what month that purchase was completed?

A. You did, and I answered that I thought it was about a month or six weeks after the circular was sent out; I do not
1114 recall the exact date.

Q. That would be sometime about April—no, a little earlier than that I guess?

A. If you can give me the date of the circular——

Q. Well, that is in the record, it will show for itself.

A. It was a month or six weeks, I think, after that.

Q. When was it first brought to your attention, Mr. Steele, that active efforts were being made in the market by certain interests to acquire control of the Northern Pacific?

A. I think I should have to answer that that was never
1115 brought to my attention. It was in the late winter and spring of 1900 that we were aware that large transactions in Northern Pacific stock were taking place in the market, but no one had called our attention to it in the way you suggest.

Q. Well, when did you first ascertain that the Union Pacific, or interests allied with it, had acquired $78,000,000 of the Northern Pacific stock?

A. I think that the first knowledge that I had of that was when the annual report of the Union Pacific Railway Company was published, and it was then stated that that stock had been
1116 bought for the Oregon Short Line. As I originally said, I think that was in the autumn of 1901.

Q. Were you not aware, Mr. Steele, earlier than that time, that previous to May 1, 1901, there had been an effort made to buy up the Northern Pacific in the market?

A. I was aware, as I have stated, that there had been large purchases of Northern Pacific stock made.

Q. Now, when was it that your firm and Mr. Hill had their first conference relative to standing together in the matter of their Northern Pacific holdings?

A. I do not recollect that I have testified that there was such 1117
a conference.

Q. I don't say you did. I ask you when it was Mr. Hill testified to that?

A. I am unable to say, sir.

Q. Well, were you present at any such conference at or about May 1, 1901?

A. I don't recall any conference. I know the question was discussed by my firm; whether Mr. Hill was there or not, I can not undertake to say. But the question was discussed that there were large purchases of Northern Pacific stock being made, 1118
and that we would probably be looked to by the minority shareholders or outstanding shareholders to protect the Northern Pacific road from going into control of anybody else.

Q. And it was pretty definitely known and understood about that time that somebody else was trying to obtain control, wasn't it?

A. It was conjectured——

Q. Quite strongly conjectured?

A. I can not say. It was very well known.

Q. What I want to get at is whether you were present at a 1119
conference that was held at or about the 1st of May between some members of your firm and Mr. Hill?

A. Regarding what, Mr. Boutelle?

Q. Regarding Mr. Hill's holding or retaining his holdings in Northern Pacific—Mr. Hill and his friends, so termed?

A. I certainly had conferences with Mr. Hill on that subject about that time myself.

Q. Will you state to us the substance of that conversation or those conversations?

A. The substance of it was that there had been large pur- 1120
chases of Northern Pacific stock in the market and we were questioning whether ourselves and Mr. Hill and our friends held an actual majority of the stock, either common or preferred.

Q. Was that all there was to it?

A. That was all there was at that immediate time; later on—well, it was within a few days—later on we feared that some of our friends had not held their stock. The stock had advanced

1121 quite sharply in the market and they had been tempted to sell, and we were not quite satisfied that taking Mr. Hill and ourselves and our friends together that we held a majority of the Northern Pacific common stock; we thereupon decided—I don't know whether Mr. Hill had anything to do with that or not—that it was important, and there was a moral obligation upon us to endeavor to secure that stock, and my firm proceeded to purchase Northern Pacific common stock.

Q. What I am more particularly anxious about at the present time is these conferences your firm had with Mr. Hill, and just
1122 what agreement or understanding you reached at those conferences between you, as you say, representing yourselves and friends, and Mr. Hill speaking for himself and friends?

A. I don't think there was any agreement at all. It was understood, and we certainly expected that Mr. Hill and his friends and our friends would hold their Northern Pacific common stock. There was no agreement with them to do so, and there was no obligation to do it if they didn't want to.

Q. I am not speaking about an obligation in the sense of a contract based upon a legal consideration, but an understanding
1123 of some kind was reached between your firm and Mr. Hill at that time that they would hold or retain their holdings, was there not?

A. It was certainly stated by Mr. Hill that he intended to, and it was stated by us that we intended to. That is all there was to it, Mr. Boutelle. I am not trying to dodge your question.

Q. I think you are one of the fairest witnesses, Mr. Steele, we have had, and I am sure I do not intend to insinuate you were dodging.

1124 A. I am trying to save you the trouble of asking so many questions about it. We certainly expected Mr. Hill and ourselves and our friends that they would hold their common stock together and not sell it. That question was discussed and talked of, and it was understood by all of us that that would be done, but there was no agreement or understanding on the subject. That is all I want to get in your mind.

Q. Now, Mr. Steele, was there nothing more to this conference than the matter of holding and of selling common stock?

A. No; that was the only thing, Mr. Boutelle. 1125

Q. Was it not at one of those conferences—one of the earliest of those conferences—stated by Mr. Hill that if he retained his stock and did not sell out that the preferred stock of the Northern Pacific must be retired.

A. No, sir; that was decided long prior to the year 1901, when the voting trust went out.

Q. I understand that, but I am getting down now to whether or no that matter was discussed at or about this time?

A. It may have been stated that we were going to retire the voting trust, that the board was expected to retire it, and it was 1126 expected that they would.

Q. Refreshing your recollection to that extent, was it not quite positively stated, and stated by Mr. Hill, that he would retain his holdings, but that the preferred stock must be retired?

A. I do not recall any such condition as that, Mr. Boutelle. May I add that I do not think it would be necessary, for we understood it, and Mr. Hill understood it, that the preferred stock was going to be retired.

Q. Was it understood that any particular plan was to be adopted for the retirement of that preferred stock? 1127

A. I think not at that moment.

Q. Was it understood that a plan was to be adopted that would absolutely freeze out the preferred stockholders?

A. I don't think any plan was even discussed at that time, Mr. Boutelle.

Q. Was the matter brought up and talked over during those conferences at which you decided to make an attempt to obtain control?

A. It was not discussed in any way except it may have been mentioned that that was going to be done, as I above previously 1128 stated.

Q. Wasn't it furthermore stated directly that it would be done, so that while it may not have been equivalent to a formal agreement that there was a perfect understanding between you gentlemen that that retirement was to be had that fall?

A. It was certainly understood by J. P. Morgan & Co. that the retirement would be in the autumn.

Q. Was it not so stated? I am not trying to get at what was in somebody's mind.

1129 A. I think it was stated a great many times.

Q. At these conferences with Mr. Hill?

A. I could not say positively as to that, but either then or later or before. It was a thing thoroughly well understood to both of us.

Q. How much Northern Pacific did you and your friends, exclusive of Mr. Hill, control at that time, Mr. Steele?

A. What time are you now speaking of?

Q. The 1st of May, 1901.

A. I could not say as to our friends; we had at that time
1130 about $4,000,000 or $5,000,000.

Q. That is, you mean your firm?

A. My firm.

Q. Shortly after your conferences with Mr. Hill and some informal agreements or understandings were brought up, your firm went into the market and purchased additional Northern Pacific, did you not?

A. Shortly after the 1st of May we did. I must dissent from the conclusions of your questions, Mr. Boutelle.

Q. I don't want you to dissent from my conclusions. The
1131 court will be able to do that.

A. I don't want to be understood as agreeing to the conclusions that you put in your question.

Q. Well, is it not a fact, Mr. Steele, that subsequent to your conference with Mr. Hill your firm did go into the market and purchased large amounts of the common stock of the Northern Pacific?

A. We purchased large amounts—we thought they were fairly large amounts of the Northern Pacific stock between the 1st of May and the 7th.

1132 Mr. KELLOGG. Didn't I hear you objecting to leading questions?

Mr. BOUTELLE. Yes; but we are up against adverse witnesses right straight along, Mr. Kellogg, and you must make a little bit of allowance.

Mr. KELLOGG. We want to give you all the latitude in the world, Mr. Boutelle.

Mr. BOUTELLE. That is appreciated, I assure you.

Mr. STETSON. And all longitude.

Mr. KELLOGG. I simply suggested you were making some 1133
objections; that is all.

Q. Mr. Steele, when did your conference—or the first conference with Mr. Hill—at or about May 1, take place?

A. I can not give the exact date. It was somewhere about May 1.

Q. How many of these conferences did you have at or about that time?

A. I could not say; I probably saw Mr. Hill every day, at least if he was in town at that time. My recollection is, he was there about a week or ten days, and I saw him probably every 1134
day.

Q. And was there any conference with him, or conferring with him relative to the condition of the market, particularly as relating to the Northern Pacific?

A. No; I don't think—about the condition of the market. We may have told him of the purchase we had made.

Q. Between May 1 and May 7, how much Northern Pacific common did you or your firm purchase?

A. I can't give you round figures, about $15,000,000.

Q. Was that stock purchased, Mr. Steele, on account of J. P. 1135
Morgan & Co. or on account of customers?

A. On account of J. P. Morgan & Co.

Q. Absolutely?

A. Absolutely.

Q. And J. P. Morgan & Co. paid for that stock then, without holding any securities back of it?

A. J. P. Morgan & Co.?

Q. Yes.

A. We did, sir.

Q. Was there any agreement or understanding at that time 1136
relative to the disposition of that additional stock you were then acquiring?

A. No; there was not.

Q. And that stock was not bought at the request of any third person?

A. It was not, sir.

Q. You held then, with these additional purchases that you made, from $19,000,000 to $20,000,000 in round numbers of common stock.

1137 A. Roughly, around $20,000,000.

Q. And how long did you continue to hold that?

A. We held it all until about the middle of the summer. I think it was the latter part of July or perhaps the 1st of August when we sold about $10,000,000 to Mr. Hill and to some of his friends, and to some of our own friends as well.

Q. And did you retain the remainder of your holdings down to the fall of 1901?

A. Yes.

Q. The only modification in your holdings was the sale of
1138 these $10,000,000, was it?

A. That is all.

Q. And that left you about $12,000,000 of Northern Pacific common?

A. I think about ten, or under ten.

Q. Do you still hold that, Mr. Steele?

A. We do not.

Q. What disposition was made of that $10,000,000?

A. That we held?

Q. Yes, sir.

1139 A. We sold it to the Northern Securities Company.

Q. Was that a sale to the Northern Securities Company in exchange for its stock?

A. We sold it to the Northern Securities Company and they paid us in their stock.

Q. Do you still retain that stock of the Northern Securities Company?

A. We do, I think, all of it.

Q. There was no agreement in reference to any disposition by you of that $10,000,000 to any other interest than the North-
1140 ern Securities Company?

A. There was no agreement with the Northern Securities Company either. There was no agreement with anybody about it.

Q. And you still hold the Northern Securities Company stock?

A. We do.

Q. Is that stock held by you absolutely, or held as collateral?

A. Absolutely.

Q. And you have no obligation back of that purchase? 1141

A. None whatever.

Q. Were you present, Mr. Steele, at the conference of May 9, at which it was decided to leave the selection of board of directors of the Northern Pacific to Mr. Morgan?

A. I was present at this conference, but it wasn't May 9.

Q. It was May 11, wasn't it?

A. Oh, no, I think it was about a week or two later.

Q. Who were present at that conference, Mr. Steele?

A. Mr. Hill and Mr. Harriman, Mr. Schiff, Mr. Bacon, and myself, I think. 1142

Q. Was Mr. Baker there? George F. isn't it?

A. Mr. Baker? No, he was not there.

Q. Mr. Bacon?

A. That was my partner.

Q. That is the gentleman who was in Europe. When was the next conference you had with either Mr. Schiff or the Harriman interests?

A. I don't recall any other conference I had with either Mr. Schiff or Mr. Harriman.

Q. Or any one representing the Oregon Short Line interests? 1143

A. No, sir.

Q. What was the substance of the negotiations that were had at that conference that you have referred to?

A. I shall have to go back a little to answer your question fully, Mr. Bouteile. On the 9th of May there was a great disturbance in the stock market here, and the newspapers were full of stories of great contest for control of the Northern Pacific between important financial interests. They had succeeded in creating a condition of great excitement in financial circles. People were in danger of failure. There was a lack of confi- 1144
dence around, and the purpose of this conference was to devise a statement that could be made public, assuring the public generally that they were mistaken and there was no such trouble on hand. The conference was very brief—I think it lasted not more than ten or fifteen minutes—and Mr. Harriman, I think it was, suggested that the purchase of Northern Pacific stock, or the Northern Pacific stock which had been purchased by or in their interests, they were quite willing to give Mr. Morgan a

1145 proxy and let him fix the composition of the board of directors of the Northern Pacific in the autumn, and they thought that would remove any question in the public mind about any friction or contest between different interests.

Q. Was there anything stated at that time as to the amount of the respective holdings?

A. There was not; no, sir.

Q. That was not discussed?

A. Not discussed at all.

Q. Did you have or were you present at any other conference
1146 with the Harriman or Oregon Short Line interests subsequent to that?

A. I don't recall any until possibly late in the autumn. Sometime in November. I think I had one conference at which Mr. Harriman was present regarding the sale of the Northern Pacific stock which they held.

Q. Between those dates, then, you know nothing of the negotiations that were had between Mr. Harriman, the Oregon Short Line interests, Mr. Hill, and Mr. Morgan.

A. I don't think there were any.

1147 Q. I am not asking you about what you think, I am asking you if you know of any.

A. I don't know of any.

Q. How much were the holdings of the Oregon Short Line in Northern Pacific?

A. I never knew exactly what they were. Roughly it was discussed as being about 78,000,000. I say I never knew until late in the summer of 1901 when that stock was transferred into the names of Mr. Harriman and Mr. Pierce, and we assumed that that was the stock which they had been talking of, and
1148 that gave us the amount as about 78,000,000.

Q. Were you present, Mr. Steele, at the time the plan of retirement of Northern Pacific preferred as ultimately carried out was under discussion?

A. I am a member of the Northern Pacific board, and I was undoubtedly present when it was discussed there.

Q. That is not what I mean. The plan, as ultimately carried out, was already drawn up and submitted to the board and simply formally p sed, was it not, as a board? Were you present at the confer ces when that plan was decided upon?

A. The plan was made up in my office. My firm were the 1149
fiscal agents of the Northern Pacific Company, and they looked to us to suggest some plan for financing this action that they had determined upon, and we suggested this plan.

Q. Well, when was that plan suggested, Mr. Morgan?

A. Mr. Morgan?

Q. Or, Mr. Steele, pardon me.

A. You flatter me, sir. It was very shortly before the meeting of the board, at which the matter was to be presented to the board. That meeting was about the middle of November, and I think this plan was gotten up about a week before. 1150

Q. I am not asking you in regard to when it was formerly drawn up, but when it was first discussed.

A. That is what I mean, Mr. Boutelle. It was first discussed, I think, about a week or ten days before a meeting of the board.

Q. And you intended by that, Mr. Steele, to state that matter was not discussed earlier in your office to your knowledge?

A. Not that I recollect.

Q. When was the plan of the organization of the Northern Securities Company first brought to your attention? 1151

A. I think early in the year 1900, as soon as I was in the office, almost.

Q. In 1900 the Northern Securities Company was brought to your notice; early in the year, was it?

A. Perhaps I am wrong under that title. I think that was brought to my notice—it was the autumn of 1901. I could not come very close to it.

Q. When was the plan of transferring to the Northern Securities Company, the stock in the Northern Pacific, first brought to your attention? 1152

A. May I ask what stock in the Northern Pacific you mean, Mr. Boutelle?

Q. All the stock that could be obtained?

A. I never heard any such plan as that at all.

Q. Will you modify that question by saying any stock of the Northern Pacific, then?

A. That was brought to my attention about midsummer of

1153 1901. It came about shortly after Mr. Morgan's return from Europe, which was early in July. The question of transferring that stock to the Northern Securities Company I am not sure was discussed at that time. The question of forming some sort of a holding company to hold the Northern Pacific stock, which we had bought and which was held by our friends at that time, was discussed about then.

Q. Did your firm have anything to do with the organization of the Northern Securities Company?

A. No, sir.

1154 Q. That was a deal entirely outside?

A. Outside; yes.

Q. The matter of organizing a securities company, you say, was first brought to your attention in the summer?

Mr. STETSON. He didn't say that. He said in the early part of 1900.

Q. I am getting at his last answer just before this. Did I state that incorrectly, Mr. Steele?

A. In this, Mr. Boutelle. I said in the summer of 1901 the matter of putting the Northern Pacific stock which we held into

1155 a securities company was first brought up.

Q. That is what I mean. What I was coming at is wasn't the matter of the retirement of the preferred stock discussed and the plan under advisement at the same time as the plan for organizing a securities company to turn over the N. P. stock?

A. No, sir. The matter of retiring the preferred stock was never under discussion. It was considered a settled thing, as far as we were concerned, and the question of the particular plan I don't think came up until shortly before the directors' meeting at which it was to be acted on.

1156 Q. Do you know how Mr. Hill and certain parties interested with him happened to buy the 10,000,000 of your 15,000,000 or 16,000,000 purchase?

A. I do not, except I think they thought it was a good investment.

Q. I want to know if you know the facts?

A. I don't know, sir. My knowledge of the facts would be confined to the simple statement that they wanted to buy it, we were willing to sell, and we sold it.

Q. When the plan or discussion as to the retirement of the 1157
preferred stock was first brought up, who was present?

A. Do you speak now of the retirement of the preferred stock or the plan?

Q. No; I am speaking about the discussion of a plan—formulating a plan.

A. I couldn't say. It was, I think, in our office, and I think it was discussed by Mr. Bacon and myself, probably.

Q. Was Mr. Hill a party to any of those discussions or conferences?

A. That I couldn't say. I am quite sure he knew what the 1158
plan was to be.

Q. And that plan was made up as a result of conferences held between you and Mr. Hill and the parties that represented him?

A. No, sir.

Q. Are you positive in regard to that?

A. Quite positive, sir.

Q. What did your firm have to do with the purchase of the Harriman interests in the Northern Pacific, Mr. Steele?

A. My impression is it was my firm that conducted that 1159
negotiation entirely.

Q. Will you state what those negotiations were?

A. I will as nearly as I can, and I think I know the substance of them, Mr. Boutelle. It was after the meeting of the Northern Pacific board, as I recollect it, at which it was resolved that the preferred stock was to be retired. Whether the suggestion came from Mr. Harriman or not, I couldn't quite say, but the question was taken up between Mr. Harriman and ourselves as to the disposition of the Northern Pacific stock which they had. 1160

Q. When was this, pardon me?

A. I think it was a little after the middle of November, after the meeting of the Northern Pacific board, at which it was resolved to retire the Northern Pacific stock. They expressed a desire to be allowed to part with their stock. It had become, or would become, by the retirement of the preferred stock, a minority interest, and it was rather an unsalable commodity, as the stock had practically been withdrawn from the market, and

1161 they asked us if we wouldn't undertake—I say they asked us, it came up between us, I am not sure which one suggested it—undertake to get the Northern Securities Company to buy their stock. We finally agreed upon a basis by which they agreed to sell their stock for a lump sum, which was to be payable partly in cash and partly in stock of the Northern Securities Company. At that time Mr. Harriman—I shall have to apologize whenever I say Union Pacific, because I never really knew whether that was so—Mr. Harriman and his friends held both common and preferred stock, in the proportion, I think, of
1162 about 37,000,000 common to 41,000,000 preferred, in round figures, and their proposition was to sell us that stock in one block for a fixed sum which was to be paid partly in cash and partly in Northern Securities Company stock, and we undertook to try and get the Northern Securities Company to buy that stock on those terms, we acting as bankers between them.

Q. You acted then in that transaction, as I understand it, as middle men?

A. As bankers.

Q. That is, it was not a purchase outright by your firm?

1163 A. No.

Q. Or a purchase in which your firm obligated themselves to pay a fixed amount of cash?

A. No; it was only a purchase by us if we succeeded in getting the Northern Securities Company to take it, and the terms were that we were to turn over just exactly what we got.

Q. You were really, then, in negotiation with the Northern Securities Company; you were really negotiating for the Union Pacific, or Harriman, or Short Line interests?

A. We were bankers in between. I wouldn't say we repre-
1164 sented either side particularly. We were very often put in that position.

Q. You were financial agents and you were requested or instigated to make the transaction or attempt the transaction by the Harriman interests?

A. Well, we did undertake it for them.

Q. And at their request?

A. With their approval, at any rate.

Q. Well, it was a little more than with their approval, was

it not? How did you happen to undertake the negotiation at all? 1165

A. I say I am not quite sure which side suggested it first, whether they asked us to do it or we suggested it to them, but it was one or the other, and as a matter of fact we did undertake it for them.

Q. And whatever you obtained as a result of those negotiations from the Northern Securities Company was what you turned over to the Oregon Short Line?

A. Well, we turned it over to Mr. Harriman.

Q. Was there any written memorandum or agreement of that purchase? 1166

A. No, sir.

Mr. STETSON. It was too large for that, Mr. Boutelle. It was a good thing, too, because writings are bad things to have floating around.

Q. Are you a member of the board of directors of the Northern Securities Company?

A. I am not, sir.

Q. Are you a member of the board of directors of the Northern Pacific? 1167

A. I am.

Q. And of the Burlington—either lines?

A. No, sir.

Q. Neither railroad nor railway?

A. Neither.

Q. Did you attend the meeting of the board of directors of the Northern Pacific on July 23, 1901?

A. I couldn't recollect the date, Mr. Boutelle, but I probably did, as I was here that time.

Q. Was there any meeting either of the executive committee or the board of directors of the Northern Pacific between May 9 and July 23? 1168

A. Well, I presume there was; I couldn't recall any particular meeting.

Q. You were not present at any such meeting?

A. I think probably I was. The board meets monthly, and I think the monthly meetings were held. I am not a member of the executive committee.

1169 Q. Not a member of the executive committee of the Northern Pacific?

A. No.

Q. Are you aware, Mr. Steele, whether there were any negotiations with Mr. Harriman, or the Oregon Short Line interests, previous to this in November?

A. With reference to what, Mr. Boutelle?

Q. The sale of the Northern Pacific holdings.

A. Not that I know of.

Q. Were you aware that at the time Mr. Harriman was placed
1170 on the board of the Northern Pacific?

A. Was I aware that he was put upon the board?

Q. Were you aware of that fact at the time it was done?

A. I was. I think I was present at the meeting when he was elected.

Q. That was five directors that resigned or retired at that time?

A. Yes, sir.

Q. And five new ones selected and appointed by Mr. Morgan?

A. Well, suggested by Mr. Morgan.

1171 Q. And what you suggested went as a matter of fact, didn't it?

A. It happened to at that time.

Q. Do you know, Mr. Steele, whether there was any controversy or understanding relative to Mr. Harriman's being placed on the Northern Pacific board prior to that time?

A. I do know absolutely there was not.

Q. Do you know how he happened to be placed on the board of directors of the Burlington?

A. I do, sir.

Q. Will you state how it was?

1172 A. You only want the Burlington now?

Q. Yes, sir.

A. There had been some apprehension, I think, in the minds of Mr. Harriman and some of his friends that difficulties might arise through the fact that the Great Northern and Northern Pacific had purchased the Burlington road and it was a menace to the Union Pacific. I talked it over, I think, with Mr. Morgan, and said, "Why not let us suggest that Mr. Harriman go on the board, and he can see there is nothing intended as a menace in

any way?" and he approved of the idea; and I don't know 1173
whether I made the suggestion or whether Mr. Bacon did, when the Burlington meeting came around, that Mr. Harriman should be elected a director of that board, and he was, at any rate, elected at that meeting. That, I think, was quite late in the autumn.

Q. Did the same thing hold good in the election of George J. Gould to the same board?

A. Yes.

Q. Mr. Gould is also a member of the Union Pacific board, is he not? 1174

A. I think he is.

Q. Did the same thing hold good in regard to the election of Jacob H. Schiff to the Burlington boards?

A. I don't know whether Mr. Schiff would be considered so much as representing Union Pacific interests as Mr. Harriman, but Mr. Schiff had been one of Mr. Harriman's associates, as we understood it.

Q. During this contest that had been going on during the spring?

A. I never knew there was any contest going on, Mr. Bou- 1175
telle. I will say during the spring. There was never any contest, except in the newspapers.

Q. We will call it this friendly bout that was had here along about May.

A. I should say during the spring of 1901.

Q. Were all these Union Pacific gentlemen placed on those boards, according to your understanding, merely to show Mr. Harriman that the Burlington was not a menace?

A. You say those boards; do you mean the Burlington boards?

Q. Yes, sir. 1176

A. That was absolutely the only reason, to my knowledge.

Q. Mr. Harriman was also made a member of the Northern Securities board, was he not?

A. I think he was, Mr. Boutelle.

Q. And a member of its executive committee?

A. That I don't know.

Q. Were you present at a conference where both Mr. Hill and Mr. Harriman was present, when the subject of Burlington extensions into Union Pacific territory was brought up?

1177 A. No; I don't recall any such.

Q. Was the subject of Burlington extensions brought up at any conference at which you were present?

A. Not that I recall.

Q. Nor any interference with Union Pacific territory by the Burlington?

A. No.

Q. You don't recall that subject having been brought up or discussed?

A. Not at any meeting where I was present.

1178 Q. Previous to the winter of 1900–1901 had your firm either purchased or financed any considerable amount of the Burlington stock?

A. I don't think we ever had anything to do with it, Mr. Boutelle.

Q. No transaction whatever in Burlington?

A. No; nothing of any consequence, at any rate. I couldn't say positively that some customer might not have bought a 100 shares, but nothing of any consequence.

Q. You neither bought yourself, nor bought for anyone, nor
1179 financed any transaction in Burlington stock during that time?

A. No, sir.

Q. Previous to what you have testified to?

A. No.

Q. When was the time that the ratio at which the stocks of the Northern Pacific and Great Northern were to be turned into the Northern Securities Company first brought to your attention?

A. The only time it ever came to my attention was when the suggestion was made that the stocks which we hold—the Northern Pacific which we hold, or our friends—should go in.

1180 Q. You personally had nothing to do with the fixing of that ratio?

A. As a member of my firm, I may have had a little to do with it.

Q. I mean aside from that—aside from the particular deal that your firm had—you had nothing to do with fixing that ratio?

A. No.

Q. Do you know, as a matter of fact, when that ratio was fixed, the per cent at which Great Northern and Northern Pacific should be turned in?

A. I don't think it was ever absolutely fixed, Mr. Boutelle, 1181
so far as the Northern Pacific was concerned. The negotiations which we had with the Northern Securities Company with regard to the stock which we had was a transaction by itself; the subsequent negotiations under which they took in the stocks which Mr. Harriman held, at our suggestion, was taken on a different basis.

Q. Hadn't the basis on which the Harriman stock was to be turned in been decided a considerable time before the Harriman negotiations were actually consummated?

A. No, sir. 1182

Q. On what basis was the Harriman common stock turned in?

A. There were no pro rata basis. It was a round lump sum for all the common and preferred stock.

Q. And what did you say that was?

A. The amount?

Q. Yes.

A. I don't think I have testified to that before. I give it to you as nearly as I can. It was, in round figures, about $90,000,000 for all.

Q. For the $78,000,000? 1183

A. Yes; of common and preferred; and that was paid partly in securities and partly in cash.

Q. Did you or your firm hold any of the preferred?

A. Do you mean at this time?

Q. Yes.

A. No; we did not then, I am sure.

Q. Did you hold it during the summer of 1901?

A. I think not.

Q. Your holdings are almost exclusively in the common stock?

A. Yes. 1184

Q. Do you represent, as a firm, Mr. Steele, any other common-stock holders than your own holdings?

A. I don't think so, Mr. Boutelle. I don't recall that we did, unless, perhaps, Mr. Baker.

Q. Did you, as a matter of fact, act for or represent any other holders of Northern Pacific common in negotiating transfers to the Northern Securities Company?

A. I don't think we did. We made our negotiations with

1185 the understanding that it was to apply to stock held by our friends, if they wanted it, and they accepted it.

Q. When you speak of your friends, that is a little bit indefinite. Who were they, or what was the amount of their holdings?

A. Well, they held, together with what we had, and I include Mr. Hill in the list, between $41,000,000 and $42,000,000 of common stock.

Q. And that included Mr. Hill's holdings, did it?

A. Yes; and Mr. Kennedy and Mr. Baker and Mr. Jones
1186 and those gentlemen.

Q. They held originally about $18,000,000 or $19,000,000, did they not—that is, in May, 1901?

A. I don't know, though they must have held at least that much, probably a little more, because with our purchase, which, added to the previous holdings, was something like $20,000,000, added to the stock of the gentlemen whom I called my friends, we had about $41,000,000 or $42,000,000.

Q. The ratio at which your Northern Pacific common was turned in was 115?

1187 A. Yes.

Q. And you don't know when that ratio was first decided upon, or by whom?

A. Yes; I tried to answer. I think that was decided upon between Mr. Hill and ourselves, and it was along in the late summer of 1901.

Q. When was it decided and by whom as to the ratio at which the Great Northern should be turned in?

A. That I don't know, sir.

Q. Did you surrender or turn in your stock in the Northern
1188 Pacific without knowledge as to the basis at which the Great Northern was to be acquired at?

A. No; we had knowledge; it was to be 100.

Q. That had been fixed and determined?

A. Yes.

Q. But you did not know when nor by whom that had been fixed in that manner?

A. I do not know, sir.

Q. When was the matter or subject of turning in the Great

Northern and Northern Pacific stock to the Northern Securities 1189
Company first brought to your attention?

A. The subject of turning in the Great Northern into a holding company had been brought to my attention a year or more before.

Q. We have heard of that.

A. Just when it was called the Northern Securities Company I do not know. I knew a holding company was to be formed, into which I assumed that Mr. Hill and his friends were going to put their Great Northern stock. The first time that my attention was called to the fact that the Northern Pacific stock 1190
would be taken in as well was when we made our negotiation to put in our Northern Pacific stock which our friends held, as to which I have testified.

Q. That was when?

A. That was late in the summer of 1901—September or October.

Q. And that was before the Northern Securities Company had been organized?

A. The papers had not been filed at that time.

Q. As a matter of fact, Mr. Steele, the entire plan of taking 1191
over the stocks of both the Great Northern and Northern Pacific had been outlined and fully decided upon during that summer, had it not?

A. Not to my knowledge, sir.

Cross-examination by Mr. STETSON:

Q. Mr. Steele, I would like to get some dates. Do you remember when Mr. Morgan went to Europe in the spring of 1901?

A. It was about the end of March.

Q. Do you know when he returned? 1192

A. It was early in July; I should say about the first week in July.

Q. Was it not the 4th of July?

A. I think it was.

Q. It was on the 4th of July. Did Mr. Morgan go to California in the autumn?

A. He did.

Q. Do you know when he went?

1193 A. I don't recollect exactly; I think it was sometime in September.

Q. Do you know when he returned?

A. My recollection is it was pretty nearly in November, or late in October.

Q. Was it not the very end of October?

A. I think so.

Q. You have been asked something as to the time of the formulation of the plan for the retirement of the preferred stock of the Northern Pacific. Wasn't that plan formulated entirely
1194 after his return from California?

A. Yes.

Q. Do you happen to know that I came back at the same time?

A. I recollect it, sir.

Q. And were all the papers with reference to the plan drawn wholly either by you or by me?

A. Yes, and all after that time.

Q. All after that date. Now, do you know when Mr. Bacon went to Europe?

1195 A. It was early in November.

Q. How early with reference to election day?

A. I don't remember the date of election day.

Q. Was it not the 6th or 7th of November?

A. My recollection is it was the 6th.

Q. And was not the formation of the Northern Securities Company entirely after Mr. Bacon's departure?

A. Altogether; yes.

Q. Mr. Bacon has not been in this country since that time, has he?

1196 A. He has not?

Q. Mr. Bacon was not here at the time of the conclusion of the plan, or the adoption of the plan, for the retirement of the preferred stock, was he?

A. Not when it was adopted by the board of the Northern Pacific Company.

Q. Did any plan or proposition of which you have any knowledge for the retirement of the preferred stock have any relation to, or any connection with any agreement, or any statements with, by, or to Mr. Hill?

A. Absolutely none. 1197

Q. I ask you the same question with reference to Mr. Schiff.

A. I make the same answer.

Q. The same question with reference to Mr. Harriman.

A. The same answer.

Q. The same question with reference to the formation of the Northern Securities Company?

A. The same answer.

Q. The retirement of the preferred stock to your own knowledge was wholly independent of these persons and this corporation, and any connection therewith? 1198

A. Absolutely.

Mr. BOUTELLE. You make a first-class witness, Mr. Stetson.

Mr. STETSON. I am cross-examining your witness.

Q. When was there first brought to your attention the adoption or the formation of any company, whether called the Northern Securities Company, or by any other name, to hold the stock of the Northern Pacific or the Great Northern Railway Company?

A. The question of a holding company for the stock of the Great Northern Railway Company was brought to my attention, 1199 I think, in the spring of 1900, almost the first time that I went into the firm of J. P. Morgan & Co. The idea of a holding company to hold stock of the Northern Pacific Company was brought to my attention along about the latter part of the summer of 1901.

Q. You state that the purchase of the so-called Harriman stock by J. P. Morgan & Co., as bankers, was made with the idea of a resale thereof, or an arrangement for the resale thereof to the Northern Securities Company?

Mr. BOUTELLE. I must object to your putting words into my 1200 witness's mouth.

Q. I am going to bulldoze your witness. Well, having listened to the colloquy between Mr. Boutelle and myself, will you now proceed to state the facts in that regard?

A. I have stated that the idea of the purchase by J. P. Morgan & Co. of the Northern Pacific stocks held by Mr. Harriman and his friends was with the idea and understanding that they were to be offered to the Northern Securities Company on terms exactly the same as those upon which they were taken by

1201 J. P. Morgan & Co., and that the proceeds of the sale received by J. P. Morgan & Co., if the sale was consummated, were to be turned over to Mr. Harriman and his associates, and this is what was done.

Q. Do you know of any hitch or difficulty in the completion of doing what was done?

A. There was quite a hitch, which arose from the fact that in our talk with Mr. Harriman and his friends we had assumed that their holdings of preferred and common stock were somewhat larger than they actually proved to be, and we had negoti-
1202 ated with the Northern Securities Company upon that basis. When they came to deliver the stock, which was the first time that we knew accurately just how many shares of stock they held, it turned out that they did not have quite so much as we supposed in the negotiation, and had represented to the Northern Securities Company that we did have. The Northern Securities Company consequently refused to take that amount of stock on the same basis that they had agreed for the amount which they supposed was to be delivered. We succeeded in effecting a compromise under which the Northern Securities Company
1203 accepted the amount of stock, which Mr. Harriman and his friends were able to deliver, but a substantial reduction in the price was made owing to the fact that the amount was not as great as the Northern Securities Company had supposed it would be.

Q. Do you remember the date on which that compromise price was decided upon, and the transfer actually made? Not the transfer actually made, but the sale completed?

A. No; I couldn't remember the date; it was toward the latter part of November.

1204 Q. Do you remember the day of the week?

A. No; I can't remember the day of the week.

Mr. BOUTELLE. You are not trying to make my witness say it is Sunday, are you?

Mr. STETSON. Now, if you have got so much objection to the way I testify, I am going to let Mr. Kellogg ask some questions.

By Mr. KELLOGG:

Q. I understand you, Mr. Steele, that when the Northern Securities Company was organized, the so-called Harriman

stock had not been purchased by you, or by anyone for that company. 1205

A. It had not been purchased by us.

Q. And, so far as you know, no arrangements for this sale to the Northern Securities Company had ever been made?

A. No, sir.

Q. Well, was there, as far as you know, any connection between the organization of the Northern Securities Company and the acquisition of the Harriman stock?

A. None whatever.

Q. In dealing with the Northern Securities Company for the sale of stock, did the Nothern Pacific stockholders act separately or in a body? 1206

A. As to that I can only state what I think I have already testified to—that my firm made the negotiations as to the price at which the stock which we held should be sold to the Northern Securities Company, and it was understood that our friends, by which I intend to mean the same persons that I tried to describe to Mr. Boutelle, were to have the right to put their stock in at the same figure. There was no binding agreement on our part that they should, and we had no authority to obligate them to do so. It was a matter for individual determination by each Northern Pacific stockholder, and extended only to those whom I have included as our friends, constituting in amount about 41,000,000 or 42,000,000. 1207

Q. Was the fact of acquiring a majority of the stock of both or either the Northern Pacific or Great Northern Railway companies made a condition of the organization of the Securities Company, so far as you know?

A. Not to my knowledge, sir.

Q. Well, do you know that it was determined to form the Northern Securities Company without knowing whether they would acquire a majority of either one of the companies, either the Northern Pacific or the Great Northern? 1208

A. I have always understood that it was intended to form that company anyhow independently of getting any Northern Pacific stock whatever, and independently of getting a majority of the Great Northern stock, as I have already testified. I understood that company was to be formed originally to hold

1209 the Great Northern stock which was owned by Mr. Hill and some of his associates, which I understood amounted to about $30,000,000 or $35,000,000.

Q. Was there any agreement between J. P. Morgan & Co. or J. P. Morgan and his associates and Mr. Hill and his associates to organize the Northern Securities Company, and to transfer to it the ownership of a majority of the Northern Pacific and Great Northern Railway companies' stocks?

A. None whatever.

Q. Was there any agreement of any such character?

1210 A. Not to my knowledge.

Q. In the organization of the Northern Securities Company did your firm speak for a majority of the stockholders of the Northern Pacific or act at all other than for your personal interests—your own interest—or did you have anything to do with organizing the Northern Securities Company other than to sell to it your stock?

A. I was about to answer that I have already testified that we had nothing to do with the organization of the Northern Securities Company, and the first connection that we had with

1211 it was the negotiation by which we sold to it the Northern Pacific common stock which we held.

Mr. STETSON:

Q. So far as you know, or as was known to your firm, so far as you know, in the organization of the Northern Securities Company, or in the tranfer thereto of the stock of the Northern Pacific Railway Company, or the Great Northern Railway Company, was there any purpose or intent to suppress competition or in any way to control competition or restrain trade or commerce between the States or within the States or within

1212 any State?

Mr. BOUTELLE. That is objected to as incompetent, irrelevant, and immaterial, and not proper cross-examination, going into a subject not covered by the direct. I suppose I should state to my witness that the examiner does not rule and he ought to answer.

A. I answer there was not.

Mr. STETSON:

Q. Or was there any purpose or intent in such organization

or in connection therewith, so far as known to you, to regulate 1213
rates or to maintain rates upon railroads?

Mr. BOUTELLE. The same objection as the last. I suppose my previous objection can be taken to the question as amended.

Mr. KELLOGG. Oh, yes; and considered as renewed to each question.

A. There was not.

By Mr. BOUTELLE:

Q. Mr. Steele, I understood you to say on cross-examination that this plan of retirement as ultimately carried out was brought up and considered first sometime in the fall just pre- 1214
vious to the meeting of the board of directors?

A. That is my recollection.

Q. Do you know how it happened that a plan of retirement was adopted that prevented the preferred stockholders from participating in the benefits and obtaining convertible certificates? Do you know how or why that plan was adopted?

A. I know how it was adopted. It was adopted by a vote of the board of directors.

Q. Yes; that was an unfortunate way of putting it by me.

A. Why it was adopted was, it was considered by us, my 1215
firm, who were fiscal agents, and by the board of directors, as a fair, equitable, wise, and expedient plan to pursue.

Q. And it was also considered by your firm that if any other plan was adopted, or if the preferred stockholders were given equal privileges in the retirement, that it would throw the control into this other interest that had the $78,000,000, was it not?

A. No, sir.

Q. That was not considered at all?

A. We never took that in consideration at all. 1216

Q. As a matter of fact, that would have been the effect, would it not, Mr. Steele?

A. That I couldn't say.

Q. Well, it is a matter of mere arithmetical computation, isn't it?

A. It depends entirely upon what the plan had been. I think you could draw that conclusion as well as I.

1217 Q. That preferred stock had been outstanding since the date of the organization?

A. Yes, sir.

Q. And previous to May 9, 1901, no plan had been proposed or acted upon for its retirement, had it?

A. No definite plan had been proposed.

Q. Do you know why it happened to be taken up and acted upon at this particular time?

A. I do. It had been intended from the time of the organization to retire the preferred stock as soon as the company became
1218 financially able to do so. The voting trust by its terms continued until January, 1902, I think it was, but in the fall of 1900 the company had become very prosperous, it was very strong, and it was deemed by the voting trustees that they had fulfilled the purposes of their trust, and that they could properly dissolve the voting trust on the 1st of January following which was 1901. The only uncompleted object of the reorganization was the retirement of the preferred stock, and they intended at the time that the voting trust was dissolved that the preferred stock should be retired on the 1st of January,
1219 1902, that being the first date after the retirement at which it it could be retired under the provision of the charter, by-laws, and stock certificate.

Q. Was there any such action as that taken by the board of directors in the early part of 1901 at the time the voting trust expired?

A. I think not, sir.

Q. And, so far as you know, the first action that was taken was taken after these conditions occurred that you have already described in the market?

1220 A. The first action taken by the board was on the 13th of November, 1901.

Q. You state that the company was financially able. As a matter of fact the plan of retirement as carried out was practically a paper plan, was it not?

A. I don't know exactly what you mean by a paper plan. I thought it was a very good plan.

Q. What I mean is simply this: That the common stockholders took the certificates of indebtedness and converted the certificates of indebtedness into common stock, so that there is pre-

cisely the same amount of stock outstanding in the Northern 1221
Pacific to-day that there was before?

A. That is true; there is the same amount of stock outstanding to-day as there was before.

Q. The only difference is that the Northern Pacific has converted preferred stock which it could retire at any time into common stock, and has paid an immense commission to somebody for underwriting and putting through that deal. That is the financial part of it, isn't it?

A. No, I shouldn't say it was.

Q. They didn't have that deal put through without any com- 1222
missions, did they?

A. My impression is it didn't cost them anything.

Q. Who paid for the underwriting?

A. There was nothing paid for it; it was considered a sufficient inducement to the underwriters to take the convertible bonds at par. The plan was this——

Q. I understand the details of the plan.

A. I want to explain the reason why there was no commission.

Q. Was there commission to the Standard Trust Company? 1223

A. No; I think not to the Standard Trust Company either.

Q. So it was gratuitous all the way around?

A. Not at all, sir.

Q. Let us hear where it was not.

A. That is what I wanted to explain to you. The Northern Pacific Company had to raise $75,000,000 cash to pay $75,000,000 of preferred stock, they being advised by counsel, learned in the law, that the only thing the preferred stockholders were entitled to was to receive their cash. In order to raise that they decided to issue $75,000,000 of convertible debentures, 1224
and in order to give the common stockholders a chance to get those debentures at par they made a contract with the Standard Trust Company—I think you have that in evidence—under which that company agreed to buy all those debentures at par, but agreed also to offer them on the same terms to the common stockholders. Now, their chance of profit was that some of the common stockholders wouldn't take them, and they were quite willing to underwrite those debentures at par, because it would

1225 have been a profitable thing to get them at par if the stockholders had not taken them. That was the consideration for the underwriters.

Q. So that those certificates were considered worth more than par?

A. Not necessarily.

Q. Then what was the profit?

A. They were considered as worth par.

Q. What was the profit in buying something at par that was worth par?

1226 A. It might ultimately go higher. It was pretty well considered it would go higher, and my opinion was that it would go higher.

Q. And that, in your opinion, was the consideration for this Standard Trust Company's agreement, instead of a commission?

A. Yes, sir.

Q. Notwithstanding this so-called benefit that you have referred to from taking the certificates at par, the Standard Trust Company, before that agreement was carried out, did have a collateral underwriting agreement, didn't it, to furnish this

1227 money?

A. Yes.

Q. And the same consideration and inducement moved to the underwriters that moved to the Standard Trust, did it?

A. I think so, sir.

Q. The obligations, counting stock as an obligation, of the Northern Pacific had not then changed? There was $155,000,000 out before and there is $155,000,000 out now; that is correct, isn't it?

A. That is correct; yes.

1228 Q. But you have, by this plan of retirement, put those who held the preferred stock to one side and coppered the entire issue of the common stock for the common-stock holders?

A. I can not quite yield to the epithets of counsel in regard to the transaction. The undoubted result was that the preferred stock was paid off in cash at par, and the common-stock holders, through taking the convertible certificates and exchanging them into common stock, have got practically all of the additional common stock.

Q. We understand that. That was the purpose and intent 1229
of the people in the Northern Pacific who put this plan of retirement through to prevent the preferred-stock holders having any part in the issue of the common?

A. It was not their purpose to prevent it; it was their purpose not to offer it to them.

By Mr. STETSON:

Q. How long have you been familiar with the affairs of the Northern Pacific?

A. Ever since my connection with the firm of J. P. Morgan & Co., which was early in the year 1900. 1230

Q. Had you not previously made a careful study of the plan of reorganization of the Northern Pacific?

A. I had read it and studied it on several occasions. I think I used it as a model in some others.

Q. Had you ever heard or known of any plan for the retirement of preferred stock which did not exclude the preferred stockholders and operate to the benefit of the common-stock holders?

Mr. BOUTELLE. Objected to as incompetent, irrelevant, and immaterial, and not proper cross-examination. 1231

A. I had not, sir.

Q. In the plan discussed for the retirement of the preferred stock was there any question ever raised to your knowledge, or any doubt expressed, that such retirement should be for the benefit of the common-stock holders, and effectually and finally should withdraw all interest of the preferred-stock holders?

A. None to my knowledge; never.

Q. And these discussions as to the plan of retirement of the preferred stock, to which you have made reference, concerned only the way of effecting that retirement and not the terms 1232
that should be offered to the holders of preferred stock?

A. There never was any discussion as to anything being offered to the preferred-stock holders except par in cash.

Q. As stated in their contract?

A. Yes.

Q. Now, was it practicable to retire the preferred stock until the common stock reached par, or until the company could

1233 make a sale of bonds bearing interest at a rate of less than 4 per cent?

Mr. BOUTELLE. It seems to me that is immaterial. I will interpose an objection there.

A. It would certainly have been inexpedient and unwise financiering.

Q. Was not the plan adopted one which gave to every common-stock holder an equal right to participate in the benefit of the retirement?

A. It did.

1234 Q. Did any of the underwriters or the Standard Trust Company have any right or benefit that was not open equally ratably to every common holder of stock?

A. They did not, sir.

Q. And the holder of even 100 shares of common stock could have gotten his proportion of that benefit equally ratably with J. P. Morgan & Co., or any underwriter?

A. Absolutely.

Q. And if he did not choose to put it in it was because he saw some way of making his stock more valuable, or else 1235 because he didn't know of his opportunity.

Mr. BOUTELLE. Good testimony.

Q. Is that it?

A. I should assume so.

Q. Has the whole $75,000,000 been paid in?

A. The whole $75,000,000 for convertible certificates?

Q. Yes.

A. Yes, sir; it has.

Q. Was there any profit upon or resulting to the underwriters or the Standard Trust Company except such profit as they 1236 might have the chance of making off from new common stock which the old common stockholders might take and decline to take?

A. They had no chance of any profit except in taking the convertible certificates which some old common stockholders might decline to take, and either selling those or converting them into common stock and keeping them?

Q. So there was no arrangement for profit that was not publicly disclosed and open to every common stockholder ratably?

A. Absolutely none. If the common stockholders availed 1237
themselves of their entire privilege there would have been no profit of any kind to the Standard Trust Company or underwriters.

Q. And that was offered to every common stockholder?

A. Yes, sir.

Q. And availed of by most of them?

A. Oh, I think almost all—very little of it—didn't take it.

Q. Do you know how much common stock failed to avail of it?

A. I think there was about $200,000 or $300,000 of the cer- 1238
tificates which were not taken by the common stockholders.

Q. That would be about 2,000 shares of the common stock?

A. Yes.

Q. Of which we know of the existence of about a hundred?

A. I don't know of the existence of any of it.

Mr. BULKLEY. You are not well informed.

A. Oh, I forgot that hundred.

By Mr. BOUTELLE:

Q. Was any offer made to the preferred stockholders to issue common for their preferred stock on an even exchange? 1239

A. None whatever, sir.

Q. How much more difficult would it have been, as we are getting into hypothetical states of facts, to have offered that to the preferred stockholders than it was to carry out this somewhat complicated scheme that you devised?

A. I couldn't answer the first part of your question. As to the second, I don't think it was complicated.

Q. As a matter of fact you did not attempt in any way, shape, or manner to offer to retire the preferred stock by substituting with the preferred stockholders an issue of common 1240
stock at par?

A. No, sir.

Q. Mr. Steele, during the time you have testified that Mr. Morgan was absent on the Continent, was your office constantly in communication with him by cable?

A. Frequently; a good part of the time.

It was agreed that the examination of Mr. J. P. Morgan should occur March 26, at 11.30 in the morning, and that of

1241 Mr. George F. Baker upon March 27, at 11 o'clock, and that the complainant should be produced for examination by the defendants before the testimony closed.

WEDNESDAY, *March 26, 1902*—11.30 o'clock a. m.

All parties convened pursuant to adjournment, and the following proceedings were had, to wit:

J. PIERPONT MORGAN, after being first duly sworn, testified as follows in answer to questions by Mr. Lamb:

Q. Mr. Morgan, you are engaged in business in the city of New York under the firm name of J. P. Morgan & Co.?

1242 A. Yes, sir; I am.

Q. And you are the senior member of that firm?

A. Yes, sir.

Q. And no transaction of any magnitude could take place without your approval?

A. I am not prepared to say that. If I am not here I don't attend to it.

Q. We have the cable and lately the wireless telegraph.

A. I mean to say——

Q. Generally speaking?

1243 A. Yes.

Q. No transaction of any great magnitude would take place without consulting with you?

A. I shouldn't think so. It would be perfectly satisfactory to me if they did.

Q. J. P. Morgan & Co. do business in other cities, do they not, abroad?

A. They have transactions with houses abroad; yes.

Q. But these houses abroad, in other cities, are in direct communication with J. P. Morgan & Co.?

1244 A. Direct correspondents, yes.

Q. But not necessarily?

A. The house in Philadelphia and the house here are the same. These two houses are identical. The other houses are correspondents.

Q. And the house in London in which your name appears?

A. I am a partner in that house.

Q. But that has nothing to do with the house here?

A. Nothing to do with the house here. 1245

Q. Now, Mr. Morgan, you have been familiar, of course, with the northwestern railroad situation for a great many years?

A. I have.

Q. With all of the roads, their financial status and physical condition, and matters pertaining to them for a great many years?

A. Yes; up to a certain point. I don't pretend to keep the run of all the roads except those with which I have direct communication.

Q. Well, for instance, you have been for many years thor- 1246
oughly familiar with all matters pertaining to the Great Northern Railroad Company?

A. No, sir.

Q. Or the Northern Pacific?

A. The Northern Pacific, yes.

Q. And in a general way, of course, as a well-informed man in financial affairs, you have information of the conditions relating to the Great Northern?

A. Not particularly; no.

Q. You have never had any occasion to study its physical 1247
condition?

A. I have done that.

Q. And its finances—have you known anything about them?

A. I have kept no record of those at all.

Q. And of the Union Pacific—have you paid any attention to their matters?

A. Not any of the details; no.

Q. No. But as a banker, for instance, you understand, whose duty it would be to keep himself informed?

A. I try to. 1248

Q. And of the Chicago, Burlington and Quincy?

A. Also.

Q. You would know all that you could about that?

A. All that I could or had the time to do.

Q. Would you mind telling us what the nature of the business of J. P. Morgan & Co., of this city, is?

A. They do any financial business that is creditable and which comes to them in the shape that can be transacted.

1249 Q. You mean that they deal in railroad and other securities for customers?

A. Yes.

Q. Do they engage in any speculative enterprises for their own account?

A. Not to any extent; no, sir. On the contrary, we carefully avoid them.

Q. They would not, for instance, purchase 78,000,000 of a stock of a railroad on their own account?

A. They would if they wanted to.

1250 Q. They would not as a rule?

A. I don't know that; I could not tell you that.

Q. That would not be the general policy of the house?

A. I am not prepared to say that, even.

Q. Their business is dealing in stocks and securities, largely for the benefit of customers?

A. Yes.

Q. And then of financing any good enterprises that may present themselves and be requested?

A. If they wished to do so.

1251 Q. Yes; of course; and they would, for instance, furnish money for that purpose; loan it?

A. Yes.

Q. For their own account and for the account of others?

A. Yes.

Q. You were a member of the voting trust committee of the Northern Pacific, were you not, Mr. Morgan?

A. I was.

Q. And you had to do very largely with the reorganization of the Northern Pacific?

1252 A. We had the absolute control of the organization.

Q. The absolute control?

A. Yes.

Q. That was in 1896?

A. Yes, sir.

Q. Now, previous to that time, had you had to do with the finance of the Northern Pacific?

A. Yes.

Q. You had not been a director?

A. I was a director at one time; yes. 1253

Q. When was that?

A. I could not remember the exact year; it was back in 1891 or 1892; along there, I suppose.

Q. But you had absolute charge of the reorganization of the Northern Pacific?

A. Absolutely.

Q. And may I ask you to give us a very brief outline of that reorganization—what the bonds of the new company were issued against, and the preferred stock and common stock?

A. In order to do that I should have to give you the plan of 1254 reorganization. I have not one with me. I could not tell you to save my life. I couldn't go into the details of that matter.

Q. Not in such a tremendous transaction?

Mr. STETSON. He can not remember the whole of it.

Q. Just those three things, what the bonds were issued against?

A. If you will allow me, I will put in, as an answer to that, the plan of reorganization, which gives all the details.

Mr. BOUTELLE. That is all right.

A. That is a matter of record, and I will produce that if you wish it. 1255

Mr. BOUTELLE. That is all in print, Mr. Lamb.

Q. Are you a director of any railroads, Mr. Morgan?

A. I would be very glad to have it put in; I think it is desirable that it should be put in.

(It was stipulated that the plan of reorganization should be marked by the special examiner as "Complainant's Exhibit N," when furnished by the witness.)

Q. You know Mr. James J. Hill, of course?

A. I do, sir.

Q. And is it in your recollection that at the time of the reor- 1256 ganization there was sold to Mr. Hill and his friends $26,000,000 par value in stock of the Northern Pacific, or about that amount?

A. The exact amount I could not tell you.

Q. About what amount?

A. It was quite a block of it.

Q. About $26,000,000?

A. I couldn't say, sir.

Q. I mention that to you because that is the amount Mr. Hill testified to.

1257 A. I have no doubt whatever he said was correct.

Q. Who conducted that negotiation for that large amount of money, Mr. Morgan?

A. I did.

Q. With whom?

A. With Mr. Hill.

Q. With Mr. Hill directly?

A. Yes, sir.

Q. Did you meet any of the associates of Mr. Hill?

A. Yes.

1258 Q. The men that he refers to?

A. What?

Q. You know the different original Great Northern stockholders, Lord Strathcona and his friends?

A. I met Lord Mount Stephen. I saw him at that time and I saw Mr. Kennedy.

Q. So the parties who purchased that great block of stock of the Northern Pacific were all Great Northern stockholders, were they not?

A. I don't know.

1259 Q. Well, Mr. Hill was?

A. Mr. Hill was.

Q. And did Mr. Hill say to you who his associates were?

A. All of them? No.

Q. Some of them?

A. I don't remember that he did.

Q. Can you tell us anyone that he named as an associate?

A. Well, I don't remember the details of the conversations that may have occurred at that time.

Q. Well, it was a very great transaction?

1260 A. I don't think so; it didn't seem very much to me.

Q. $26,000,000?

A. It was not twenty-six millions of money; twenty-six millions of par value were sold at $16. I don't think it came to that.

Q. It was sold at $16 a share?

A. Whatever it was sold at. I don't remember the exact figure, but it was a low price, because at that time the stock was of very little value. I mean the market value when I say value.

Q. So that Mr. Hill, the president of the Great Northern,

conducted those negotiations with you for the purchase of this 1261
Northern Pacific stock and consummated them?

A. He did.

Q. And what was the consideration of that purchase?

A. The money.

Q. Do you remember how much money?

A. I have not the data here with me. I will give it to you with great pleasure.

Q. Will you give it to us? Thank you.

Mr. STETSON. We will have that stipulated, shall we, that the amount of cash paid for the purchase of Northern Pacific stock 1262
in 1896, amounting approximately to $26,000,000, shall be furnished?

A. I said approximately; whatever it was. Whatever it was—the transaction.

Mr. STETSON. Whatever the amount was. If you want to know what amount was sold and the price?

Mr. LAMB. Yes.

Mr. STETSON. There is no use finding one without finding the other.

Q. Did you or your firm purchase any Northern Pacific com- 1263
mon at that time?

A. I think it is very likely.

Q. Do you think it is very likely that you bought a large block?

A. I do not.

Q. Your relations as a banker, I mean. Of course, the relations of your firm have continued with the Northern Pacific from 1896, have they not?

A. They have. We have been their fiscal agents.

Q. Now, to save time, would you mind telling us what that 1264
term means; what you did for them?

A. Whatever they required in a financial way came under our charge.

Q. Do you mean to say that all their financial business was conducted through your house?

A. Not all of it, but we are their New York representatives.

NOTE.—The amount of common stock sold to J. J. Hill and Lord Mount Stephen February, 1897, was 258,341 shares, at $16 per share, making $4,133,456.

1265 Q. Oh, you are their New York representatives of the Northern Pacific?

A. Of the Northern Pacific, and are to-day.

Q. So that if the Northern Pacific issued any new securities since that time it would be financed through your house?

A. It would.

Q. And if it was necessary to raise money for the building of extensions and improvements or for the purpose of branch lines, that transaction, or those transactions, would probably be financed from your house?

1266 A. I should expect them to be.

Q. Of course, the detail of the financial matters of the railroad would be handled by themselves?

A. Of course.

Q. But all these larger matters would be handled by your house?

A. They would. At least, I should so expect them to be.

Q. Was any member of your firm detailed to look specially after the finances of the Northern Pacific?

A. In the house itself?

1267 Q. Yes.

A. No, sir.

Q. It was a matter that came generally under the attention of any——.

A. Of any partner who at the time happened to be running the machine.

Q. I suppose that during that period you have loaned the Northern Pacific large sums of money?

A. At times; yes.

Q. Or obtained large loans for them. Now, have those

1168 loans been——

Mr. STETSON. You have no answer to that.

Q. Those loans, then, were generally for the account of your house and not for others?

A. I could not tell you that. The transactions have been made; that is all.

Q. Well, I take it as a matter of course, that since that time it was necessary to raise large loans, and I am simply asking whether the house of J. P. Morgan & Co. did it for their own account, or whether it was for the account of others.

A. I don't feel called upon to answer that question. We 1269
have negotiated other loans.

Q. I didn't ask that.

A. You asked me for whose account they were made. I can not tell you that, of course. We have been the fiscal agents and have raised the money wherever we could get it.

Q. Sometimes you have loaned it yourself and sometimes obtained it for them?

A. We have formed syndicates to raise it for them.

Q. And the Northern Pacific has, of course, paid from time to time for those services? 1270

A. I suppose so.

Q. I suppose each time that an underwriting syndicate is formed there is a commission paid to the banker, and there is some profit to the underwriter?

A. Not always.

Q. Not always, but generally. Usually that would be the case, would it not?

A. We should expect it to be; otherwise the transaction would not be made.

Q. You would expect as bankers, of course, to have a rail- 1271
road company pay you a regular sum for your services?

A. Not always; no.

Q. Do you mean to say that when you negotiate a loan for a railroad you don't make the railroad pay your house for its work?

A. Not always.

Q. You do it sometimes without a consideration?

A. We do.

Q. Can you explain that, Mr. Morgan?

A. Certainly; because it may not be desirable to make a 1272
charge. It depends upon the character of the transaction. In a great many cases no charge whatever is made.

Q. So that you do that work for nothing?

A. Do that work for nothing.

Q. In the matter of purchasing branch lines, or completing extensions, who would generally negotiate or usually negotiate for the Northern Pacific those purchases?

A. The company.

Q. The company directly?

1273 A. Certainly.

Q. Not through your house?

A. No, sir.

Q. And do you know what special officer of the company would have that matter in charge?

A. That depends upon the by-laws.

Q. I thought perhaps you might know of your own personal knowledge.

A. I have not been a director of the Northern Pacific since it was reorganized.

1274 Q. No; but you have had a very thorough and clean knowledge of its affairs?

A. I have got a natural inference, but I have no knowledge. If you ask for my knowledge, I say no; I do not know anything about it.

Q. Have you taken a great interest in the road?

A. A great deal.

Q. Since the time you reorganized it?

A. I have.

Q. And you would take special care to know just how its

1275 business was being conducted?

A. I should not. I should know probably the result and the policy, but I have never attempted to follow the details of all the transactions. I should have time for nothing else if I did.

Q. I don't speak of the details, Mr. Morgan.

A. I have told you, Mr. Lamb, that I have known the policy of the Northern Pacific.

Q. In a general way?

A. In a general way, and I don't think that any large transaction would be made without my knowledge, but there is

1276 nobody under obligations to keep me advised. If they made transactions without my knowledge, I should think they had a perfect right to do so.

Q. But they wouldn't naturally do so?

A. I don't know; I am not prepared to say that. I think I have answered that question.

Q. What has been the general policy of the road since 1896? Has it not been to conduct its affairs as an independent organization; that is, from 1896 to prior to 1901?

A. Up to date I would say it has.

Q. And it has never formed any alliance with any other 1277
trunk line?

A. In what way?

Q. Or any other railroad?

A. What kind of alliance, sir?

Q. Any kind of alliance.

A. That is a pretty broad term. I don't understand that. You mean——

Q. I mean it has been conducted as an absolutely independent organization?

A. It has, to my knowledge. 1278

Q. And has entered into no alliance with other roads?

A. I don't know.

Q. That is, for instance, an alliance covering rates and railroad rates?

A. I should not think so. I don't know.

Q. You do not think it has?

A. That I don't know anything about—about rates.

Q. But it has not been the policy of the road to enter into alliances—that is, from 1896 to the 1st of January, 1901—for the division of traffic with other railroads? 1279

A. That I know nothing about.

Q. To your knowledge, Mr. Morgan—and, of course, I think you have a very thorough knowledge of the affairs of the company—has its stock from 1896 to the first of 1901, ever been controlled by any other organization?

A. Never.

Q. Any other railroad, or otherwise?

A. No; none.

Q. So that its policy from 1896 to 1901 was to pursue an absolutely independent course? 1280

A. Absolutely.

Q. And to operate its affairs without reference to any other railroad?

A. Absolutely.

Q. Since you reorganized the company its affairs have been very prosperous, have they not?

A. They have.

Q. It has paid dividends right along?

1281 A. How can I answer that?

Q. Of course we know that it has.

A. Then what is the use of asking the question?

Q. I mean to say——

A. That is all right. I will answer any question, Mr. Lamb.

Q. Simply to get them on the record?

A. I could not answer that because I should tell you I don't know when they paid their dividends.

Q. You do know that the market value of its securities have steadily advanced in public favor?

1282 A. They have.

Q. Since the reorganization?

A. Ever since then.

Q. They have steadily gone upward?

A. With some few reactions.

Q. The Great Northern Railway Company is a competitor in many respects with your Northern Pacific, is it not?

A. To a certain extent, yes.

Q. And there is, as I know, and as you know, and we all know, pretty sharp competition sometimes at some places?

1283 Mr. STETSON. If you know, what is the use of asking him?

Mr. LAMB. I want it on the record.

Mr. STETSON. Then ask him the question instead of making your confession of faith.

Q. I will put the question over again. Is there not at various points sharp competition or has there not been for traffic between the Great Northern and the Northern Pacific?

A. I should say yes. I can not imagine anywhere where it would be greater than it is there to-day.

Q. And the Great Northern Railroad Company, from the

1284 period since you reorganized the Northern Pacific, has several times increased its capital stock, has it not?

A. I don't know.

Q. Do you know in a general way how prosperous the Great Northern has been in recent years?

A. From common reports I should consider it very prosperous. I have already said to you the details of the Great Northern I know nothing about.

Q. Not the details, but in a general way?

A. I told you from common reports I should consider it had been. 1285

Q. You don't know about the great increases in their capital stock?

A. I don't know. I have no doubt that they have been made; but when you ask for my knowledge, I know nothing.

Q. When was it first decided to dissolve the voting trust of the Northern Pacific?

A. I think in October, 1900.

Q. Why was that decided, Mr. Morgan?

A. Because I came to the conclusion that the condition of the company was such that it could be safely turned over to the stockholders, and for the reason that I thought the time was approaching when it would be desirable to retire the preferred stock, and I preferred that that question should come up before the stockholders then rather than the voting trustees, and that was one of the leading reasons which induced me. 1286

Q. Was the question of retiring the preferred stock ever submitted to the stockholders?

A. No; but I mean that they should act upon it—that the voting trustees as such, if you will allow me to explain to you—— 1287

Q. Yes, do.

A. I will explain how that came up; the retiring of the preferred stock, of course, was in the hands of the directors, but those directors were elected by the voting trustees. There was an election in October, 1901, to elect directors. I preferred that that election should take place by the stockholders themselves, rather than simply by the voting trustees voting.

Q. So that the responsibility for the retiring of the preferred stock should fall upon the stockholders? 1288

A. No; so that the directors who should decide that question should be the nominees of the holders of the stock themselves and not of the voting trustees.

Q. Didn't you think, carry out your thought, there, that the stockholders should themselves decide that it might have been well to submit the question to the stockholders as a whole?

A. Decidedly not, and if you wish me to I will go on and tell you why.

1289 Q. No; never mind.

Mr. KELLOGG. We will ask you why, if they do not wish it. I think it would be more convenient to take it now.

Q. Very well, Mr. Morgan, will you explain why the question of retiring the preferred stock of the Northern Pacific was not submitted to the stockholders?

A. No; that is another question. Because the directors had the power, that was the reason. I will tell you—you asked me the question before and I would like to answer that question, but this question is a different matter. The directors had the
1290 absolute power to retire the preferred stock. Consequently it is not for me to say whether they could have done it or not.

Q. Answer it in your own way, Mr. Morgan.

A. No; I won't. Ask me the question to suit you. If you will ask me to tell you why I didn't, I will explain to you the reasons for my decision, why the thing should have been done by the directors and not the stockholders, and the situation. I will do it in a few words, if you wish that statement.

Q. Certainly, we would like to hear it.

A. When the Northern Pacific was reorganized the times
1291 were very bad and the indebtedness of the Northern Pacific—of the old company—was very large. It was not possible—it was not desirable—it was not desirable and I don't think it would have been possible at that time, with the credit of the Northern Pacific in the market, or the public opinion of the value of the property, to get a syndicate up large enough to raise an almost indefinite amount of money. At the same time provision had to be made to take up bonds and stock of the old company under the reorganization. Consequently, in making up the plan Mr. Coster and myself, together with Mr. Stetson,
1292 who advised us on the legal points of the question, decided this point—that if we could issue a preferred stock which would be a temporary security upon which we would not have to pay interest unless the road earned it, and which at any time we could retire if we wished to, that that would be a safe transaction, and that plan was decided upon and such a security was issued in the shape of the preferred stock. That preferred stock, as you will see by the plan of reorganization which I have agreed to submit to you, was used to take up obligations in the

shape of bonds, notes, and old debts of the original Northern 1293
Pacific Company, and it was successful, and from the day that that plan of reorganization was issued we never had one moment's doubt that within a very few years and before the expiration of the time fixed for the voting trust, that the common stock would have reached a point in its price where it could be sold at par or better and the preferred stock retired, which restricted not only the income of the property, but also restricted certain lands which were set aside and upon which the preferred stock was, to a certain extent, a lien. Consequently, it was always considered and always known by every- 1294
body connected with the Northern Pacific that the amount of preferred stock which was outstanding was simply a temporary loan until we should issue the common stock at par and take it up, and consequently, in dealing with the question, the question simply was when the directors of the Northern Pacific should decide that it was expedient to do it.

Q. Then it became necessary to raise a great deal of money to retire this preferred stock?

A. It did.

Q. And did your house provide that money? 1295

A. We did not. The stock was offered to the stockholders—the common-stock holders. The new common stock for an amount sufficient to pay off that preferred stock was issued to the common-stock holders.

Q. Did you, as fiscal agent, manage it?

A. We financed the transaction.

Q. And you at that time—your house and Mr. Hill—were such large holders of common stock that practically the taking of a majority of this new common stock fell upon you and Mr. Hill? 1296

A. And the other stockholders, whoever they were.

Q. The other minority stockholders?

A. The stockholders—whoever the stockholders were of record—took them up; at least, they took convertible bonds which were convertible into stock.

Mr. BOUTELLE. Convertible certificates?

A. Yes; convertible certificates.

Q. And this $75,000,000 was raised in cash?

1297 A. It was.

Q. Now, were there a large number of stockholders of the Northern Pacific at that time?

A. Quite a number; yes.

Q. How many would you think?

A. Oh, I couldn't tell you that.

Q. I mean just roughly.

A. I couldn't tell you to save my life.

Q. Is it not a fact that most of the stock was held in very large blocks?

1298 A. Yes; in large amounts.

Q. In very large amounts?

A. The transfer books of the company will show you exactly now it was.

Q. I would like to see them.

A. I say there is a record of the list of the stockholders. I suppose you have got the power to get it. I don't know.

Q. Well, they usually try to obstruct us——

Mr. STETSON. Have you had any obstruction here, in this case?

1299 Mr. LAMB. No; I don't think we have, Mr. Stetson.

The WITNESS. Then I don't think it is fair to make that remark.

Q. I wish to explain that. That was a side remark, speaking generally.

A. That goes on record. I try to give you everything that I can. I don't think a statement of that kind is right or fair.

Q. Strike it all out. I must say we have been met with unexpected frankness in this matter.

A. There is nothing under heaven connected with the trans-
1300 action that I know of that I won't tell you, and I will tell you how to get the rest.

Q. For managing that transaction, of course the Northern Pacific paid your house?

A. They paid nothing whatever. That is one of the transactions I spoke of a little while ago, it just occurs to me, where things had to be done for nothing.

Q. What time was that Mr. Morgan? Can you recall the date?

A. The stock was paid on the 1st of January, 1902. 1301

Mr. STETSON. We know that.

A. Owing to the peculiarities of the law of the State of New York, we were obliged to have the money ready on January 1. It was a legal holiday.

Q. And it was decided to pay that off when?

A. I don't know. By the directors at their meeting, whenever it was.

Mr. STETSON. The 13th of November.

Q. That is the same day that the Northern Securities Company was organized, was it not? 1302

A. I don't know. I think the record will show that. It was a busy day, I know.

Q. I don't doubt it. Well, you gave, under that plan of issuing convertible certificates, privilege to the common-stock holders of the Northern Pacific to acquire this new common stock?

A. To acquire the convertible certificates; yes.

Q. Convertible at the option of the company into common stock?

A. After the 1st of January. 1303

Mr. STETSON. Convertible at the option of the company at any time, and by the holder, after the 1st of January.

Q. Yes; that is right. Now, as your house was a very large holder of common stock at that time, that privilege was really one that you conferred upon yourself, to a great extent, was it not?

A. We didn't confer it upon anybody.

Q. Who did?

A. The Northern Pacific Railway Company.

Q. But then you managed its affairs? 1304

A. No, sir; I beg your pardon, the board of directors managed its affairs.

Q. And Mr. Hill, of course, being a large holder of common stock, received great benefits under that?

A. Every stockholder received it.

Q. Mr. Morgan, when did you first hear of the proceeding or negotiation to purchase the entire capital stock, or endeavor to do so, of the Burlington by the Northern Pacific?

1305 A. When it was first started.

Q. When was that?

A. That I can not tell you. I haven't any memorandum here to give you the date. Some time last summer, or before that—long before that—before I went to Europe. I went to Europe the end of March, and it was before that.

Q. Who first suggested that to you, Mr. Morgan?

A. If you will allow me to state you the history of that in my own words, I will tell you the transaction from beginning to end.

Q. Yes.

1306 A. I think it was fully two years ago, or more—time has flown on since then. I think it was 1899; it may have been 1898. I made up my mind that it was essential that the Northern Pacific Railroad Company—railway, or whatever you call it—what is it?

Mr. STETSON. Railway.

WITNESS (continuing). Railway should have its eastern terminus practically in Chicago, and in the same manner that the New York Central, of which I am a director, at that time, or soon after, decided the same thing with regard to their line, that
1307 the western terminus of their line should be in Chicago, practically by acquiring the Lake Shore; in other words, that the transcontinental line should come to Chicago, and that eastern line should go to Chicago, so that was to be the central point, and I talked it over with a great many people interested in the Northern Pacific, and I found they all agreed with me, and the question came up as to how it could best be done. Of course, we were confronted with the question which is always arising and repeats itself, as to whether a line that you want is an independent line or whether it is a competing, and—what is the other
1308 term?

Mr. STETSON. Parallel.

WITNESS (continuing). Parallel and competing line, and from a study of the case I came to the conclusion that there were but three lines available. In other words, there was the St. Paul, there was the Chicago, Burlington and Quincy, and there was the Wisconsin Central. Of course we would not have taken the last one anyway. That was not the question involved. Consequently we came down to the question of the

St. Paul. I made up my mind that of the two I would rather 1309
have the St. Paul. Soon after that I met Mr. Hill, and I said: "Mr. Hill, I think that the best thing that we can do—I think your line perhaps is in the same condition—I think we had better go to work and secure the St. Paul road, or a road to Chicago, and if you will share with us we will do it together," and he said: "All right." So he said: "Who would take it up?" I said: "I will; I think we had better take the St. Paul." He said he thought we had better take the Burlington. I said I would rather have the St. Paul, because the financial responsibility to take the St. Paul would be less. He did not agree with 1310
me, but he acquiesced in my decision, and we discussed that question. I took up negotiations, not in any secret manner—we went directly to the directors of the road and told them what we wanted. We found some of them disposed to make the transaction. Others were not. Well, right here I will tell you what my reasons were for taking the St. Paul in preference to the Burlington. Mr. Hill's opinion—I will give you what I understood to be his opinion—and that was that the Burlington system offered a better market for the coarse freight we were hauling from the Pacific coast for distribution than the St. 1311
Paul, and he wanted the Burlington because he thought that would have been open for the freight from the Pacific to greater advantage than the St. Paul. However, as I say, he acquiesced in my decision. Those negotiations, as I said, went on for some time, and, finally, the directors of the St. Paul asked me for a conference, and then they told me very frankly that they had decided they would not let us have the road on any terms. They would not even name terms. I could not have it in that way; and being unwilling I didn't attempt to buy stock in any way, shape, or manner. I said: "Well, we will abandon the trans- 1312
action." Then I went to Mr. Hill and told him: "You can go ahead and see what you can do with the Burlington;" and he took up negotiations with the Burlington, which were carried through successfully. That is the whole story.

Q. When did these negotiations for the purchase of the St. Paul commence?

A. I don't keep a journal of all these dates. It is a question of common knowledge—it was not done in secret—it was

1313 a question that was going on for months and perfectly well known. Every paper in New York published every day how it stood.

Q. You know sometimes they are right——

Mr. STETSON. This was about the date published in the daily press, was it not?

A. It was in October, 1899.

Mr. BOUTELLE. What I was asking about was in reference to the time when the negotiations with the St. Paul fell through and when he directed Mr. Hill to start in on the Burlington
1314 approximately?

A. Perhaps some one can tell me here. Do you know, Mr. Clough?

Mr. STEELE. It was the first of 1901 or last of 1900.

Mr. CLOUGH. It was a little after the middle of March when the negotiations began, and the circular of the Burlington committee was sent out on the 27th of April, requiring the stock to be deposited by May 20.

A. But the transaction was practically closed; that is, it was understood to be closed before I went to Europe in March.

1315 Mr. STETSON. Yes; it was. That is what I say. It was the 15th of March.

Mr. STEELE. It began a few weeks before that.

Mr. BOUTELLE. That one transaction followed the other?

A. They did absolutely.

Mr. STETSON. The termination of the St. Paul matter was in December, 1900, and the other was taken right up, and was practically concluded in March, 1901. Is that about right, Mr. Morgan?

A. I should think so. As you will see, I—allow me to say—

1316 you will see from that that that transaction was done for a specific object—to get to Chicago. It was a transaction made independent of everybody and everything. It was simply an understanding and a desire on the part of Mr. Hill and myself. Take the Atchison road, for instance: All these roads seem to center in Chicago. It was the desire that the Northern Pacific on my part, and the Great Northern on his, should terminate there; that is, practically, that the two roads should end in Chicago. It was a transaction entirely independent of all other

transactions that you may have in mind or anything of the kind. 1317
It was a perfectly independent transaction, and it was done to attack nobody or to do anything. It was simply to bring those two Northern lines to Chicago.

Q. And so negotiations for the purchase of the St. Paul were solely with Mr. Hill?

A. No, no; what do you mean? I didn't have any negotiations with Mr. Hill. Mr. Hill simply agreed if we took the St. Paul, we would take it together.

Q. And then you negotiated with the directors of the St. Paul?

A. With the directors of the St. Paul road. 1318

Q. And made no attempt whatever to purchase any stock in the market?

A. I don't think we bought a share. I want to say to you gentlemen that when J. P. Morgan & Co. are acting in a fiduciary capacity they are not speculating in the stock market.

Q. We all believe that, Mr. Morgan.

A. You asked me a question a little while ago and I want to say that——

Q. It did not occur to me to ask that question as a breach, or even indicating a breach of a fiduciary trust, but as an actual 1319
thing, that interests desiring to control would go into the market and purchase every share of the stock they could before they began negotiations.

A. That is not our way of doing business.

Q. I only wanted you to understand my motive.

A. I understand; I am quite satisfied with your question, Mr. Lamb.

Q. And the negotiations for the purchase of the Burlington, were they made by Mr. Hill or your house?

A. Exclusively by Mr. Hill, except such influence as we 1320
could bring to bear on people who were interested in the Burlington, believing that it was the thing to do. But as to the negotiations—when I say negotiations I mean the man that sits down and is responsible to me and to everybody else in regard to the situation, the same as I was with the St. Paul—they were made by Mr. Hill.

Q. Who negotiated with the directors?

A. Mr. Hill negotiated with the directors for the purchase of the Burlington road.

1321 Q. Mr. Morgan, you say the price of $200 a share for the Burlington was determined between Mr. Hill and the directors of the Burlington road? I mean that in view of the fact that its market price had for so many years been and was then so much less.

A. Yes, sir; we simply couldn't get it any cheaper.

Q. You had nothing to do with fixing the price?

A. We agreed to pay it.

Q. Mr. Hill fixed the price?

A. No; the Burlington directors fixed the price.

1322 Q. And you ageed to pay that price?

A. When Mr. Hill said we must pay $200 a share, I said certainly, pay it.

Q. Have you any knowledge of the basis of value on which that amount was determined, or was it simply because that was the only price at which it could be bought?

A. It was the only price at which it could be bought, and we had great difficulty getting it at that, and, in the next place, I felt, and Mr. Hill must have felt also—because he is not in the habit of making transactions he don't think are profitable—that 1323 it was worth a great deal more than that for the purpose for which we wanted it, and it would pay a large profit. He thought it would pay both the Northern Pacific and Great Northern a profit on that price.

Q. Yes; for the purpose for which you wanted it.

A. No; I say it would pay a profit in itself.

Q. Do you mean in operating?

A. In operating it; yes, sir.

Mr. STETSON. You put it both ways.

A. I say both ways.

1324 Q. Up to that time the traffic of the Burlington had been shared by both roads, had it not—by the Northern Pacific and Great Northern?

A. Not to any great extent; perhaps somewhat.

Q. Those were connecting lines?

A. I want to say to you right here when you come to questions of traffic you are dealing with questions I know nothing about.

Q. I am speaking of the general question?

A. I can not answer questions on that subject, because I 1325
know nothing about them.

Q. Do you not know that the Northern Pacific was competing with the Great Northern for the business of the Burlington?

A. Not that I ever knew of, no; no more than they do for everything.

Q. Yes; engaged in general competition?

A. I never knew two roads yet that didn't compete.

Q. But now they operate the road jointly?

A. No; not at all.

Q. They own it? 1326

A. The road is operated independently to-day.

Q. But they own it—the two roads own it?

A. What?

Q. Of course——

A. The Burlington road to-day is worked as independently as any other road in the United States, in my opinion.

Q. But its entire revenue goes to its owners, of course?

A. Naturally, all roads do.

Q. Couldn't the Burlington have been purchased by the Northern Pacific alone? 1327

A. Undoubtedly.

Q. Wouldn't that have been a better transaction for the Northern Pacific to a certain extent?

A. Yes. The reason we didn't was that the amount of two hundred odd million dollars—I don't think that the Northern Pacific cared to take all that obligation, when they could get the Great Northern to assume half of it.

Q. Have you ever read the trust indenture, Mr. Morgan, relating to the issuance of those bonds?

A. No, sir. 1328

Mr. STETSON. You mean the joint bonds of the Great Northern and Northern Pacific?

Mr. LAMB. Yes.

Q. Are you aware of the condition existing therein whereby, in the event of the failure of the Northern Pacific to pay interest, the entire stock of the Burlington would become the property of the Great Northern?

A. And vice versa.

Q. Yes.

1329 A. Of course, that is always the case, I suppose, if a person has joint collateral. If one partner has to pay all the debt he takes the collateral.

Q. So that one man or one interest dominating both roads might wreck one at the expense of the other?

A. I beg your pardon. It would be absolutely impossible.

Q. In the event of a dispute, Mr. Morgan, between these two roads, the Great Northern and the Northern Pacific, as to matters relating to the Burlington, it would be arbitrated, I suppose?

1330 A. The trust indenture says that, doesn't it? Mr. Steele can tell you better than I can. I am not up on that question.

Q. Now, I suppose, the fact that these roads through their directors entered into a transaction for the purchase of the Burlington tended to bring them together a little and to enhance the friendly relations between the directors?

A. I don't think so, not necessarily.

Q. No; but they met frequently, of course?

A. No; they didn't meet.

Q. I understand that shortly after that the Northern Securi-
1331 ties Company was organized?

A. The Northern Securities Company was not organized for six months or more after that.

Q. In November, and the trust indenture was in July?

A. No; this was in November previous, the year before. The negotiations with the St. Paul were certainly a year before, more than a year before the Northern Securities Company was ever thought of. So far as the Northern Pacific Company was concerned nobody thought of the Northern Securities Company at that time, or dreamed of it.

1332 Q. When did you first hear of the Northern Securities Company, Mr. Morgan?

A. Just a few days before it was organized.

Q. You hadn't been consulted about it previous to that time?

A. In what way, about the Northern Securities Company?

Q. Yes; about the advisability of forming such a company.

A. No; do you want me to tell you about the Northern Securities Company? Have you got through with the Burlington? I mean let us finish one. Don't you think it would be as

well to finish one thing? There is no connection between them; 1333
consequently I would prefer it.

Q. Yes, I know.

A. I don't want to convey the impression there is any connection between the two, because there is no more connection between the Burlington and the Northern Securities Company than there is between New York and Kamschatka. I would like to finish one subject before I take up the other, if it is agreeable to you; that is all.

Q. Did Mr. Hill ever consult you about the danger of some other interests buying in the Burlington? 1334

A. No; not that I know of.

Q. Or to your knowledge—any member of your firm?

A. Not that I know of.

Q. Or anybody representing Mr. Hill?

A. I don't know that I have any recollection or any knowledge of it.

Q. It never came to your knowledge that Mr. Harriman, or the Union Pacific, or the Oregon Short Line had at one time attempted to buy the Burlington?

A. Oh, a long time before. 1335

Q. But at this time, or about this time, you had not been consulted by Mr. Hill?

A. I was consulted by Mr. Hill about buying the Burlington.

Q. I mean about the danger of Harriman or his interests, the Union Pacific or the Oregon Short Line?

A. That went without saying. We kept very quiet as long as we could, on account of buying the Burlington, because we knew perfectly well what the possibility was—if somebody wants a thing another man wants it, too.

Q. Did you know at that time that these rival interests had a 1336
great deal of the stock, or were attempting to buy it?

A. At that time, no.

Q. Or shortly before, or about that time?

A. Oh, no; it must have been a year or so before that. I don't remember the date. But it was a common story at one time. In fact, I would like to point out to you that for months at that time, nearly every day, somebody was negotiating for some line or buying, or trying to buy, a railroad.

1337 Q. I remember the time.

A. I say you remember the time I am speaking about, and I think we bought every road in the United States, within a few days, at one time.

Q. I was asking simply on the basis of a statement made by Mr. Hill, that the purchase of the Burlington was presented rather by the fact that the other people were trying to get it.

A. I have no doubt myself. You asked my opinion of it. If we had been the sole buyers we probably could have bought it cheaper; that was not the question. The question was that
1338 you could buy it. There was no attempt on our part—there was no connection between that purchase and any views of any other road, or of any man, woman, or child living. I have told you the exact facts of that transaction from beginning to end, as I know them.

Q. Just to summarize the Burlington matter, Mr. Morgan, Mr. Hill conducted the negotiations with the Burlington people?

A. Yes.

Q. With the directors? Then he submitted the plan to you, and you approved it?

1339 A. Yes; that is, he submitted this question to me: Shall we take the Burlington at $200 a share, payable in 4 per cent bonds. We had already decided, you know, before that, if we couldn't get the St. Paul we would try for the Burlington. I was consulted a long time before on the general principle, not with regard to what we would have to pay for it, but when it came down to the question—the question submitted to me simply was: Shall we pay $200 a share, payable in 4 per cent bonds, and my opinion was decidedly yes. I told Mr. Hill that, and that being the case there was a tacit understanding that the transac-
1340 tion was closed, and, of course, all the details of it were taken up by the board of directors of the companies, and with that I had nothing to do; in fact, I went to Europe the next day.

Q. The plan was submitted to the various boards of directors and approved and carried out?

A. No; I beg your pardon. The terms were submitted and then the two companies went to work—the three companies rather—to complete the papers.

Q. Yes; but the directors, after that, approved it?

A. Of course. We had no power, of course, neither Mr. 1341
Hill or I, to bind the roads. We had the moral influence. We told the directors we thought it was the thing to do; but I mean I had nothing to do with the detail you are speaking of; in fact, it wasn't done at once. It took six months, didn't it?

Mr. STEELE. We got the bonds out in September.

Q. We have heard a little in this court room about a contest some time last May for the purchase of Northern Pacific stock. When did you first hear that somebody else was trying to buy the stock of the Northern Pacific?

A. Do you men the Union Pacific interest? 1342

Q. Yes. When did you hear of that?

A. Oh, it must have been about the last of April or the first of May.

Q. Not before then?

A. I didn't hear they were trying to buy it. I heard that it was understood, and, in fact, thought it practically settled, that they had control when it came to me. It was not an imaginary fact; it was a complete transaction, as I was informed. There was no contest in the matter.

Q. I was alluding now to the famous 9th of May. 1343

A. That was after it was bought. That was when the thing was done.

Q. Now, directly, you heard that the Union Pacific interests—you understand when I refer to them it means Harriman or the Oregon Short Line?

A. I don't understand anything of the kind. I know nothing about that. I know no man, woman, or child, except the Union Pacific interests. I don't know what Mr. Harriman did. I don't want to be misunderstood. When I speak of the Union Pacific interests it may have been Mr. Harriman, or Mr. Pierce, 1344
or Mr. Schiff, or somebody else. I know nothing about the names. I only know I heard in Aix, where I was, that the Union Pacific interests had acquired control of the Northern Pacific.

Q. And you, having been the fiscal agent of the Northern Pacific, took steps at the same time to protect the control of the road, undoubtedly?

A. In that connection I will tell you that part of it here now.

1345 Q. You might just as well.

A. When I heard that, I felt in this position: We had reorganized the Northern Pacific. We had placed all the securities of the Northern Pacific, and I knew, as I had always supposed, that there were people—friends of ours and other people—who held practically enough Northern Pacific—we always supposed we had with us people upon whom we could depend to protect our moral control of the property—and consequently when that news came to me I hadn't any doubt about the fact of the matter, and at the same time this news came so strong, whoever had
1346 acquired it, I felt something must have happened. Somebody must have sold. I knew where certain stocks were, and I figured it up. I feel bound in all honor when I reorganize a property and am morally responsible for its management to protect it, and I generally do protect it; so I made up my mind that it would be desirable to buy 150,000 shares of stock, which we proceeded to do, and with that I knew we had a majority of common stock, and I knew that actually gave us the control and they couldn't take the minority and have it sacrificed to the Union Pacific interests.

1347 Q. You had to pay very high prices for that stock that you bought at that time, did you not?

A. I did not. Higher than I wished to, but not very high.

Q. Higher than the market price?

A. I did not.

Q. You bought that stock in the market?

A. I did, sir; every share of it.

Q. None of it was bought by private negotiation abroad?

A. No, sir; it was all bought in the market.

Q. But the market price had by force of these circumstances
1348 become greatly in excess of the actual value?

A. No, sir; not at that time. It did when they came to deliver their stock, but not when we bought it.

Q. Would you mind telling us the highest price?

A. No, sir; I could not tell you that.

Q. All right, sir. I have no right to ask it. What was the market price between the 1st and 7th of May, Mr. Morgan?

A. Send for a stock list; I couldn't tell you.

Q. Roughly?

A. I don't know. I think up to the 7th—I don't think it 1349
went above 120.

Q. The prices day by day and hour by hour are stamped on the memories of some?

A. I was not here. You must remember I was in Europe; but that is my impression.

Q. Now, you bought that $15,000,000 of stock, Mr. Morgan, for the account of the railroad, or for the account of your house?

A. Bought it for the account of my house.

Q. Absolutely? 1350

A. Absolutely.

Q. And not at the request of the railroad or anybody representing it?

A. No, sir.

Q. Was it at the request of Mr. Hill?

A. No, sir.

Q. Was not there an understanding between yourself and Mr. Hill that you would buy this stock, or some of it, so as to protect the control of the railroad?

A. I was not here. I could not tell you anything about 1351
that.

Q. The matter, then, must have been negotiated by junior members of the firm?

A. I don't know that there was anything of the kind. There was no negotiations to it. I told you we did it for ourselves.

Q. They didn't report to you that they bought it in pursuance of an understanding?

A. I told you exactly there was no understanding that I know of.

Q. What time did you return, Mr. Morgan? 1352

A. I returned in July some time.

Q. What did you ascertain the situation to be upon your return?

A. The situation in what?

Q. As to the dissensions that had arisen and as to the control of the road and matters pertaining thereto.

A. And the situation as regards the control of the road?

Q. Yes, as to who had control.

1353 A. We had control.

Q. You knew that on your return?

A. As I believed, yes.

Q. That is, that you had control of the common stock?

A. Well, there was no other.

Q. Yes, the other stock was to be paid off in January. When you say "we" you mean, of course, yourself and Mr. Hill and his friends?

A. I don't mean anything of the kind. I mean J. P. Morgan & Co. and their associates—whoever acted with them in
1354 the matter.

Q. Did Mr. Hill act with you?

A. He generally did.

Q. In that matter?

A. Certainly; that is to say, his interests were the same as ours.

Q. Do you recall the famous remark of Mr. Hill, alleged to have been made by him to you, that he would stand without hitching in that matter?

A. I don't remember any such remark. It is barely possible.

1355 Q. He says he made it.

A. I think it is very likely. I don't remember any such remark.

Q. Now, on your return did you have any conference with Mr. Hill, or Mr. Hill and his friends?

A. On that subject?

Q. On the subject of the control of the Northern Pacific and of any arrangement to quell the uneasiness that had been in the stock market?

A. Now you come to another subject—the public feeling in
1356 relation to the transaction.

Q. Yes, I know. They were anxiously awaiting your return.

A. Well, as I have told you before, we bought that stock in good faith, feeling bound in honor to protect the minority stockholders. We didn't know who they were or anything about it. We knew perfectly well that if the Union Pacific was to acquire or had acquired a majority, there was certainly a minority we were bound to protect, and this stock was purchased for that purpose. But subsequently came up another question. The

people at large, those who didn't know Northern Pacific, or 1357
Union Pacific, or anything else became very much alarmed, fearing that there was going to be a great contest over this thing, which would bring in active antagonism what they deemed the important financial elements of the street; that is, what they talked about. They were going to have a battle in Wall street, and I don't know—well, they were going to have all sorts of things, and it had spread to such an extent that it became absolutely essential that something should be done. That was before I returned. It had taken some shape. Something should be done to allay that public excitement and they had several 1358
conferences. I was not here and don't know anything about how they were brought about, or whether they were held, or who was present, or anything of the kind in relation to them. But finally a paper, at least not a paper but an agreement or whatever it is—an understanding was arrived at which was published in the papers, that there was nothing of that kind; that the election to be held in October of the board of directors of the Northern Pacific would be left to me to decide. Subsequently the "Morgan interests," as they were called, should be left independent to manage that property, and that was decided 1359
upon. When I got back I found that this feeling had not entirely subsided, and there was still a great deal of anxiety, so I thought it was best to act at once, and I drew up a paper. I drew up a letter stating who I thought should compose that board and sent it to the Union Pacific interests, or the people that had signed this, J. P. Morgan & Co. and others, and that was carried out. It was thought best, too, that the thing should not wait until October; in other words, better have the changes made at once in order to show there was no hostility, and con- 1360
sequently I suggested to some of the directors that they had better make the change then in the board instead of waiting until October, and that was done, and that seemed to suit the people's mind a good deal, and the thing simmered and died out—that public excitement.

Q. So that you found upon your return that it had been left to you to designate a new board?

A. I did.

Q. And if that agreement had not been reached the Union

1361 Pacific, having the preferred stock, with its voting power, could have elected its own board; that is a fact, is it not?

A. That is a legal question; I am not prepared to say.

Q. I understand there is no question of law as to the voting power of the preferred stock, and as it is accepted by everybody and testified to here, I think, that the Union Pacific had a majority of both classes of stock?

A. No, sir; they had a majority of the whole.

Q. I mean a majority of the whole; so that if that agreement had not been reached they might have elected their own board?

1362 A. I am not prepared to say that. I will explain to you why; because if the board of directors had then and there declared the preferred stock payable on the 1st of January, I doubt very much if they could have voted on it.

Q. Don't think they could have voted on it?

A. I don't think so if it was declared payable, but still I am only telling you. You asked me my opinion. At any rate, happily, that has all been settled since, and we have not got to decide those questions.

Q. On your return or thereafter, did you meet Mr. Schiff or

1363 Mr. Hill, or Mr. Harriman?

A. I think it is very likely. I don't remember.

Q. Do you remember meeting Mr. Schiff?

A. I don't remember. I have no doubt I did. I don't know what point you have.

Q. I mean about this matter; about the question of the election?

A. Oh, no; I did it myself. I sent the letter on.

Q. Did you consult Mr. Hill about that?

A. I told him what I was going to do.

1364 Q. You did not consult with him?

A. No, I should not; I did not think anybody had anything to say about it but myself. They had been kind enough to trust me in the matter, and I did not consult Mr. Harriman, and I don't think I consulted anybody; at least, if I did, I did not consider it in any way that made it a factor of the case at all. I wanted to be in a perfectly independent place. I felt that I was acting in a fiduciary capacity, to allay this feeling, and I was acting without any influence from anybody. I don't think I satisfied anybody, but I accomplished the object.

Q. Mr. Morgan, you know that the Union Pacific, of course, 1365
was a competing line with the Burlington. You know that it had attempted to wrest your property away from you; what was the object in putting their representatives on the board?

A. Simply to show that there was nothing that the Northern Pacific management, or J. P. Morgan & Co., or anybody, which had bought the Burlington, to show that they were acting under what we know as a community of interest principle, and that we were not going to have that battle on Wall street. There was not going to be people standing up there fighting each other.

Q. What is community of interest? 1366

A. The community of interests is that principle that a certain number of men who own property can do what they like with it.

Q. But they sha'n't fight one another?

A. There is no fighting about it. If they choose to fight their own property—but people don't generally do that.

Q. Is not this community of interest idea one of working harmony?

A. Working in harmony—yes.

Q. Even though they own competing and parallel lines?

A. No; they own them all. 1367

Q. And they will work in harmony together?

A. No, no; I think the language is sufficient to tell you. It is not an idea of my creation. I have only used it because I felt you would understand what I meant.

Q. There never had been a representative of the Union Pacific on the board of the Northern Pacific before, had there?

A. No; and I think that the people that were more than surprised that they were put on were the Union Pacific interests themselves.

Q. It was a most unusual thing to put opposing interests on 1368
the board?

A. It was; it showed that we had nothing to fear from it, that was all.

Q. Was there any special object in putting Mr. Gould on the board?

A. He was in the Union Pacific interests at that time.

Q. Mr. Gould and one other?

Mr. STETSON. He never was put on the Northern Pacific board.

1369 A. I have forgotten now who I put on. I don't think he was put on.

Q. No, I was mistaken. Now we come, Mr. Morgan, to the famous 13th of November, when they organized the Northern Securities Company.

A. I think you had better go back a little.

Q. When did you first hear of the plan to organize the Northern Securities Company, or a securities company of any kind, or a holding company?

A. A securities company in connection with the Northern
1370 Pacific?

Q. And Great Northern—yes.

A. No; in connection with the Northern Pacific or Great Northern.

Q. Take the Northern Pacific.

A. That was after I came back.

Q. How long after you came back?

A. Oh, a long time after I came back.

Q. By whom was the matter first brought to your attention?

A. I think it was rather in my own mind, as far as the North-
1371 ern Pacific was concerned.

Q. Well, as far as the Great Northern was concerned, when was that first suggested?

A. I had heard it discussed for a year or two.

Q. Had you talked with Mr. Hill generally about it?

A. I think I had. That is, not in any detail, with the exception of being to a certain extent a stockholder in the Great Northern. I talked to him on that subject.

Q. And that was a separate holding company for the Great Northern?

1372 A. Yes, sir.

Q. And then you had that in your own mind to have a holding company for the Northern Pacific?

A. That came up after I came back. When we found ourselves in this position, with the danger, having escaped as I thought at that time from what I thought was a great danger; that is to say, our property being absorbed by a competing line without our knowledge or consent. It occurred to me something ought to be done to prevent that, because, while we chose

to defend the property, I did not want it to go on indefinitely, 1373
and I thought the best plan was to go to some trust company. My idea was first to go to some trust company to take the Northern Pacific stock and hold it.

Q. That is, to hold control?

A. Hold control of the stock. Just to surrender it to them and take their receipt.

Q. For the purpose of keeping control in one place?

A. No; not alone to keep it one place, but to keep it so that the policy of the company upon which its future depended could be continued. We didn't want convulsions going on. You 1374
can not take a company with three or four hundred millions of securities and do one thing one day and another thing another. It destroys confidence in the first place, and everything of that kind. What I wanted to accomplish was to put that stock so that it could be protected—to maintain the policy of the company as it then existed.

Q. Held in one hand, in other words?

A. No; not in one hand, because it could be held in third hands. I wanted it so that I could go to Europe and not hear next day that somebody had bought it for the Boston and Maine, 1375
or I don't know what other company. I wanted the Northern Pacific stock put where nothing could interfere with the policy I had inaugurated and for the carrying out of which we were perfectly satisfied and morally responsible.

Q. It being the idea that the control would be in your hands?

A. It was not a question of control. It is a moral control.

Q. I know.

A. It was not a question of that kind. It was a question of moral control.

Q. When did the idea of putting the control of both these 1376
roads in one place come up; after your return?

A. I suggested to Mr. Hill "why not." I think I did, at any rate. If it was not, it may have been by Mr. Steele. Whether I did it or J. P. Morgan & Co., I think we are responsible for having made that suggestion.

Q. When was that?

A. I suppose in October.

Mr. STETSON. You returned from Europe the 4th of July, didn't you, and went to California in October?

1377 A. In October.

Mr. STETSON. The latter part of September or the first week in October?

A. Yes.

Mr. STETSON. And you were in California all the month of October?

A. Then it must have been just before I went to California.

Q. How long had that matter been under consideration with Mr. Hill?

A. Oh, I don't know.

1378 Q. I mean between you and Mr. Hill?

A. I only knew it as a moderate stockholder in the Great Northern. That was his idea, as it is with a great many of these companies. That was his idea with the Great Northern road, because there were side companies, and all of that he had, and he seemed to think that was the way to manage it. I did not follow it any more. It was not a question of my device; it was his.

Q. In other words, he owning one road and you the other?

A. No, sir; I beg your pardon; not at all.

1379 Q. You know what I mean?

A. Mr. Hill, I say, for the Great Northern road, had had in his mind, evidently, as I understood it, for sometime, all that question of putting all the securities of the Great Northern road itself, and all its allied companies—I don't know just what he has got; all sorts of things—steamboats.

Mr. CLOUGH:

Q. Subsidiary companies?

A. All those subsidiary companies, putting them all into a holding company and creating a voting trust. He had some 1380 company out in the West; what is the name of that thing?

Mr. STETSON:

Q. St. Peter Company.

Q. So you and Mr. Hill discussed that question during the summer?

A. What?

Q. The question of the formation of a holding company.

A. No, no. Mr. Hill and I—I think it was two years ago

Mr. Hill first talked to me about the Great Northern road, 1381
when I took stock, and that sort of thing—the little stock I had, 1,000 or 2,000, 5,000 shares—but it had nothing to do with the Northern Pacific road in any way, shape, or manner. Mr. Hill, I have no doubt, thought at one time he could buy up the Northern Pacific road and do something. I told him then if he could not we could work in harmony; but the law was against him, and he found that out afterwards and abandoned it, and that was settled years ago, when the Supreme Court decided that case.

Q. In the Pearsall case? 1382

A. Yes; that dismissed any question in my mind of that kind. Everything, so far as the Northern Pacific road is concerned, and a holding company, all occurred to my mind subsequent to the 9th of May. My idea was, I can't live forever, and J. P. Morgan & Co. may be dissolved. I wanted this affected, so that the policy we have incorporated and created shall be continued on that property if the stockholders chose to put the stock there.

Q. How soon after your return did you meet Mr. Hill?

A. I don't know. 1383

Q. Very soon?

A. No; Mr. Hill, I don't think, was here when I came back. I don't remember about that.

Q. Did you exchange ideas with him on this subject during the summer?

A. Not to any extent; no.

Q. To some extent?

A. No; I don't remember talking with him until when we came to discuss this question when I made up my mind to do this thing. He was a large stockholder of the Northern Pacific, 1384
and I said I think that has got to be done. I will not take the responsibility of going through anything of this kind again. If a man has got 10,000 shares of stock, and acts with you, and he is your friend, to-morrow somebody comes on and offers him 100 per cent profit, and he will sell his stock, and you will find yourself left in a box. The consequences are too serious. I said "It can't go on that way."

Q. What was the result of your talk with Mr. Hill?

1385 A. The result of it was that we decided that the Northern Pacific, so far as I was concerned as a stockholder in the Northern Pacific, I would put my stock in provided that he would take everybody else's into this thing that he had proposed to arrange for the Great Northern.

Q. That is this Northern Securities Company?

A. Yes.

Q. That is, provided he would go in himself?

A. Yes; of course. Well, I didn't care whether he went in or not. We had a majority without him. I wanted a majority
1386 of the Northern Pacific stock in that securities company; I didn't care who went in, provided there was enough there to protect the Northern Pacific.

Q. You could not have a majority without Mr. Hill, could you?

A. I don't know—the books will tell you—yes, I could.

Q. Could you?

A. Yes; very easily at that time.

Q. You had, anyway; it was agreed between you, and that was done?

1387 A. I mean to say, now that you have raised that question—it never occurred to me before, by the way—Mr. Hill has not got any control in the Northern Pacific and did not have then.

Q. Oh, no; but yours and his holdings put together constituted a control?

A. No, sir; it did not do anything of the kind.

Q. I mean him and his friends—Mr. Strathcone and all those folks?

A. He and all the other stockholders did; yes.

Q. His little coterie, I mean?

1388 A. He has got no coterie. Mr. Kennedy, you speak of, is a great friend, and I think Mr. Kennedy's interest, if anything, in the Northern Pacific was greater than his interest in the Great Northern. He was just as much a friend of mine, and has been for forty years. Mr. Kennedy and I were in Aix. He came down to see what in the mischief all this meant. I said I didn't know. He said, "I am going to cable over to tell them to put my stock into your office." I said, "There is no use, because you can not sign the power," and he said, "Whatever you want done I want done with my Northern Pacific,"

and that is the way people treated me in the Northern Pacific. 1389
Whatever I was willing to do they wanted, and they wanted to put the stock just where I said to keep it safe. That is what they wanted. Well, I appreciated that. I can not help but being touched by a thing of that kind. Consequently, it is not Mr. Hill and his coterie. It was a question of who held stock in the Northern Pacific, and the men in the Northern Pacific wanted my policy or our policy from the organization carried out. Take, for instance, which is a case in point, which I suppose you will get at with me pretty soon—that is, how I came to buy the Union Pacific interests in the Northern Pacific. 1390
Supposing I had bought the Northern Pacific—I mean the Union Pacific—interests in Northern Pacific and added it to mine, where would Mr. Hill have been? He would not have had any control at all. I am only speaking to you to show you this. You ask questions. Of course that is all right. You will get the point I want to convey, you know.

Q. Yes; I had always had that thought, that you could have done without him.

A. Mr. Hill and I worked together. I would work with him on anything, but when you say to me—Mr. Hill and I, we 1391
worked simply because he was a stockholder of the Northern Pacific and I was a stockholder; but I was independent of Mr. Hill in that transaction. I wanted simply to keep the stock of the Northern Pacific safe beyond question.

Q. As a matter of fact, there was some sort of an understanding with Mr. Hill that he would do it. You would have been very much surprised if he had not?

A. Simply because I know he wanted to make the most he could out of the Northern Pacific.

Q. And you agreed to work in unison in that thing? 1392

A. He would give me his stock and I could do what I liked with it. In that connection, Mr. Lamb, I would have given him all my Great Northern stock. He could have done what he liked with that, because I had confidence in him, and he has confidence in me, but it is not a coterie or anything of that kind.

Q. You sold Mr. Hill quite a lot of your stock, didn't you?

A. Yes.

Q. About how much?

A. I don't know. I don't remember now.

1393 Q. About $10,000,000?

A. I don't remember anything about that.

Q. About when was that sold?

A. What?

Q. This $10,000,000 of Northern Pacific to Mr. Hill?

A. I didn't say there was.

Mr. BOUTELLE. Mr. Hill testified to that, Mr. Morgan.

Q. Mr. Steele, too.

A. I don't know anything about that. Any stockholder that chose to take part of my stock could do so. I bought that stock,
1394 as I have testified ($15,000,000), for the benefit of the protection, and these stockholders came in. I remember one gentleman came in and said, "Mr. Morgan, you took a good deal of burden in that thing. I want to relieve you of 10,000 shares of that stock." I said, "All right; it cost so much. Make your check and you can have the stock."

Q. So you gave it to him at the price you paid for it?

A. I gave it to him at what it cost, and I gave it to everybody else who wanted it at the same price.

Q. The price you paid for it under this condition?

1395 A. Whatever the stock cost was the price they paid.

Q. Do you remember who conducted the negotiations with Mr. Hill for a sale to Mr. Hill of that stock?

A. There was no negotiation.

Q. It is a big amount, $10,000,000?

A. You may think so, but when you are talking about a thing where there is 300,000,000 or 400,000,000—10,000,000 of stock is not a very large amount nowadays. I don't consider a purchase of $10,000,000 of stock very much.

Q. To a struggling lawyer it seems so.

1396 A. I told Mr. Hill and all these stockholders whatever I paid for the stock they could have it for, if they wanted it; they said they did not think we ought to take the whole responsibility of the thing, and whatever we paid for it they took it at. There was no negotiation about it. If they took it they took it; if they didn't we kept it. We have the balance of it to-day; at least we did have it.

Q. These conferences about turning in stock, were they prior to the sale or subsequent to it?

A. What?

Q. I mean the conferences about turning in the stock of the 1397
Northern Pacific into a holding company?

A. There was no connection between the two; one was not dependent on the other in any way, shape, or manner.

Q. I mean merely in reference to time?

A. They were all since my return.

Q. Well, about that time these conferences were being held?

A. About that time; yes.

Q. Did you see a circular sent out by Mr. Hill to the stockholders of the Great Northern advising them to turn their stock into the Northern Securities? 1398

A. Oh, yes; I got one of those as a stockholder, and I turned mine in.

Q. And you approved of the plan of the Northern Securities Company?

A. I did.

Q. And gave it the benefit of your influence?

A. I did.

Q. You assisted in the organization of the company?

A. I had nothing to do with it.

Q. I mean in the way of consultation or advice? 1399

A. No. Oh, I don't know; I may have been asked about it, but I was not an incorporator or director, or anything about it.

Q. Were you ever consulted as to the men who were to be directors?

A. I don't think I ever knew; I don't know to-day who are the directors.

Q. You were never consulted about them?

A. I don't think I was; at any rate it made no impression on my mind.

Q. Well, who fixed the ratio of 180 for the Great Northern 1400
and 115 for the Northern Pacific?

A. I suppose the board of directors of the Northern Securities Company.

Q. Well, you must have been consulted by them?

A. I think it is very possible I was. I can tell you gentlemen that is just what the stock cost us that we had bought; that is the way the 115 came from the Northern Pacific; it cost just that—the stock we bought to protect the stock, etc.

1401 Q. Then, of course, your house was a large holder of stocks bought before at the time that the company was in distress?

A. That has nothing to do with the other.

Mr. STETSON. That was the market price of the stock.

A. That was practically the last market price.

Mr. STETSON. Of the stock actually delivered prior to the 9th of May.

Q. How did they arrive at the price of $180 for the Great Northern?

A. That was about what the market price was at that time.

1402 I had nothing to do with that.

Q. Was that determined before the securities company was organized?

A. I suppose so. I know nothing about what the Great Northern did.

Q. The Northern Pacific price was agreed upon before the Northern Securities Company was organized?

A. That I don't know, either. I doubt it. Not before it was organized. It may have been at the same time. I don't know.

1403 Q. You would not care to put in your stock to the Northern Securities Company without knowing what they were going to pay for the Great Northern?

A. I didn't. But when you say before it was organized—organizing a company is one thing and receiving stock is another. I knew what the price of the two stocks were to be before I put in my stock, but whether it was before or after the organization—legal organization of the company—I don't know.

Q. You would not have put in this stock unless you had been satisfied that the Great Northern's price was a fair one?

1404 A. I didn't know how much they would get for the Great Northern, but, of course, I would not—you are quite right—unless I had been satisfied with the price. But whether that price was known before or after the legal organization of the company I don't remember, and it did not seem to me material, because before I put in my stock I would know the two prices and the relative value. But a company might have been organized and no stock put in. My impression is that the price was not fixed until after the legal organization, but I am not sure.

Q. But you would not put your stock in unless you were satisfied? 1405

A. There was no use fixing a price until we knew the company was going through, and all that sort of thing. That is why I believe that the price of the stock was fixed afterwards. I knew the price at which both stocks were to be taken, certainly, before I put in anything I had.

Q. Did the relative proportion seem to you a fair one?

A. It did.

Q. One hundred and eighty dollars Great Northern and one hundred and fifteen for Northern Pacific? 1406

A. It did. If anything, I thought the Great Northern was a little low.

Q. You, then, did acquaint yourself with the standing of the Great Northern and its history?

A. If you take the dividend and the market price of the Great Northern and the uncertainty as to the price of the Northern Pacific—because you must remember that when this was formed, and all that sort of thing, we did not know whether we were going to be able to settle definitely with the Union Pacific interests, and we did not know either if we were going 1407 to get through the 1st of January without legal contest—and we found out from you gentlemen we came very near not doing it—consequently I say the Northern Pacific got their fair share of that deal.

Q. So the stocks did not go in on the basis of actual certainties?

A. They went in as near as possible on what we considered the market price.

Q. Market price is regulated?

A. By the stock markets. 1408

Q. And the fear of lawsuits?

A. Oh, no; I beg your pardon.

Q. And the possibility of trouble with the Union Pacific people?

A. That is just what I said I didn't do.

Q. I have made some analysis of the subject myself, and I thought the Great Northern got a little the best of it.

A. Probably that is because you had Great Northern. I had

1409 both. What I mean to say is this: You had control of the suits, you see. You could remove the suit, and probably that is why you thought the Northern Pacific would go in cheaper. But that was not the case with the other. But what I say is simply this: At 180 and 115, I think, the Northern Pacific, if anything, got a little better of the trade. But that was fixed, because it was the price at which we bought this stock. Undoubtedly, if that stock had not cost quite as much we would not have received as much.

Mr. STETSON. You mean the stockholders of the Northern
1410 Pacific and the Great Northern when you say the Northern Pacific and Great Northern?

A. Oh, no; I mean the stockholders in the companies; the stockholders in the Great Northern did not get quite as much relatively as the stockholders of the Northern Pacific.

Q. When was it first decided between you and Mr. Hill to put both stocks of these companies into one holding company?

A. Mr. Hill did not decide the Northern Pacific. I told him I thought if he was willing we would take it; and that was probably some time either just before or just after I re-
1411 turned from California.

Q Then you agreed to do it?

A. No, sir; I told him that would be my decision if everything went smooth. We could not tell at that time if we were going to be able to get our charter.

Q. That was satisfactory to him?

A. It was satisfactory to me if it was to him.

Q. Did he say it was satisfactory to him?

A. Yes.

Q. And you both agreed to it?

1412 A. We both agreed to it.

Q. If you could get your charter and all the legal formalities could be carried out?

A. He was acting for his stock and I for mine, with the condition that if the Northern Securities Company was organized the holders of the Northern Pacific stock should have the right to put in their stock the same as we did.

Q. When was it decided between you or agreed between you that the Great Northern would come in?

A. They were in before; I had nothing to do with that; 1413
that was all fixed.

Q. That they would come into the Northern Securities Company?

A. I have already said to you that the Great Northern Company and a holding company was a thing of Mr. Hill's plan. The question simply was whether J. P. Morgan & Co. should select the Northern Securities Company as the custodian for our Northern Pacific stock or not, so that it was really Mr. Hill's plan, and the Great Northern went in before I did. I told you before he had arranged that for his road and subsidiary 1414
companies, at least that or some holding company, so that was long before this thing came up.

Q. You have explained that it was your idea that it would be a good plan to put the control of the Northern Pacific into a trust company or into a holding company and Mr. Hill apparently held the same theory as to his stock.

A. Not at the same time.

Q. No; not at the same time; he had worked that out years ago in his mind. You had both been working the same thing out. Why was it agreed to put the stock of both of these com- 1415
panies in one holding company?

A. It seemed to me the better way of putting it.

Q. But why?

A. Why, on the face of it, it did not make any difference to me.

Q. Why put the stocks of both of these companies into one holding company?

A. In the first place this holding company was simply a question of custodian, because it had no other alliances.

Q. It does own other properties?

A. What? 1416

Q. The Northern Securities Company.

A. The Northern Securities Company may own other properties some time, but they do not now.

Q. It owns several companies?

A. I say those are Mr. Hill's companies.

Q. Yes.

A. That is all right. Those are Great Northern companies. It doesn't hold anything. It is an investment or trust company

1417 which can hold securities that Mr. Hill may put in, and we put ours in the same boat.

Q. Putting both companies into one holding company, whoever gets control of the holding company may wrest the stock away from one or the other.

A. That is another advantage which I took into account, and that was that the capital of the Northern Securities Company was so large I did not believe in a night or week anybody would ever be able to get control of it.

Q. They might. It is only $400,000,000.

1418 A. You said just now $10,000,000 was a large amount. If that is so, I think $400,000,000 would be much more.

Q. Can you tell me what special benefits accrued from putting them both in one company?

A. Because it seemed to me the best remedy. The company is so large. For instance, supposing I had gone to the United States Trust Company and they had issued to me some securities for the Northern Pacific (the persons who put their stock in a holding company would desire to have something for it—trust certificates or other securities). Supposing we had put our

1419 securities in the United States Trust Company, and they had given me something or other. They have 2,000,000 of stock. Somebody could get hold of that and do what they liked with it. I wanted to put it in a company with capital large enough that nobody could ever buy it, and that is the only one I know of. It is the only investment or trust company that I knew of of that kind where the stock was large enough so that in all human probability I felt that if it was not safe there it was not safe anywhere.

Q. It is a fact, however, that a number of the larger holders

1420 of Northern Securities Company stock acting together would control both roads?

A. No, sir; I do not think it would be possible. If you go and select all the stockholders, of course. I have no doubt if you had a list of the stockholders, and take all the largest until you got over $200,000,000, those people would control; but there is no interest that I know of to-day that can control the Northern Securities Company.

Q. When did you first meet Mr. Harriman on your return from Europe?

A. I could not tell you; some time during the summer. It 1421
was some time after I had returned, I know.

Q. What conversation did you have with him?

A. I don't think I had any.

Q. Relative to the holding of Union Pacific in Northern Pacific?

A. I had no interview with him on that subject.

Q. Or with Mr. Schiff?

A. Or with Mr. Schiff.

Q. To your knowledge, did any member of your firm have an interview with him on that subject? 1422

A. I had no interview with Mr. Harriman.

Q. When did it come to your knowledge that Mr. Harriman was apprehensive that the purchase of the Burlington might jeopardise his interest?

A. I never knew it at all.

Q. Did you ever have a conversation with him about that?

A. No. On the contrary, I thought they were perfectly satisfied.

Q. And no members of your firm ever had any conference with him? 1423

A. Not that I know. I do not know of any. I never had any. I always supposed they were perfectly satisfied until that was assigned as a reason.

Q. How much of the Northern Securities Company stock does your house own now?

A. I decline to answer that question. I will answer any question that is fair, but I do not think that is fair. I have no objection to answering it; but I do not think in a case of this kind—a corporate thing, you know—questions of a personal character should be omitted. I am perfectly willing to answer 1424
any questions that are public. We own about 164,000 shares of the Northern Securities Company.

Q. Did you hear that the Union Pacific interests sold their Northern Pacific holdings to the Northern Securities Company?

A. I did not. We bought it; J. P. Morgan & Co. bought it. J. P. Morgan & Co. made the negotiation with the Securities company. Supposing we had kept that stock that we had bought? That is an illustration of what I was showing you just now.

1425 Q. And that stock was sold at once to the Northern Securities Company?

A. Afterwards.

Q. Will you give us the basis of that transaction and the terms of it?

Mr. STETSON:

Q. Are you doing this for the purpose of establishing a discrepancy? Mr. Perkins has testified to it, and Mr. Steele.

A. Mr. Morgan was not here personally. It was not far from
1426 $90,000,000, Mr. Steele told you, of which about $9,000,000 was in cash.

Mr. BULKLEY:

Q. And they turned it over to the Northern Securities Company on the same terms on which they bought it?

A. On the same terms exactly as those on which they bought. That is another of those transactions I was speaking about.

Q. In regard to those transactions with the Union Pacific interests, Mr. Steele has testified that they agreed at one time to pay one price, and they subsequently ascertained that the
1427 Union Pacific had less stock than they thought they had.

A. Than we thought they had.

Q. And than they thought they had, or you thought they had. I was putting it in a kindly way for the Union Pacific—and that another price was ultimately paid. Will you tell us what the first price was and what the second price was?

A. There was no price about it. I have forgotten what the first agreement was. That never came to anything, because no transaction was ever based on it. I don't remember the figures at all. I could not tell you, to save my life; I had nothing to
1428 do with it.

Q. Have you heard of or authorized recent purchases of Burlington at very high prices?

A. Me?

Q. Your house.

A. I do not know. I do not think I have bought a share of Burlington stock for two years; at least not for a long time.

Q. And, to your knowledge, no purchases have been made by your house within the last few months?

A. I never heard of them. I can not imagine what they 1429
want to buy any more for. They have all they want now, and more, too.

Cross-examination by Mr. STETSON:

Q. Your present amount of holding in the Northern Securities Company—about 164,000 shares, as you testified—is substantially the same amount that you have held from the beginning?

A. Yes, sir; substantially; that is, originally we held 172,000 shares, and now we hold 164,000 shares.

Q. Mr. Morgan, referring to the purchase of Northern Pacific 1430
stock in 1896 by Mr. Hill and other gentlemen, you referred to them, or the questioner referred to them, as being Mr. Hill's associates. I would like to know of you, were these sales made to Mr. Hill and to other purchasers as an association, or were they made to a number of gentlemen separately?

A. They were made to Hill, as I understood it. I do not remember how the transaction was made. I understood when the company was reorganized there was a certain amount of stock left over in the hands of the reorganization committee, and it was that stock which I sold to Mr. Hill. What he did 1431
with it at that time I did not know. It was not until afterwards that I ever knew, by looking at the registry books, how that was done.

Q. You were asked as to the custom of your house in reference to transactions for the Northern Pacific and the acquisition of branch lines and extensions, etc. It was suggested to you that your usual method was to form an underwriting syndicate for that purpose. Is that a fact?

A. We never had any extension lines that I know of; if we did I don't remember. 1432

Q. You have no recollection of any underwriting syndicate that you formed for the Northern Pacific since the reorganization in 1896?

A. I don't remember anything at the moment, but I mean to say that is our way of doing business; if we make a large loan we form a syndicate to carry it out.

Q. Voting trust ended in December, 1900, I understand?

A. 1901; January, 1901.

1433 Q. It terminated in January, 1901, which was a year before the time fixed for its expiration?

A. Yes.

Q. You have from time to time been asked and have answered concerning your carrying on negotiations, or making arrangements for the Northern Pacific. Who actually completed the arrangements and carried them into effect?

A. I don't know.

Q. You or the board of directors?

A. The board of directors; I never carried any into effect.

1434 Q. What was the meaning of that statement, you did this or that?

A. We did whatever the board of directors requested us to do?

Q. At all times one or two of your partners were members of the board?

A. They were.

Q. And the conference in your office on this subject was between you and the directors of the Northern Pacific who were in your firm?

A. No, sir; I mean negotiations with the Northern Pacific,

1435 except, as I say, a certain amount of conversation in regard to what I called moral responsibility. I would talk that with any director, but when it comes down to the course between J. P. Morgan & Co. and the Northern Pacific, J. P. Morgan & Co. act with the officials of the company authorized by the by-laws.

Q. I mean the daily conference between you and the members of your firm who were directors, that was the way you got your advice as to the wishes of the board?

A. They would tell me what the board wanted, but I did not deal with them as members of the board, I was not acting with

1436 them in that capacity.

Q. I understood that, but I mean as channels of communication?

A. Channels of communication; yes.

Q. The question was put to you two or three times in different forms as to why you recommended these gentlemen for the board of the Northern Pacific in July, 1901. Was it your intention to be understood as saying these gentlemen were put on here not for the interest of the company itself?

A. My impression is that the names that I proposed would 1437
be a sufficient answer to that.

Q. But the question was put several times. Did you consider these proper and suitable directors for the interests?

A. I never put anybody on any board I did not think was capable of filling it.

Q. And it was to the interests of the Northern Pacific to have these gentlemen?

A. Certainly.

Q. In referring to the Northern Securities Company by way of illustration you have used the example United States Trust 1438
Company once or twice. Are you to be understood that the Northern Securities Company held the several certificates in the nature of a trustee or as owner?

A. As owner; but what I meant is this, while the Northern Securities Company as such issued stock for this, a trust company would have issued a receipt, we have issued stock, consequently we could control it. I say, if I had put them in a company with $2,000,000 of stock it could have been easily controlled, but in the Northern Securities Company, which the only company I know of up to this time where the stock itself 1439
is represented, you can not control that stock without buying a majority of $400,000,000 or more of stock.

Q. Did or did not the organization of the Northern Securities Company have any relation to the retirement of the preferred stock of the Northern Pacific?

A. Nothing whatever.

Q. Was there, or was there not, in any way any connection between the organization of the Northern Securities Company and the retirement of the preferred stock of the Northern Pacific?
1440

A. Nothing whatever.

Q. Was the retirement of the preferred stock of the Northern Securities Company undertaken for the purpose of giving to the Northern Securities Company an opportunity to acquire a majority of the common stock of the Northern Pacific Company and thereby control that company?

A. Nothing whatever, because they already had it.

Q. Was the retirement of said stock the part of any scheme

1441 or plan to allow the Northern Securities Company to obtain a majority of the stock of the Northern Pacific, or any of the stock of said company?

Mr. BOUTELLE. That is the same question just asked.

Q. Did Mr. Hill, so far as you know, have anything to do with the retirement of the preferred stock of the Northern Pacific except voting thereon as a director?

A. I don't think he was a director at the time that was passed; he had nothing to do with it.

Q. Was the retirement undertaken in good faith in pursuance
1442 of the long-established understanding that the stock should be retired?

A. I have testified to that already.

Q. Was there any scheme or plan entered into by anyone, so far as you know, whereby the retirement of the Northern Pacific preferred stock was to be used to vest in the Northern Securities Company, or in anyone else, the control of the Northern Pacific?

A. Certainly not.

Q. Was the fact of acquiring a majority of the stock of both
1443 or either the Northern Pacific and the Great Northern Railway Company made a condition of the organization of the Northern Securities Company, so far as you know?

A. Nothing at all. On the contrary, we only wanted one.

Q. Was it, or was it not, determined, so far as you know, to form the Northern Securities Company without knowledge whether the company would, or could, acquire a majority of either or both of these stocks?

A. Nothing whatever. We had a majority of the Northern Pacific; we knew that.

1444 Q. Was it agreed by anyone, so far as you know, before the Northern Securities Company was organized that the so-called Harriman or Union Pacific stocks in the Northern Pacific should be placed in the Northern Securities Company?

A. No; we did not require it.

Q. And you did not know that it would be done until after the consummation?

A. Not until after.

Q. In the organization of the Northern Securities Company,

or previous to this organization, so far as you know, was there 1445
any agreement or understanding of any kind between J. P. Morgan & Co., or any firm, and Mr. Hill, or any gentleman acting with him, that the said company would be organized for the purpose of acquiring the control of the stocks of the two railway companies for the purpose of maintenance of railway rates, suspension of competition and control of competition, or the restraint of trade and commerce in any manner whatever?

A. It never entered our head.

Q. Was the question of controlling and competition and regulating rates, or maintaining rates, or fixing rates in any 1446
way, one of the objects in forming the Northern Securities Company, so far as you have ever heard?

Mr. LAMB. I shall have to object to that question.

A. No.

Q. In selling the stock in Northern Pacific belonging to J. P. Morgan & Co. to the Northern Securities Company did your firm act by agreement with other stockholders, or did you act individually?

A. We acted individually, with the understanding that every other stockholder should have the same right, at the same price 1447
that I have testified to already.

Q. Do you remember what were the terms of the circular of the Great Northern to which you have referred? You have spoken that the Great Northern asked you to come in. Did they ask you to come in or offer an opportunity?

A. They offered me the opportunity at $150.

Q. But they did not ask you to?

A. Oh, no.

Redirect examination by Mr. BOUTELLE:

Q. The plan of retirement of the preferred stock of the 1448
Northern Pacific as ultimately adopted and passed upon by the board of directors was arranged and agreed upon before it was submitted to the board, was it not?

A. Do you mean the financial plan?

Q. No; the general plan and scheme was outlined and thereafter submitted to the board approved by them, was it not?

A. Adopted by the board; yes.

1449 Q. Now, how long before it was actually submitted to the board was that plan gotten up?

A. Oh, my own impression is that it was the very day.

Q. Do you know, Mr. Morgan, whether the preferred stockholders were ever offered the opportunity of converting their preferred into common stock?

A. Certainly not. They had nothing to do except take their money.

Q. What was the reason for adopting the plan that was adopted in such a way as to deny the preferred stockholders the
1450 right to convert their stock into common?

A. It never was denied; it never was even thought of.

Q. If that plan had been adopted and an offer had been made to the preferred stockholders to convert their preferred stock into common, the Union Pacific interests would have had a control, would they not?

A. No; the stock belonged to the Northern Securities Company at the time; they would have got it all.

Q. No; before the plan of retirement, Mr. Morgan.

A. When was that put out?

1451 Q. The 13th of November. Do you recall, Mr. Morgan, what the amount of the Union Pacific holdings were?

A. No, I don't—about $78,000,000.

Q. In refreshing your recollection, was it not subsequently $37,000,000 of common and $40,000,000 of preferred?

A. That is what I remember—about that.

Q. And it was claimed by the Union Pacific, and I understood you to testify, that they had a majority in there at that time?

A. No, no. If you added the two stocks together.

Q. That is what I mean.

1452 A. Adding their holdings of both stocks together they had at that time a majority, but that did not give them control.

Q. Well, what ordinarily controls a corporation besides a majority of the stock?

Mr. STETSON. The board of directors.

A. The board of directors and the conditions under which the stock is issued.

Mr. STETSON. So the Supreme Court has decided.

Q. Was the board of directors of the Northern Securities Company submitted to you before it was adopted?

A. I don't think it was. I do not remember, and I don't 1453
know who are directors of it.

Q. You don't recall the fact of its having been discussed with you who should compose that board?

A. I don't think it ever was.

Q. Did you have anything to do with the composition of the Burlington and Quincy boards, either railway or railroad?

A. I don't think I did. I don't remember to have done so. It is possible that I may, but I don't remember; I didn't care about it.

Q. Do you recall whether you were consulted or informed 1454
before those boards were elected as to how they should be composed?

A. I don't think so.

Recross-examination by Mr. STETSON:

Q. In the conduct of your firm did you generally rely upon some of your associates and partners for the details?

A. I relied on them entirely.

Q. You don't pay much attention to the details, except something in which you have a particular interest?

A. I keep a pretty good lookout for the details; yes. 1455

Q. But as to these dates and amounts?

A. Oh, that I don't remember.

Q. You pass upon questions of policy and determine the course of business?

A. I help them along.

Q. You returned from California the very end of October, did you not?

A. Yes.

Q. The plan for the retirement of the preferred stock was adopted by the board of directors on the 13th of November? 1456

A. Yes.

Q. Now, so far as your knowledge or participation in the completion of that plan, it was between those dates, was it not? Between your return from California and the 13th of November?

A. Of course; it could not have been otherwise.

Q. I mean it was not taken up before you went to California?

A. Oh, no; I think we finished it up the day we issued it.

Q. Yes; you did finish it up then, but the discussion was between those dates?

1457 Re-redirect examination by Mr. BOUTELLE:

Q. You have stated in your examination that it had been understood from the first that when conditions were ripe that the preferred stock issued on the organization of the Northern Pacific would be retired?

A. Yes.

Q. But up to 1901, the time when this plan that was finally consummated was adopted, no plan had been devised for the retirement of that stock, had it?

A. No; but it was always the idea that the time would come
1458 whenever the credit of the company reached a point when the common stock to meet it could be sold at par or above it.

Q. But there was no specified plan of retirement until this time?

A. Oh, no; there was no other way of doing it but the one we adopted.

Q. Was it impossible to have offered to the preferred stockholders to convert their stock into common?

A. It was the right of the company——

Q. Was it impossible, Mr. Morgan?

1459 A. Certainly, it was.

Q. I am not speaking about the question of right as between the two classes of stockholders.

A. Absolutely impossible. That is the only way it could be done. Under the plan of reorganization the common stockholders were entitled to the benefit of retiring that preferred stock.

Q. But the question of possibility and policy may be different?

A. Oh, no; it is the same with us.

Q. Do you know that the preferred stockholders would have
1460 refused to convert their stock into common?

A. At what time?

Q. At the time that you actually retired that stock.

A. Certainly not; they would have converted it with great pleasure.

Re-recross-examination by Mr. STETSON:

Q. Would it have been just to Mr. Power and the other common stockholders to have given all of this common stock to the preferred stockholders?

Mr. BOUTELLE. That is objected to as calling for a conclusion. 1461

A. What I mean to say is this. I did not finish my remark on that subject. There is so much interest in this case, and with all these questions published we like to understand it, and in addition I want to say this. What I say is, that under the plan of reorganization that right to retire the preferred stock became in fact the right of the common stockholders. That is to say, it was the common stockholders who would benefit by the retirement. Supposing they had attempted against my judgment to have done what you say—that is, offered the preferred stockholders the right to convert into common stock. I, as a com- 1462
mon stockholder, would have immediately got out an injunction to stop it. The preferred stockholders were only entitled to par and interest at 4 per cent. That is all they could claim under that law, and those were the only rights they had.

Q. Then you agree with Judge Scott and Judge Lochran in their holdings to that effect?

A. I don't remember what they held.

By consent of all parties further proceedings were adjourned until 1.30, March 27, 1902.

1463

NEW YORK, *Thursday afternoon, March 28, 1902.*

The following proceedings were had, to wit:

Mr. Mortimer H. Boutelle, of Minneapolis, Minn., and Mr. A. W. Bulkley, of Chicago, Ill., appearing in behalf of the complainant, and Mr. Frank B. Kellogg, of St. Paul, Minn., appearing in behalf of the defendant.

Mr. KELLOGG. Before we go on with the cross-examination of Mr. Kennedy, I furnish the by-laws of the Northern Securities Company, which the master had marked as "Exhibit K," and there is an extra copy for you gentlemen.

1464

I also furnish a list of the directors of the Northern Securities Company, classified by years, which the examiner had marked as "Exhibit M." I will bring the plan of reorganization the next time. I have forgotten it.

JOHN S. KENNEDY, recalled.

(Testimony inserted at page 37.)

W. P. CLOUGH, recalled.

(Testimony inserted on page 85.)

Mr. BOUTELLE. So far as Mr. Morgan's testimony is con-

1465 cerned, you may enter this stipulation in behalf of counsel, that if Mr. Morgan has any corrections they may be made and incorporated in the record without any further appearance before the examiner.

Mr. KELLOGG. That is satisfactory, but that wouldn't cover the examination of Mr. Perkins. We want to examine him. It is understood that the testimony of Mr. Morgan may be corrected by him and sent to the examiner, and as to Mr. Perkins we may ask him any further questions at any other time?

Mr. BOUTELLE. Yes, sir. And before any notary, at the
1466 convenience of yourself, Mr. Kellogg, and Mr. Perkins.

It was stipulated by and between the several solicitors for the respective parties to this cause that any rules of the circuit court requiring testimony to be signed by the witness should be and was in all respects waived.

Whereupon further proceedings were adjourned subject to the call of the special examiner.

Members of the firm of J. P. Morgan & Co.:

J. Pierpont Morgan.
George S. Thomas, Philadelphia.
1467 Edward T. Stotesbury, Philadelphia.
Robert Bacon.
Charles Steele.
George W. Perkins.
James W. Paul, Philadelphia.
John Pierpont Morgan, jr.
Temple Bowdoin.
Edward T. Whitney.
Edward M. Robinson, Philadelphia.
William Pierson Hamilton.

The following is a copy of volume 3 of special examiner's 1468
transcript in Peter Power case, from page 1 to 88, inclusive, and here offered by complainant as original evidence in this case:

United States circuit court, district of Minnesota, fourth division.

PETER POWER, COMPLAINANT,
v.
NORTHERN PACIFIC RAILWAY COMPANY, DEFENDANT. } Defendant's testimony.

Pursuant to the agreement of counsel for the respective parties, proceedings in the above-entitled cause in behalf of the 1469
defendant came on to be heard at the office of the general counsel of the Northern Pacific Railway Company, in the city of St. Paul, county of Ramsey, and State of Minnesota, in the third division and district, on Thursday morning, July 24, A. D. 1902, at 10 o'clock in the forenoon of said day, at which time appeared before me William A. Lancaster, esq., counsel for and in behalf of the complainant, and C. W. Bunn, esq., and Frank B. Kellogg, esq., of the firm of Davis, Kellogg & Severance, counsel for and behalf of the defendant, whereupon the following proceedings were had, to wit: 1470

R. H. RELF, after being first duly sworn, testified as follows in answer to questions by Mr. Kellogg:

Q. Mr. Relf, state whether you are the assistant secretary of the Northern Pacific Railway Company.

A. I am.

Q. How long have you been?

A. Since September 4, 1900.

Q. I will ask you if the book I show you is the record of the proceedings of the stockholders' and directors' meetings of the Northern Pacific Railway Company? 1471

A. Yes, sir.

Mr. KELLOGG. I offer in evidence the proceedings of the stockholders' meeting of July 1, 1896, containing a resolution of the stockholders of said company increasing the capital stock, which reads as follows and is marked by the special examiner as "Defendant's Exhibit No. 4."

1472 DEFENDANT'S EXHIBIT No. 4.

Superior and St. Croix Railroad Company.—Stockholders' meeting, July 1, 1896.

MADISON, WISCONSIN,
OFFICE OF SPOONER, SANBORN, KERR & SANBORN,
July 1, 1896—2 o'clock p. m.

The holders of record of all outstanding capital stock of the Superior and St. Croix Railroad Company being present this day at the time and place above stated, as follows:

A. H. Gillard, owning one share, by John C. Spooner, A. L. Sanborn, and H. C. Reed, holding the written proxy of said Gillard, which was presented and filed;

1473 Walter B. Horn, owning one share, by John C. Spooner, A. L. Sanborn, and H. C. Reed, holding the written proxy of said Horn, which was presented and filed;

Charles F. Cooney, owning twenty-four shares, by John C. Spooner, A. L. Sanborn, and H. C. Reed, holding the written proxy of said Cooney, which was presented and filed;

Charles F. Coaney, assignee C. W. Reed estate, owning one share, by John G. Spooner, A. L. Sanborn, and H. C. Reed, holding the written proxy of said Coaney, which was presented and filed;

Mortimer F. Smith, owning one share, by John C. Spooner, A. L. Sanborn, and H. C. Reed, holding the written proxy

1474 of said Smith, which was presented and filed;

Edward D. Adams, owning eleven shares, by John C. Spooner, A. L. Sanborn, and H. C. Reed, holding the written proxy of said Adams, which was presented and filed;

Henry E. Lord, owning one share, by John C. Spooner, A. L. Sanborn, and H. C. Reed, holding the written proxy of said Lord, which was presented and filed;

H. B. Bodine, owning one share, by John C. Spooner, A. L. Sanborn, and H. C. Reed, holding the written proxy of said Bodine, which was presented and filed;

W. Paxton Little, owning one share, by John C. Spooner, A. L. Sanborn, and H. C. Reed, holding the written proxy of said

1475 Little, which was presented and filed;

John W. Almy, junior, owning one share, by John C. Spooner, A. L. Sanborn, and H. C. Reed, holding the written proxy of said Almy, which was presented and filed;

Each of said proxies being identical, except as to names, with the following:

The undersigned, being a stockholder of the Superior and St. Croix Railroad Company, a corporation of the State of Wisconsin, does hereby make, constitute, and appoint John C. Spooner,

A. L. Sanborn, and H. C. Reed, jointly and severally, his attor- 1476
neys and proxies in his behalf and in respect of all stock of said company owned or held by the undersigned to attend at a meeting of the stockholders of the said company to be held in the State of Wisconsin on the first day of July, at two o'clock, in the afternoon, and then and there, in behalf of the undersigned, to vote in respect of all stock held or owned by the undersigned for a change in the name of said company to "Northern Pacific Railway Company," and to an increase of the capital stock of said company to the aggregate sum of $155,000,000; to be divided into preferred stock to the aggregate amount of $75,000,000, and common stock to the aggregate amount of $80,000,000; hereby giving and conferring to said attorneys 1477
and proxies, either at said meeting or at any adjournment or adjournments thereof, authority to vote for the propositions aforesaid, and also to vote in respect of any and all matters that may come before such meeting at any adjournment thereof; and also to sign upon the books of the company or elsewhere a waiver of notice of any stockholders' meeting, and a consent that meetings shall be held without notice and business fully transacted thereat as if said meeting had been duly called, all with the same force and effect as though the undersigned were personally present and cast such vote.

In witness whereof the undersigned has hereunto subscribed his name this 27th day of June, 1896. 1478

EDWARD D. ADAMS.

All of the stockholders being present and with the proxies as aforesaid, and it being desired to hold a meeting of the stockholders for the transaction of important business, and as section five of the by-laws provides as follows:

"At all meetings of the stockholders every registered owner of shares may vote in person or by proxy,"

the stockholders did thereupon, by their attorneys and proxies, as aforesaid, execute and sign the following waiver of notice and consent to the holding of this meeting:

MADISON, WISCONSIN, *July 1, 1896.*

We, the undersigned, owning and holding of record all of the 1479
outstanding capital stock of the Superior and St. Croix Railroad Company, and being, therefore, all of the members of the said corporation, and deeming it important that a stockholders' meeting be now held, and no notice of such meeting having been given, do hereby waive notice of this meeting and consent to the holding of a stockholders' meeting at this time and place for the purpose of changing the name of the company to "Northern Pacific Railway Company," and for the purpose of increasing

1480 the capital stock of the company to the aggregate sum of $155,000,000, to be divided into preferred stock to the aggregate amount of seventy-five millions of dollars, and common stock to the aggregate amount of eighty millions of dollars, and for the transaction of any business at said meeting which could lawfully be transacted at any meeting of the members of such corporation regularly called and notified.

	Shares.
A. H. Gillard, by John C. Spooner, A. L. Sanborn, and H. C. Reed, his proxies	1
Walter B. Horn, by John C. Spooner, A. L. Sanborn and H. C. Reed, his proxies	1
Charles F. Coaney, by John C. Spooner, A. L. Sanborn, and H. C. Reed, his proxies	24
Charles F. Coaney, assignee C. W. Reed estate, by John C. Spooner, A. L. Sanborn, and H. C. Reed, his proxies	1
Mortimer F. Smith, by John C. Spooner, A. L. Sanborn and H. C. Reed, his proxies	1
Edward D. Adams, by John C. Spooner, A. L. Sanborn, and H. C. Reed, his proxies	11
Henry E. Lord, by John C. Spooner, A. L. Sanborn, and H. C. Reed, his proxies	1
H. B. Bodine, by John C. Spooner, A. L. Sanborn and H. C. Reed, his proxies	1
W. Paxton Little, by John C. Spooner, A. L. Sanborn, and H. C. Reed, his proxies	1
John W. Almy, junior, by John C. Spooner, A. L. Sanborn, and H. C. Reed, his proxies	1

1482 Whereupon on motion of John C. Spooner, seconded by H. C. Reed, A. L. Sanborn was chosen chairman of the stockholders' meeting.

On motion of John C. Spooner, seconded by A. L. Sanborn, H. C. Reed was elected secretary of the meeting.

Whereupon Mr. Spooner offered the following resolution and moved the adoption of the same:

"*Resolved*, That the corporate name of this corporation be, and the same is hereby, changed from the Superior and St. Croix Railroad Company to Northern Pacific Railway Company, which latter name is hereby adopted as the corporate name of this corporation."

1483 The motion being seconded by Mr. Reed, on the stock vote the resolution was unanimously voted, 43 shares of stock voting therefor.

On motion of Mr. Spooner, seconded by Mr. Reed, the following resolution was unanimously adopted:

"*Resolved*, That the secretary of the corporation be, and he is hereby, instructed to file in the office of the secretary of the State of Wisconsin a copy of the foregoing resolution, and of the record of its adoption, certified under his hand and the corporate seal of the corporation, and to publish a like certified copy of said resolution for three successive weeks in the Wis-

consin State Journal, the official State paper, as provided by 1484
section 1835 of the Revised Statutes of Wisconsin for 1878."

Mr. Spooner offered and moved the adoption of the following preamble and resolutions:

"Whereas by section fifteen of the original charter of the corporation it was provided that its capital stock should be in the first instance five millions of dollars, and that the same might be increased to any sum, not exceeding ten millions of dollars, said capital stock to be divided into shares of one hundred dollars each, no increase of said capital stock ever having been made under said charter provisions; and

"Whereas by chapter 244 of the laws of the State of Wisconsin for the year 1895, approved April 15th of said year, it 1485
is provided by section 10, among other things, as follows:

"SECTION 10. Section 11 of said chapter 326 is hereby amended so as to read as follows:

"SECTION 11. The capital stock of said company may be increased from time to time to such an amount as may by its stockholders be deemed necessary for the construction, acquisition, or operation of any of its railroad or railroads by a vote of the owners of record of at least a majority of all its outstanding stock, in person or by proxy, at any annual meeting or at any meeting called for the purpose by a notice in writing to each stockholder, etc.;

"And whereas section 1826, applicable to railroad corpora- 1486
tions organized under chapter 87 of the Revised Statutes of 1878, is as follows:

"SECTION 1826. The capital stock of any such corporation may be increased to such an amount as may, by its stockholders, be deemed necessary for the construction or operation of its road by a vote of the owners of at least two-thirds of all its stock, in person or by proxy, at any annual meeting or at any meeting called by its directors for that purpose by a notice in writing to each stockholder, to be served on him personally or by depositing the same in the post-office, postage paid, properly directed to him at the post-office nearest the usual place of residence, at least twenty days prior to such meeting. Such notice shall state 1487
the time and place of such meeting, its object, and the amount to which it is proposed to increase such capital stock. No vote in favor of such increase shall take effect until the proceedings of such meeting, showing the names of all the stockholders voting therefor and the amount of stock owned by each, shall be entered upon the records of such corporation.

"And whereas section 1829 of the Revised Statutes is as follows:

"SECTION 1829. All existing or future railroad corporations within this State, including such as were originally organized

1488 under chapter seventy-three (73) of the Revised Statutes of 1858, shall respectively have and possess all of the powers and privileges, and be subject to all of the duties, liabilities, and restrictions prescribed by this chapter, and shall also have all peculiar rights and privileges granted to them respectively by their charters or any special law not inconsistent with these statutes.

"The said several statutes conferring upon the stockholders of this corporation full power to increase its capital stock; and

"Whereas the stockholders deem it necessary for the construction, acquisition, and operation of the railroads authorized by its charter and by the general laws of the State of Wisconsin to be
1489 by it acquired within and without the State of Wisconsin, and intended by it to be acquired by construction, purchase, or otherwise, within and without said State, that the capital stock of the corporation shall be increased one hundred and fifty millions of dollars, so that the aggregate of the capital stock of the corporation shall be one hundred and fifty-five millions of dollars, the said capital stock to be divided into shares of the par or face value of one hundred dollars each; and

"Whereas it is deemed necessary to the interests of the corporation, and to the carrying out of its business and lawful purpose, that of said aggregate of one hundred and fifty-five millions of dollars of the capital stock seventy-five millions thereof shall
1490 be preferred stock and eighty millions thereof shall be common stock;

"Now, therefore, be it first resolved, That the capital stock of this corporation be, and the same is hereby, increased from five millions of dollars to one hundred and fifty-five millions of dollars, and the same shall consist of one million five hundred and fifty thousand shares of the par or face value of one hundred dollars each, and of said stock, as the same is so hereby increased, seventy-five millions of dollars, or seven hundred and fifty thousand shares, shall be preferred stock, and eighty millions of dollars, or eight hundred thousand shares, shall be common stock, and the five millions of present authorized capital,
1491 including the shares now outstanding, shall be a portion of said common stock.

"Second. *Resolved*, That each share of the said preferred stock shall be entitled to noncumulative dividends for each fiscal year when and as declared by the board of directors of the company to the extent of four per cent per annum, payable quarterly, on the first days of March, June, September, and December, out of any surplus of net profits of the company as determined by said board before any dividend shall be declared or paid in such fiscal year on the common stock; and without deduction for any tax or

taxes imposed by the United States or by any State or municipality thereof that this railway company may at any time be required to pay or to retain therefrom. 1492

"Third. *Resolved further*, That dividends on the common stock may be declared and paid out of any surplus net profits remaining from any previous fiscal year or years from which the full dividends at the rate of four per cent per annum shall have been paid on the preferred stock; but after dividends to the extent of four per cent shall have been declared for any one fiscal year on all the stock of the company, the common as well as preferred, any further dividends for that fiscal year shall be declared only for the equal ratable benefit of all the stock, whether preferred or common. No dividends shall be paid on the common stock out of the surplus net profits of any year for which the full dividend shall not have been paid on the preferred stock. 1493

"Fourth. *Resolved further*, That the company shall not put a mortgage upon its property at any time theretofore embraced in the system of the Northern Pacific Railroad Company, nor shall the amount of the preferred stock be increased except after obtaining in each instance the consent of the holders of a majority of the whole amount of the preferred stock given at a meeting of the stockholders called for that purpose and the consent of the holders of a majority of such part of the common stock as shall be represented at such meeting, the holders of each class of stock voting separately. 1494

"Fifth. *Resolved further*, That whenever the full and regular quarterly dividends of two successive quarterly periods after July 1, 1897, upon the preferred stock, at the rate of four per cent per annum, shall not have been paid in cash, then, and in that event, at the next annual meeting such number, and only such number, of directors as will constitute a majority of the whole board shall be elected by a separate ballot of the holders of the preferred stock present or represented at such meeting, and the remainder of the board shall be elected by the separate ballot of the holders of the common stock present or represented at such meeting. In every case each share to be entitled to one vote. 1495

"Sixth. *Resolved*, That such preferred stock shall be issued upon the condition that, at its option, the company may retire the same, in whole or in part, at par from time to time upon any first day of January prior to 1917.

"Seventh. *Resolved*, That certificates for preferred stock registered in New York may be exchanged in any manner as the company may prescribe for similar certificates registered with the Deutsche Bank in Berlin, and all dividends declared

on the preferred stock registered in Berlin shall be payable at the rate of 4.20 marks per dollar.

"Eighth. *Resolved further*, That the board of directors be, and they are hereby, authorized to make such provision as to the registration and transfer of said stock, either in this or foreign countries, or both, and as to the rate at which dividends upon stock registered in foreign countries shall be there collected, as may be deemed by said board for the best interests of the corporation.

"Ninth. *Resolved further*, That the said board of directors be, and they are hereby, authorized and empowered to prescribe the form of certificates to be issued for said common and preferred stock, and to incorporate in said certificates or to endorse upon the same such conditions and regulations as to the voting power thereof and otherwise as shall in their judgment best subserve the interests of the corporation."

The motion was seconded by Mr. Reed, and a stock vote being demanded thereon by Mr. Sanborn, the following stockholders voted in favor thereof:

A. H. Gillard, by John C. Spooner, A. L. Sanborn, and H. C. Reed, his attorneys and proxies, one vote in favor of the resolution.

Walter B. Horn, by John C. Spooner, A. L. Sanborn, and H. C. Reed, his attorneys and proxies, one vote in favor of the resolution.

Charles F. Coaney, by John C. Spooner, A. L. Sanborn, and H. C. Reed, his attorneys and proxies, 24 votes in favor of the resolution.

Charles F. Coaney, assignee C. W. Reed estate, by John C. Spooner, A. L. Sanborn, and H. C. Reed, his attorneys and proxies, one vote in favor of the resolution.

Mortimer F. Smith, by John C. Spooner, A. L. Sanborn, and H. C. Reed, his attorneys and proxies, one vote in favor of the resolution.

Edward D. Adams, by John C. Spooner, A. L. Sanborn, and H. C. Reed, his attorneys and proxies, 11 votes in favor of the resolution.

Henry E. Lord, by John C. Spooner, A. L. Sanborn, and H. C. Reed, his attorneys and proxies, one vote in favor of the resolution.

H. B. Bodine, by John C. Spooner, A. L. Sanborn, and H. C. Reed, his attorneys and proxies, one vote in favor of the resolution.

W. Paxton Little, by John C. Spooner, A. L. Sanborn, and H. C. Reed, his attorneys and proxies, one vote in favor of the resolution.

John W. Almy, junior, by John C. Spooner, A. L. Sanborn,

and H. C. Reed, his attorneys and proxies, one vote in favor of 1500
the resolution.

Forty-three shares of stock, being all of the outstanding stock of the corporation, having been voted in favor of the adoption of said resolution, the same was declared unanimously adopted.

On motion of Mr. Reed, seconded by Mr. Spooner, the following resolutions were unanimously adopted, all of the shares on a roll call voting therefor, to wit:

"Tenth. *Resolved*, That of the lines of railroad which this corporation is authorized by law to construct, acquire, operate, and maintain, the board of directors be, and they are hereby, authorized and instructed to cause to be immediately located upon a route satisfactory to and to be adopted by said board a railroad 1501
commencing at such point on the bay of Superior as shall be approved by said board and extending to such point or points on the Minnesota State line as the said board shall select or deem desirable, and shall also, at the same time, cause to be located a portion of the line from said point of commencement on the bay of Superior, toward Prescott, on the Mississippi River, as provided by the original charter and the acts amendatory thereof and supplemental thereto; and the said board is authorized and instructed to provide for the immediate construction of that portion of the road as rapidly as possible from the Minnesota State line to the bay of Superior.

"Eleventh. *Resolved further*, That the board of directors be, 1502
and they are hereby, authorized and empowered, through the officers of the company, to cause this corporation to enter into an agreement to use or connect with the railroad of any railroad company or association built, or partly built, running in the direction of the line of railroad which this company is authorized to construct from the State line to the bay of Superior, as aforesaid, and the board of directors are duly authorized and empowered, having agreed to connect with or use any such railroad built, or partly built, along said line, as aforesaid, to lease or purchase the same for such sum and upon such terms as to the said board shall seem wise, and as by the said board or to the executive officers of the corporation thereunto authorized by the board 1503
shall have been agreed upon."

Upon motion of Mr. Spooner, seconded by Mr. Reed, the following resolution was adopted:

"Twelfth. *Resolved*, That the board of directors be, and they are hereby, authorized and instructed to cause to be fully complied with all the conditions and requirements imposed by the laws of Minnesota, North Dakota, Montana, Idaho, Washington, Oregon, and the Dominion of Canada, and all the provinces thereof, to enable this corporation to acquire railroads and railroad property therein, to exercise its franchises as a railroad cor-

poration, and to carry on the business of the same in the States or in the Dominion of Canada and of the provinces thereof."

On motion of Mr. Spooner, seconded by Mr. Reed, the following resolutions were unanimously adopted:

"Whereas it is the purpose and intention of this company, in the exercise and accomplishment of its legal powers, to construct or acquire and maintain and operate a railway to the Pacific coast; and

"Whereas the railroad property and franchises of the Northern Pacific Railroad Company are about to be sold under decrees of foreclosure in United States circuit court for the eastern district of Wisconsin in certain proceedings therein pending between The Farmers' Loan and Trust Company and others, plaintiffs, and the Northern Pacific Railroad Company and others, defendants, entered April 27th and April 28th, 1896; and also in pursuance of the decree ancillary thereto; and

"Whereas, pursuant to a certain plan and agreement with the holders of the securities of the Northern Pacific Railroad Company dated March 16, 1896, Messrs. J. P. Morgan & Company, as reorganization managers under the said plan and agreement, have acquired and now hold the securities of the said Northern Pacific Railroad Company in amount constituting a very large proportionate part of the several issues of such securities, which securities the said J. P. Morgan & Company, as reorganization managers, propose to use in the purchase of the said railroad franchises and property of the Northern Pacific Railroad Company at such sale thereof under the foreclosure decrees, which upon the request of the company, and in exchange for its capital stock and bonds as hereinafter, propose to transfer such securities to this company to enable this company at such foreclosure sale to become the purchaser of the rights, property, and franchises of the Northern Pacific Railroad Company; and

"Whereas it is for the interest of this company to acquire and receive such securities of the Northern Pacific Railroad Company for the purpose of making use thereof to such extent as may be necessary in the purchase of the railroad property and franchises of the Northern Pacific Railroad Company:

"Now, therefore, it is hereby

"Thirteenth. *Resolved*, That the board of directors be, and they are hereby, authorized and directed, and empowered from time to time to take and to make such provisions and agreements as to them shall seem reasonable and proper to acquire securities of the Northern Pacific Railroad Company from Messrs. J. P. Morgan & Company, and also to use the same, or any part thereof, or any other funds of this company, in the purchase and acquisition of the railroad property and franchises (or any part thereof) of the Northern Pacific Railroad Company, and specifically to

enter into an agreement with Messrs. J. P. Morgan & Company 1508
in the form of that now submitted to this meeting, and to be appended to the minutes thereof.

"Fourteenth. *Resolved*, That the president and secretary of this company be, and they are, and each of them is, hereby severally authorized and empowered to attend at the judicial sales of the rights, property, privileges, and franchises of the Northern Pacific Railroad Company to be held under the decrees above mentioned, and in the name and in behalf of this company to bid for the whole or any part of such rights, privileges, franchises, and property when offered at such judicial sales to the extent of the securities of such company then controlled by this company and in the name and behalf of the Northern 1509
Pacific Railway Company to purchase each and every of such rights, property, and franchises of the Northern Pacific Railroad Company, and in payment thereof to transfer and deliver any or all of the stocks, bonds, or other securities of the Northern Pacific Railroad Company when possessed or owned by the Northern Pacific Railway Company, and generally to do and perform all acts and execute and deliver all writings and undertakings necessary or proper to carry this resolution into effect; these powers intending to be, and being, continuing powers.

"Fifteenth. *Resolved*, That the by-laws of this company be, and they are hereby, amended so as in all particulars to read as the copy thereof submitted to this meeting, and to be annexed 1510
to the minutes of the proceedings thereof; and that the board of directors be, and they are hereby, authorized and directed to take all such action and proceedings as shall be necessary to fully accomplish the purpose of this resolution."

On motion, the meeting was adjourned to Monday, July 13, 1896, at 2 o'clock p. m.

A. L. SANBORN,
Chairman.

_____

Secretary.

Mr. KELLOGG. I offer in evidence the proceedings of the meeting of the board of directors of the Northern Pacific Rail- 1511
way Company of July 8, 1896, reading as follows, and which is marked by the special examiner as "Defendant's Exhibit No. 5."

1512 DEFENDANT'S EXHIBIT No. 5.

SUPERIOR AND ST. CROIX RAILROAD COMPANY.

Northern Pacific Railway Company, directors' meeting, July 8th, 1896.

At a meeting of the board of directors of the Superior and St. Croix Railroad Company, held at the office of the president, in the city of New York, on Wednesday, July 8th, 1896, at half past three o'clock in the afternoon, the following directors were present:

1513 Edward D. Adams, president; W. Paxton Little, Harry B. Bodine, A. H. Gillard, John W. Almy, jr., Walter B. Horn, Mortimer F. Smith.

In the absence of Charles F. Coaney, George H. Gardiner was appointed secretary pro tem.

The minutes of the meeting of the board held October 31, 1895, were read and approved.

The resignation of Mr. Charles F. Coaney as secretary of the company was then presented, and Mr. George H. Gardiner was elected in the place of Mr. Coaney, resigned.

The resignation of Mr. Charles F. Coaney as director of the company was then presented, and Mr. C. H. Coster was elected

1514 in his place.

Mr. Coster thereupon appeared and took his place as a director.

The resignation of Mr. Harry B. Bodine as director of the company was presented, and Mr. F. L. Stetson was elected in his place.

Mr. Stetson thereupon appeared and took his place as director.

The resignation of Mr. Henry E. Lord as director of the company was then presented, and Mr. George H. Gardiner was elected a director in his place.

Mr. Gardiner then appeared and took his place as director.

The resignation of Mr. Walter B. Horn as director was then presented, and Mr. Victor Morawetz was elected a director in

1515 his place.

Mr. Morawetz thereupon appeared and took his place as director.

The chairman then laid before the board the minutes of the proceedings of the stockholders of the company held July 1, 1896, at Madison, Wisconsin.

Thereupon it was unanimously

"*Resolved*, That the proceedings of the stockholders at their meeting of July 1, 1896, as so reported be accepted and so far as the same require the action of the board of directors, the same are hereby adopted by the board of directors of the Superior and

St. Croix Railroad Company, and the secretary is directed to 1516
append the same to the minutes of this meeting."

Upon motion, the following resolutions were unanimously adopted:

"*Resolved*, That the corporate name of this company be, and the same is hereby, changed from the Superior and St. Croix Railroad Company to 'Northern Pacific Railway Company,' and the latter name is hereby adopted as the corporate name of the corporation.

"*Resolved*, That the secretary of the corporation be, and he is hereby, instructed to file in the office of the secretary of state of Wisconsin a copy of the foregoing resolution and of the record of its adoption, certified under his hand and the corporate seal of 1517
the corporation, and to publish a like certified copy of said resolution for three successive weeks in the Wisconsin State Journal, the official State paper, as provided by section 1835 of the revised statutes of Wisconsin for 1878.

"*Resolved*, That the capital stock of this corporation be, and the same is hereby, increased from five million dollars to one hundred and fifty-five million dollars, and the same shall consist of one million five hundred and fifty thousand shares of the par or face value of one hundred dollars each, and of said stock, as the same is so hereby increased, seventy-five million dollars, or seven hundred and fifty thousand shares, shall be preferred stock, and eighty million dollars, or eight hundred thousand 1518
shares, shall be common stock; all as directed by the stockholders' meeting of July 1, 1896.

"*Resolved*, That the form of certificate to be issued for said common and preferred stock, and the conditions and regulations to be incorporated therein and endorsed thereon as in the judgment of the board of directors may best subserve the interests of the corporation shall be as follows:

Northern Pacific Railway Company.
Capital stock, $155,000,000.
Preferred stock, $75,000,000.
Common stock, $80,000 000.
Shares, $100 each. 1519

No. —— Shares ——

"This is to certify that ——— is the owner of —— fully paid and nonassessable shares, of the par value of one hundred dollars each, in the capital stock of the Northern Pacific Railway Company, transferable only in person or by attorney upon the books of the company at its transfer office in the city of New York upon surrender of this certificate.

"The holders of the preferred stock of the company shall be entitled to noncumulative dividends for each fiscal year, when and as declared by the board of directors of the company, to the

1520 extent of four per cent per annum, payable quarterly on the first days of March, June, September, and December, out of any surplus net profits of the company as determined by said board before any dividends shall be declared or paid for or in such fiscal year on the common stock, and without deduction for any tax or taxes imposed by the United States or by any State or municipality thereof that the railway company may at any time be required to pay or to retain therefrom.

"Dividends on the common stock may be declared and paid out of any surplus net profits remaining from any previous fiscal year or years for which the full dividends at the rate of four per cent per annum shall have been paid on the preferred stock;
1521 but after dividends to the extent of four per cent shall have been declared for any one fiscal year on all of the stock of the company (common as well as preferred), any further dividends for that fiscal year shall be declared only for the equal, ratable benefit of all the stock, whether preferred or common.

"No dividends shall be paid on the common stock out of the surplus net profits of any year for which the full dividends shall not have been paid on the preferred stock.

"Whenever the full and regular quarterly dividends for two successive quarterly periods after July 1, 1897, upon the preferred stock at the rate of four per cent per annum shall not have been paid in cash, then and in that event at the next annual meeting
1522 such number, and only such number, of directors as will constitute a majority of the whole board shall be elected by a separate ballot by the holders of the preferred stock present or represented at such meeting, and the remainder of the board shall be elected by a separate ballot by the holders of the common stock present or represented at such meeting; in every case each share to be entitled to one vote.

"The company shall not put a mortgage upon its property formerly embraced in the system of the Northern Pacific Railroad Company, nor shall the amount of the preferred stock be increased except after obtaining, in each instance, the consent of the holders of a majority of the whole amount of the preferred
1523 stock given at a meeting of the stockholders called for that purpose, and the consent of the holders of a majority of such part of the common stock as shall be represented at such meeting, the holders of each class of stock voting separately.

"The company shall have the right, at its option, and in such manner as it shall determine, to retire the preferred stock, in whole or in part, at par from time to time upon any first day of January prior to 1917.

"This certificate is not valid unless registered by the registrar of transfers of the company in New York.

"Certificates of preferred and common stock registered in 1524
New York may be exchanged in such manner as the company may prescribe for similar certificates registered at the Deutsche Bank in Berlin, and all dividends declared on preferred stock registered in Berlin will be payable there at the rate of 4.20 marks per dollar.

"In witness whereof the said company has caused this certificate to be signed by its president, or one of its vice-presidents, and its secretary or assistant secretary.

"New York.

"_____ _____,
"*Secretary.*

"_____ _____, 1525
"*President.*

"Entered.
"Registered.

"_____ _____,
"*Transfer Clerk,*
"*Central Trust Company of New York.*
"By _____ _____."

Whereupon the meeting adjourned until Saturday, July 11, 1896, at half past one o'clock in the afternoon.

Q. You will note that the resolution just introduced fixes the form of the certificates of common and preferred stock to be issued by the Northern Pacific Railway Company. Were all 1526
of the certificates that have been issued issued in that form?

A. Yes, sir.

Q. I show you a form of common stock and a form of preferred stock, marked by the examiner as "Defendant's Exhibit 2" and "Defendant's Exhibit 3." Are those the forms of the certificates of the Northern Pacific Railway Company?

A. Yes, sir.

Q. Are all the certificates that have ever been issued in the same form?

A. Yes, sir. 1527

Judge BUNN. Are these exhibits the engraved certificate as it was actually?

The WITNESS. Yes, sir. It is the engraved certificate itself.

Mr. KELLOGG. The defendant offers in evidence the Exhibit No. 2 and Exhibit No. 3, being the engraved certificate showing the form of certificate for the preferred and common stock.

1528 Exhibit No. 2 and Exhibit No. 3 of the defendant, as above offered, are as follows:

EXHIBIT No. 3

NEW YORK CERTIFICATE
COMMON STOCK.
No. 00000.

———— Shares
Issued to
_____
_____
———— 190 ——

1529 Received the above-described certificate.

———— 190 ——
_____
_____

Certificate for less than one hundred shares. New York No. 00000. Common stock.

Northern Pacific Railway Company

Certificate for less than one hundred shares. Certificate. ——— Shares. Common stock.

This is to certify that ——— is the owner of ——— fully paid and nonassessable shares, of the par value of one hundred
1530 dollars each, in the common capital stock of the Northern Pacific Railway Company, transferable only in person, or by attorney, upon the books of the company at the office of its transfer agents in the city of New York, upon surrender of this certificate. The holders of the preferred stock of the company shall be entitled to noncumulative dividends for each fiscal year, when and as declared by the board of directors of the company, to the extent of four per cent per annum, payable quarterly on the first days of March, June, September, and December, out of any surplus net profits of the company, as determined by said board, before any dividend shall be declared or paid for or in such fiscal year on the common stock, and without deduction for any
1531 tax or taxes imposed by the United States or by any State or municipality thereof that the railway company may at any time be required to pay or to retain therefrom. Dividends on the common stock may be declared and paid out of any surplus net profits remaining from any previous fiscal year or years for which the full dividends at the rate of four per cent per annum shall have been paid on the preferred stock; but after dividends to the extent of four per cent shall have been declared for any one fiscal year on all the stock of the company (common as well as preferred), any further dividends for that fiscal year shall be declared only for the equal ratable benefit of all the stock,

whether preferred or common. No dividends shall be paid on 1532
the common stock out of surplus net profits of any year for which the full dividends shall not have been paid on the preferred stock. Whenever the full and regular quarterly dividends for two successive quarterly periods after July 1st, 1897, upon the preferred stock at the rate of four per cent per annum shall not have been paid in cash, then, and in that event, at the next annual meeting such number, and only such number, of directors as will constitute a majority of the whole board shall be elected by a separate ballot by the holders of the preferred stock present or represented at such meeting, and the remainder of the board shall be elected by a separate ballot by the holders of the common stock present or represented at such meeting, in 1533
every case each share to be entitled to one vote. The company shall not put a mortgage upon its property formerly embraced in the system of the Northern Pacific Railroad Company, nor shall the amount of the preferred stock be increased except after obtaining in each instance the consent of the holders of a majority of the whole amount of the preferred stock given at a meeting of the stockholders called for that purpose, and the consent of the holders of a majority of such part of the common stock as shall be represented at such meeting, the holders of each class of stock voting separately. The company shall have the right at its option, and in such manner as it shall determine, to retire the preferred stock in whole or in part, at par, from 1534
time to time, upon any first day of January prior to 1917.

All dividends declared on the preferred stock registered in Berlin will be payable there at the rate of 4.20 marks per dollar. This certificate is not valid unless duly registered by the registrar of transfers of the company in the city of New York.

Witness the signatures of the president, or one of the vice-presidents of said company, and of J. P. Morgan & Co., its transfer agents in the city of New York.

New York————		(Specimen.) 1535
Transfer agents.		Vice-president.

STATE OF Capital stock, $155,000,000. Preferred stock, $75,000,000. Common stock, $80,000,000. WISCONSIN.

1536

Tens.	Units.
1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	8
9	9
0	0
Shares.	

Shares $100 each.

Registered:

1537 CENTRAL TRUST COMPANY OF NEW YORK,
Registrar.
By ——— ———, *Secretary.*

Endorsed:

For value received —— hereby sell, assign, and transfer unto ——— shares of the capital stock represented by the within certificate, and do hereby irrevocably constitute and appoint ——— attorney to transfer the said stock on the books of the within named company, with full power of substitution in the premises.

——— ———.

Dated ———, 19—.

1538 In presence of ——— ———.

Notice.—The signature to this agreement must correspond with the name as written upon the face of the certificate in every particular, without alteration or enlargement, or any change whatever.

EXHIBIT No. 2.

NEW YORK CERTIFICATE

PREFERRED STOCK.

No. 00000

Ten shares

1539 Issued to

———————————

———————————

————————, 190—.

Received the above-described certificate

————————, 190—.

———————————

———————————

10 NORTHERN 10 1540

Shares. RAILWAY COMPANY. Shares.

PACIFIC

New York Certificate.

No. 00000 10 Shares

Preferred Stock. Preferred Stock.

This is to certify that ——— is the owner of ten fully paid and nonassessable shares, of the par value of one hundred dollars each in the preferred capital stock of the Northern Pacific Railway Company, transferable only in person, or by attorney, upon the books of the company, at the office of its transfer agents 1541 in the city of New York, upon surrender of this certificate. The holders of the preferred stock of the company shall be entitled to noncumulative dividends for each fiscal year, when and as declared by the board of directors of the company, to the extent of four per cent per annum, payable quarterly on the first days of March, June, September, and December, out of any surplus net profits of the company, as determined by said board, before any dividends shall be declared or paid for or in such fiscal year on the common stock, and without deduction for any tax or taxes imposed by the United States or by any State or municipality thereof that the railway company may at any time be required to pay or to retain therefrom. Dividends on the common stock may 1542 be declared and paid out of any surplus net profits remaining from any previous fiscal year or years, for which the full dividends at the rate of four per cent per annum shall have been paid on the preferred stock; but after dividends to the extent of four per cent shall have been declared for any one fiscal year on all the stock of the company (common as well as preferred), any further dividends for that fiscal year shall be declared only for the equal ratable benefit of all the stock, whether preferred or common. No dividends shall be paid on the common stock out of surplus net profits of any year for which the full dividends shall not have been paid on the preferred stock. Whenever the full and regular quarterly dividends for two successive quarterly 1543 periods after July 1st, 1897, on the preferred stock at the rate of four per cent per annum shall not have been paid in cash, then and in that event at the next annual meeting such number, and only such number, of directors as will constitute a majority of the whole board shall be elected by a separate ballot by the holders of the preferred stock present or represented at such meeting, and the remainder of the board shall be elected by a separate ballot by the holders of the common stock present or

represented at such meeting, in every case each share to be entitled to one vote. The company shall not put a mortgage upon its property formerly embraced in the system of the Northern Pacific Railroad Company, nor shall the amount of the preferred stock be increased except after obtaining in each instance the consent of the holders of a majority of the whole amount of the preferred stock given at a meeting of the stockholders called for that purpose, and the consent of the holders of a majority of such part of the common stock as shall be represented at such meeting, the holders of each class of stock voting separately. The company shall have the right at its option, and in such manner as it shall determine, to retire the preferred stock in whole or in part, at par, from time to time, upon any first day of January prior to 1917.

All dividends declared on the preferred stock registered in Berlin will be payable there at the rate of 4.20 marks per dollar. This certificate is not valid unless duly registered by the registrar of transfers of the company in the city of New York.

Witness the signatures of the president or one of the vice-presidents of said company, and of J. P. Morgan & Co., its transfer agents in the city of New York.

New York.....	(Specimen.)
Transfer agents.	Vice-president.

STATE OF WISCONSIN.

Capital stock, $155,000,000.
Preferred stock, $75,000,000.
Common stock, $80,000,000.

Shares $100 each. Shares $100 each.

Registered:

CENTRAL TRUST COMPANY OF NEW YORK,
Registrar.

By ——— ———, *Secretary.*

Endorsed:

For value received —— hereby sell, assign, and transfer unto ——— shares of the capital stock represented by the within certificate, and do hereby irrevocably constitute and appoint ——— attorney to transfer the said stock on the books of the within-named company, with full power of substitution in the premises.

——— ———.

Dated, ———, 19—.

In presence of ——— ———.

NOTICE.—The signature to this agreement must correspond 1548
with the name as written upon the face of the certificate, in every particular, without alteration or enlargement, or any change whatever.

Mr. KELLOGG. I offer in evidence a resolution of the board of directors of the Northern Pacific Railway Company, adopted at their meeting of November 13, 1901, which reads as follows, and which has been marked by the special examiner as "Defendant's Exhibit No. 6:"

DEFENDANT'S EXHIBIT NO. 6. 1549

The following preamble and resolutions, offered by Mr. Kennedy and seconded by Mr. Baker, were unanimously adopted:

Whereas, under and pursuant to an agreement dated July 13, 1896, the Northern Pacific Railway Company did acquire from Messrs. J. P. Morgan & Company, a copartnership in the city of New York (in said agreement called reorganization managers), certain stocks, bonds, and other property representing the system formerly of the Northern Pacific Railroad Company, and in consideration of such agreement and transfer did issue and deliver to the reorganization managers certificates for seven hundred and fifty thousand shares of its fully paid and nonassessable preferred stock, and eight hundred thousand shares of its 1550
fully paid and nonassessable common stock of the character described in a certain plan and agreement for the reorganization of the Northern Pacific Railroad system, dated March 16, 1896; and, furthermore, did agree at all times and in all ways and particulars to cooperate with the reorganization managers and to assist them in carrying into effect and in accomplishing the purposes of the said plan and agreement of reorganization; and

Whereas, in and by the said plan and agreement of reorganization, it was expressly provided that the right would be reserved by the new company (being the Northern Pacific Railway Company) to retire this preferred stock, in whole or in
part, at par from time to time upon any first day of January 1551
during the twenty years succeeding the date of said reorganization agreement—it being the purpose and intent of the said agreement that the ultimate control of the new company should be held and be exercised by the holders of the common stock—and that the preferred stock should, as soon as practicable, be liquidated and be paid off in cash at par; and

Whereas, upon the first day of July, 1896, at a meeting of the stockholders of the Northern Pacific Railway Company, each and every stockholder being present and voting in favor

thereof, a resolution was duly adopted providing for the issue of eighty million dollars of common stock and seventy-five million dollars of preferred stock of the Northern Pacific Railway Company, and expressly prescribing that such preferred stock should be issued upon the condition that, at its option, the company might retire the same, in whole or in part, at par from time to time upon any first day of January prior to 1917; and

Whereas, at a meeting of the directors of the Northern Pacific Railway Company, duly held on the 8th day of July, A. D. 1896, a form of certificate for the preferred stock of the company, with the conditions and regulations to be incorporated therein or endorsed thereon, was duly adopted by the unanimous vote of the board of directors of the Northern Pacific Railway Company, including the following provision:

"The company shall have the right, at its option, and in such manner as it shall determine, to retire the preferred stock, in whole or in part, at par, from time to time, on any first day of January prior to 1917;" and

Whereas, at a meeting of the stockholders of the Northern Pacific Railway Company, duly held upon July 13, 1896, the said resolution of the board of directors adopting the said form of stock certificate to be issued for the preferred stock was duly ratified and approved by the affirmative vote of every stockholder of the company; and

Whereas, each and every certificate for the seventy-five million dollars of preferred stock of the Northern Pacific Railway Company, containing the express provision for the retirement thereof from time to time thereafter, was issued under and pursuant to the provisions of the said resolution of July 1, 1896, and each and every certificate for stock now outstanding contains such express provision for the retirement thereof; and

Whereas, under and pursuant to section 8 of the act, chapter 244 of the private and local laws of Wisconsin, approved April 15, 1895, it was expressly provided that all the affairs of this company should be managed by a board of directors who should be stockholders, and who thereby were invested with all the power of the corporation, save as thereinafter provided; and

Whereas, in and by section 11 and section 12 of the said act, chapter 244 of the laws of 1895, it was expressly provided that this company might make this portion of the stock convertible into common stock upon such terms and conditions as should be fixed by the board of directors, and that it might in its corporate name, execute and deliver its notes, bonds, debentures and other evidences of indebtedness in such form as from time to time should be prescribed by the board of directors, and in such amount as should be deemed from time to time by said board expedient, and might make the same convertible into its

capital stock of any class upon such terms and conditions as to 1556
the board of directors might seem advisable; and

Whereas, the holders of a majority of the common stock of the Northern Pacific Railway Company have requested the board of directors to take all such action as may be requisite to retire the whole of the preferred stock upon the first day of January, 1902, and have given satisfactory assurances that the necessary moneys for that purpose will be furnished, and that all action requisite for that purpose will be taken by the holders of the common stock; and

Whereas, in the judgment of the board of directors of the Northern Pacific Railway Company it is desirable that this company should now exercise the option to retire the preferred 1557
stock in whole upon the first day of January, 1902:

Now, therefore, it is hereby unanimously resolved:

1. That the Northern Pacific Railway Company, in exercise of its rights specifically expressed in each and every certificate of stock in this company, has determined, and hereby does determine, to retire the preferred stock of the Northern Pacific Railway Company, in whole, at par, upon the first day of January, 1902;

2. That notice of the retirement of the preferred stock substantially in the form of that annexed to the minutes of this meeting be published in the manner prescribed by the by-laws for notice of a stockholders' meeting, and that a copy thereof 1558
be mailed to every stockholder of this company.

3. That, for the purpose of raising the funds necessary to retire the preferred stock, this company will make and will issue its negotiable bonds dated November 15, 1901, for the aggregate principal sum of seventy-five million dollars, payable January 1, 1907, in gold coin of the United States of the present standard of weight and fineness, at this company's office in the city of New York, with interest in like gold coin at the rate of four per cent per annum from January 1, 1902, payable semiannually at said office.

Every such bond shall be convertible into shares of the common stock of this company at the rate of one share of one 1559
hundred dollars for each one hundred dollars of the principal sum of such bonds remaining unpaid at the date of such conversion; and upon surrender to it of any such bond this company will issue to the holder of such surrendered bond shares of this company's common stock at the rate aforesaid. Such conversion may be made by the company, at its option, at any time after November 15, 1901, and shall be made at the demand of any holder of any such bonds at any time on or after the first day of January, 1902. Such bonds shall be coupon bonds or registered bonds in denominations each of one thousand

1560 dollars, or some multiple thereof, and shall be in such form as shall be determined by the president or vice-president of this company. Every such bond shall be subscribed by the president or a vice-president, and by the secretary or an assistant secretary, and shall be issued under the corporate seal.

4. That the president and vice-president of this company, and each of them, be, and hereby they are, authorized and empowered to contract to sell and to sell all or any of said bonds at a price not less than par and accrued interest, and in such contract to provide for the delivery of all or any part of said bonds upon receiving such payment therefor on or prior to or after December 31st, A. D. 1901; and also to covenant and agree that
1561 any and all moneys received for said bonds shall be specifically appropriated and used exclusively for the retirement of the preferred stock at par. And, accordingly, it is hereby expressly declared that all of such proceeds shall be set apart and shall be held as a trust fund for such purpose.

Any such contract for delivery of such bonds prior to January 1, 1902, may provide for the payment of the whole or any part of the purchase price of any bonds, with allowance of interest at a rate not exceeding four per cent per annum from the time of the receipt of the price of such bonds until January 1, 1902, the date when such bonds begin to bear interest.

Any and every such contract shall contain a provision giving
1562 to the holder of every share of this company's common stock now outstanding suitable opportunity, on demand, to receive through or from the purchaser of said bonds under said contract, at a price not exceeding par and accrued interest, such bonds (or a like amount of common stock received upon conversion of said bonds, if thereafter converted) to an amount equal to seventy-five eightieths of the par amount of said common stock at such time owned by such holder; and for the purpose of providing for subdivision of interests, suitable certificates representing fractional interests in bonds from time to time may be issued, and may be redeemed in such manner as shall be determined by the president or the vice-president.

1563 5. That the proper officers of this company be, and hereby they are, directed, out of the proceeds of said bonds, and out of any other moneys in the company's treasury available for that purpose, to pay at the company's New York office to each holder of record of the preferred stock of this company on and after January 1, 1902, upon surrender of the certificate for such stock, one hundred dollars for each and every of the shares of preferred stock for which the certificates shall be so surrendered.

6. That all of the preferred stock of this company be, and hereby it is declared to be, retired from and after December 31st, A. D. 1901; and that from and after that date all of the author-

ized capital stock of this company, fixed at one hundred and 1564
fifty-five million dollars by resolution of this company's stockholders at a meeting thereof held on the first day of July, 1896, be of one kind, and be without preference in favor of any part thereof, and the total authorized capital of the stock of this company continue to be one hundred and fifty-five million dollars as so fixed at said meeting.

7. That the president, the vice-president, the treasurer, and the secretary of the Northern Pacific Railway Company be, and hereby they are, authorized from time to time to take all proceedings and to do all acts necessary or suitable to carry these resolutions fully into effect.

8. That for the purposes of the retirement of the preferred 1565
stock the transfer books of the stock of this company be closed at 3 o'clock p. m. on Tuesday, December 10, 1901, and that the transfer books of the common stock be reopened upon Thursday, January 2, 1902, at 10 o'clock a. m.

Mr. KELLOGG. I offer in evidence a copy of a notice for the retirement of the preferred stock, which reads as follows, and which has been marked by the special examiner as the "Defendant's Exhibit No. 7:"

DEFENDANT'S EXHIBIT No. 7.

NORTHERN PACIFIC RAILWAY COMPANY.

RETIREMENT OF PREFERRED STOCK. 1566

To the holders of preferred stock of the Northern Pacific Railway Company:

Notice hereby is given that, in the exercise of the power reserved by the Northern Pacific Railway Company and specifically declared in every outstanding stock certificate, the company has duly determined to retire the preferred stock, and the same will be retired in whole at par upon the first day of January, 1902.

Accordingly each and every holder of preferred stock is notified to present and surrender his certificate for such preferred stock at the office of the Northern Pacific Railway Company, 1567
49 Wall street, in the city of New York, on and after the first day of January, 1902, and upon such surrender to receive payment in cash of the par amount thereof.

For the purpose of such retirement the transfer books of the Northern Pacific Railway Company will close at three o'clock p. m. on Tuesday, December 10, 1901, and the transfer books

1568 of the common stock will reopen Thursday, January 2, 1902, at ten o'clock a. m.

By order of the board of directors.

GEORGE H. EARL,
Secretary.

Dated November 13, 1901.

Q. Mr. Relf, is that the notice which was sent to the stockholders of the retirement of the preferred stock?

A. Yes, sir.

Mr. KELLOGG. I offer in evidence the proceedings of the
1569 meeting of the board of directors of December 11, 1901, containing a copy of the convertible certificate scrip issued for the retirement of the preferred stock, which proceedings have been marked by the special examiner as the "Defendant's Exhibit No. 8," and which proceedings read as follows:

DEFENDANT'S EXHIBIT No. 8.

The chairman submitted a form of convertible certificate scrip which had been prepared to meet the requirements of the fourth of the series of resolutions of November 13, 1901.

1570 On motion, it was resolved that the president, or any vice-president, and the secretary, or any assistant secretary, be, and hereby they are, authorized and directed from time to time to execute in such amounts as may be necessary convertible certificate scrip in the following form, to-wit:

UNITED STATES OF AMERICA.

No. .... $....

NORTHERN PACIFIC RAILWAY COMPANY.

FOUR PER CENT CONVERTIBLE CERTIFICATE SCRIP.

1571 This certifies that the holder hereof is entitled, on the first day of January or of July, in any year until January 1, 1907, to receive ——— dollars, par value, in the four per cent convertible certificates of the Northern Pacific Railway Company, duly authorized November 13th and 15th, 1901, on presentation and surrender of this and like certificates in the aggregate representing the even sum of one thousand dollars, or of some even multiple thereof, at the office of the Northern Pacific Railway Company, in the city of New York.

This scrip bears four per cent annual interest, payable in cash semiannually, July first and January first, until January

first, 1907 (unless called for exchange prior to that date), and 1572
the said convertible certificates, when received in exchange for scrip of this issue, will bear four per cent interest from the date of such exchange.

The Northern Pacific Railway Company, at its option, may deliver certificates for fully paid shares of its common stock at par (instead of convertible certificates) in satisfaction and redemption of this scrip at par. In no event will the principal of this scrip be redeemable or payable in money.

In witness whereof the Northern Pacific Railway Company has caused this certificate to be signed by its president, or one of its vice-presidents, and its corporate seal to be hereunto affixed, and to be attested by its secretary, or assistant secretary, this —— 1573
day of ———, 19—.

NORTHERN PACIFIC RAILWAY COMPANY,
By ——— ———, *Vice-President.*

[L. S.] Attest: ——— ———, *Secretary.*

Mr. KELLOGG. I offer in evidence the proceedings of the meeting of the board of directors of January 8, 1902, commencing with the words: "The president submitted the following forms of notices which had been duly published," marked by the special examiner as the "Defendant's Exhibit No. 9," and which reads as follows:

DEFENDANT'S EXHIBIT NO. 9.

The president submitted the following forms of notices which 1574
had been duly published, to wit:

NORTHERN PACIFIC RAILWAY COMPANY.

NOTICE THAT PREFERRED STOCK HAS BEEN RETIRED.

To the holders of certificates of the Northern Pacific Railway Company:

Notice is hereby given that in the exercise of the power reserved by the Northern Pacific Railway Company and specifically declared in every stock certificate issued and outstanding prior to November 15th, 1901, the company has retired the preferred stock, and the same was retired at whole on the first day of January, 1902. Each and every holder of the certificate for preferred stock not heretofore surrendered is notified that, on 1575
presentation and surrender of this certificate at the office of the Northern Pacific Railway Company, 49 Wall street, in the city

of New York, he will receive payment in cash for the par amount of such certificate.

No holder of any certificate of preferred stock now has, or hereafter will have, any right as stockholder, nor any claim against the company, except to receive payment for certificates surrendered at the rate above stated.

Dated January 2, 1902.

By order of the directors.

GEORGE H. EARL,
Secretary.

Mr. KELLOGG. I also offer in evidence part of the proceedings of the same meeting of the board of directors showing the sale of the convertible certificates for the retirement of the preferred stock, which has been marked by the special examiner as "Defendant's Exhibit No. 10," and which reads as follows:

DEFENDANT'S EXHIBIT NO. 10.

NORTHERN PACIFIC RAILWAY COMPANY.

NOTICE TO THE HOLDERS OF FOUR PER CENT CONVERTIBLE CERTIFICATES.

JANUARY 2, 1902.

Notice is hereby given to all holders of four per cent convertible certificates of the Northern Pacific Railway Company, dated November 15, 1901, and issued under and pursuant to resolutions of the directors of this company adopted November 13, 1901, that the railway company has elected to require, and hereby does require, the holder of every such certificate to convert the same into common stock of the Northern Pacific Railway Company at the rate of one share of one hundred dollars for each one hundred dollars of the unpaid principal of the certificate, and upon presentation and surrender of such certificate at the office of this company, 49 Wall street, in the city of New York, the holder will be entitled to receive therefor common stock of the railway company at the rate aforesaid. No interest will accrue or be payable upon or in respect of any such certificate from and after the first day of January, 1902.

By order of the directors.

NORTHERN PACIFIC RAILWAY COMPANY,
DANIEL S. LAMONT,
Vice-President.

Attest:
GEORGE H. EARL,
Secretary.

The president reported that, pursuant to the resolutions and 1580
instructions of the directors, $75,000,000 of convertible 4 per cent certificates were sold by the officers of the company at par, and the proceeds deposited with the fiscal agents of the company for the retirement of the whole of the preferred stock certificates, which were duly retired January 1, of which certificates for 713,410 shares have already been redeemed and canceled, and that the entire issue of $75,000,000 of convertible certificates have been exchanged by its owner for a like amount of the common stock of the company at par, making the present capital of the company consist of 1,550,000 shares of com- 1581
mon stock at $100 each.

Q. Were all the convertible certificates, to wit, $75,000,000 thereof, which were issued for the purpose of retiring the preferred stock, issued and sold?

A. Yes, sir.

Q. Was the preferred stock all retired on the 1st day of January?

A. Yes, sir.

Q. How many shares of preferred stock are there still outstanding which have not been turned in pursuant to the pro- 1582
ceedings retiring the preferred stock?

A. At the close of business on the 15th day of July, 1902, the number of shares of preferred stock still outstanding was 4,055.

Mr. KELLOGG. I offer in evidence the original agreement between the Northern Pacific Railway Company and the Standard Trust Company of New York, dated the 15th day of November, A. D. 1901, marked by the special examiner as "Defendant's Exhibit No. 11."

Q. Is this agreement which I have offered in evidence, and 1583
which I show you, the original agreement?

A. Yes, sir.

Q. Is that Mr. Mellen's signature?

A. Yes, sir.

Q. I don't know whether you know the signature of the trust company?

A. No; I don't.

Judge BUNN. Well, it has the seal of the company on it.

1584 DEFENDANT'S EXHIBIT No. 11.

Memorandum of agreement, made this 15th day of November, A. D. 1901, by and between Northern Pacific Railway Company, a corporation of the State of Wisconsin, of the first part, and the Standard Trust Company of New York, a corporation of the State of New York (hereinafter termed the "Trust Company"), of the second part,

Witnesseth, that the parties hereto have mutually agreed as follows:

ARTICLE I.

On January 1, 1902, Northern Pacific Railway Company agrees to sell and deliver to the Trust Company, and the Trust
1585 Company agrees to buy from Northern Pacific Railway Company, at their face value, all the convertible certificates of indebtedness of the Northern Pacific Railway Company, for the aggregate principal sum of seventy-five million dollars ($75,000,000), of the issue authorized by vote of the directors of said company passed November 13, 1901, except such of said certificates as shall be purchased by the holders of the common stock of said corporation, as recited in Article III of this agreement.

Such convertible certificates are to be dated November 15, 1901, and to be payable on January 1, 1907, in gold coin of the United States of the present standard of weight and fineness, at
1586 said company's office in the city of New York, and to bear interest in like gold coin at the rate of four per cent per annum from January 1, 1902, payable semiannually at said office. Every such certificate shall be convertible into shares of the common stock of the Northern Pacific Railway Company at the rate of one share of one hundred dollars ($100) par value for each one hundred dollars ($100) of the principal of such certificate remaining unpaid at the date of such conversion; and upon surrender to it of any such certificate said railway company will issue to the holder of such surrendered certificate shares of its common stock at the rate aforesaid. Such conversion may be made by the Northern Pacific Railway Company, at its option,
1587 at any time after November 15, 1901, and shall be made at the demand of any holder of any such certificate at any time on or after January 1, 1902. Such certificates shall be in denominations each of one thousand dollars, or some multiple thereof, and shall be substantially of the tenor of the draft thereof, marked "Exhibit A," hereto attached.

Until engraved or lithographed certificates can be prepared, temporary certificates, in form satisfactory to the Trust Company, shall be deliverable hereunder, which temporary certificates shall

be exchangeable for engraved or lithographed certificates as soon 1588
as the same shall be ready for delivery.

ARTICLE II.

Northern Pacific Railway Company covenants and agrees with the Trust Company that all moneys received for such certificates shall be specifically appropriated and used exclusively for the retirement of the preferred stock of the Northern Pacific Railway Company at par, and shall be set apart as a trust fund for such purpose.

ARTICLE III.

It is understood and agreed that suitable opportunity shall be given to every holder of common stock of the Northern Pacific Railway Company registered at the closing of the transfer books 1589
on December 10, 1901, to purchase and to pay for, at the price hereinafter stated, an amount of such certificates (subject to a proper adjustment for fractional amounts of certificates) equal to seventy-five eightieths of the par amount of such common stock owned of record by such stockholder.

At any time prior to the sale and delivery of such certificates to the Trust Company, the Northern Pacific Railway Company may sell and deliver, at the price hereinafter stated, to any such holder of common stock, the amount of such certificates which such holder of common stock is to be given such opportunity to purchase; but in case any such sale be made to any stockholder prior to the closing of the transfer books on December 10, 1901, 1590
such arrangement shall be made as will prevent any transfer of such stock before the reopening of the transfer books on January 2, 1902, except subject to the condition that the transferees and subsequent holders of such stock, prior to such reopening of the transfer books, shall release any and all right to purchase any of such certificates from the Northern Pacific Railway Company. As soon as practicable, the Northern Pacific Railway Company by notice, shall extend to each holder of its common stock registered at the closing of the transfer books on December 10, 1901, suitable opportunity, until January 1, 1902, to purchase, at the price hereinafter stated, an amount of such certificates (subject to adjustment as aforesaid) equal to seventy-five 1591
eightieths of the par amount of such common stock owned of record by such stockholder.

After the sale and delivery to the Trust Company of such of said certificates as shall not have been purchased by the stockholders of the Northern Pacific Railway Company, the Trust Company will give to every holder of common stock of said company registered at the closing of the transfer books on

December 10, 1901 (other than holders of common stock how previously shall have purchased, or shall have had suitable opportunity to purchase, a ratable share of such certificates, as aforesaid), suitable opportunity, not later than March 1, 1902, to receive, on demand, through or from the Trust Company, upon payment to the Trust Company of the price hereinafter stated, an amount of such certificates (subject to adjustment as aforesaid) equal to seventy-five eightieths of the par amount of such common stock owned of record by such stockholders (or a like amount of common stock received upon conversion of such certificates if theretofore converted).

The price payable for all such certificates sold under this article on or before January 1, 1902, shall be a sum equal to the principal thereof. The price payable for all such certificates sold and delivered under this article after January 1, 1902, shall be a sum equal to the principal thereof and the interest accrued thereon. The price payable for any stock received upon conversion of such certificates shall be the same as the price which would have been payable for a corresponding amount of such certificates.

Under the provisions of this article every such holder of common stock shall only be given the opportunity to purchase, either from the Trust Company or from the Northern Pacific Railway Company, such amount of such certificates (or stock) as in the aggregate shall be equal to seventy-five eightieths of the par amount of the common stock owned of record by such stockholder at the closing of the transfer books on December 10, 1901.

ARTICLE IV.

In case the Northern Pacific Railway Company shall fail to sell and to deliver such certificates to the Trust Company at the times and in the manner herein provided, or shall fail to comply with all its agreements herein contained, or in case the Northern Pacific Railway Company shall fail to issue its common stock in exchange for all certificates delivered hereunder to the Trust Company when and as demand therefor shall be made by the Trust Company or other holder, then and in any such case the Trust Company, at its option, by notice delivered at the office of the Northern Pacific Railway Company in the city of New York, may forthwith rescind this agreement, and thereupon the Northern Pacific Railway Company, upon surrender to it of any of such certificates, shall be bound to repay to the Trust Company or other holder the price paid for such certificates hereunder, with proper allowance of interest.

This agreement shall be deemed strictly *inter partes*, and shall not give any rights to any person or corporation except

the Trust Company and the Northern Pacific Railway Com- 1596
pany, except as provided in the certificates themselves.

In witness whereof the parties hereto have caused these presents to be signed by their officers duly authorized the day and year first above written.

NORTHERN PACIFIC RAILWAY COMPANY,
By C. S. MELLEN, *President.*

[CORPORATE SEAL.]

Attest:
GEO. H. EARL,
Secretary.

THE STANDARD TRUST COMPANY OF NEW YORK, 1597
By WM. C. LANE, *President.*

[CORPORATE SEAL.]

Attest:
WM. C. COX,
Secretary.

EXHIBIT A.

No. ——. $——.

UNITED STATES OF AMERICA.

NORTHERN PACIFIC RAILWAY COMPANY. 1598

Temporary four per cent convertible certificate.

Northern Pacific Railway Company (hereinafter termed the "Railway Company"), for value received, promises to pay to bearer, or to the registered holder of this certificate, if the same shall be registered, on the first day of January, 1907, upon presentation and surrender of this certificate for cancellation at its office in the city of New York, ——— dollars, in the gold coin of the United States of America of the present standard of weight and fineness, and to pay interest thereon at the rate of four per cent per annum from January 1, 1902, such interest being payable at said office, in like gold coin semiannually, on 1599
the first day of January and the first day of July in each year, to the bearer or to the registered holder of this certificate, upon presentation of the certificate and endorsement of such payment thereon. Both the principal and interest of this certificate are payable without deduction for any tax or taxes which the Railway Company may be required to pay or to retain therefrom under any present or future law of the United States or of any State, county, or municipality therein.

Upon demand of the holder of this certificate at any time

after January 1, 1902, and upon presentation and surrender of this certificate for cancellation, this certificate shall be convertible into common stock of the Railway Company, at the rate of one share of $100 for each $100 of the unpaid principal of this certificate, and upon such demand and such presentation and surrender of the certificate, the Railway Company will issue to the holder its common stock at the rate aforesaid. In case the Railway Company shall fail to make such conversion, then and in every such case, at the option of the holder, the principal of this certificate shall become and be forthwith due and payable, with the interest accrued and unpaid.

At any time after the date hereof, at its election, the Railway Company may require the holder of this certificate to convert the same into common stock of the Railway Company, at the rate of one share of $100 for each $100 of the unpaid principal of this certificate, and upon advertisement by the Railway Company of such election in either the New York Times or the New York Tribune, newspapers published in the city of New York, the holder shall, upon presentation and surrender hereof, be entitled to receive common stock of the Railway Company at the rate of one share of $100 for each $100 of the unpaid principal of this certificate; and from and after such advertisement no interest shall accrue or be payable upon or in respect of this certificate from the interest day next preceding the date of such advertisement, and the principal of this certificate shall not be payable in cash, but the holder shall be entitled only to receive common stock of the Railway Company in exchange for this certificate as hereinbefore provided.

This temporary certificate is exchangeable for an engraved or lithographed certificate when the same shall be ready for delivery, and is one of a series of similar certificates of the Railway Company issued and to be issued for the aggregate principal sum of $75,000,000, such issue having been authorized by resolution of the board of directors of the Railway Company, passed November 13, 1901, to which reference hereby is made. All moneys received for the certificates of said issue have been specifically appropriated, and will be used exclusively for the retirement at par of the preferred stock of the Railway Company, and will be set apart as a trust fund for such purpose.

This certificate may be registered in the owner's name on the books of the Railway Company, at its office or agency at the city of New York, such registry being noted on the certificate by the certificate registrar of the Railway Company. After such registration no transfer shall be valid unless made on the Railway Company's books by the registered owner, and similarly noted on the certificate, but the same may be discharged from registry by being transferred to bearer, and thereafter transfer-

ability by delivery shall be restored, but this certificate again 1604
from time to time may be registered or transferred to bearer as before.

In witness whereof The Northern Pacific Railway Company has caused these presents to be signed by its president or one of its vice-presidents, and its corporate seal to be hereunto affixed and to be attested by its secretary or assistant secretary, this fifteenth day of November, 1901.

NORTHERN PACIFIC RAILWAY COMPANY,

[L. S.] By ——— ———, *President.*

Attest: ——— ———, *Secretary.*

(Endorsed:) 1605

No. .... $....

NORTHERN PACIFIC RAILWAY COMPANY.

TEMPORARY FOUR PER CENT CONVERTIBLE CERTIFICATE.

Interest due January and July.

Registered in the name of—	Date.	Registrar.

1606

Q. I show you also a contract, dated the 18th day of November, between the Standard Trust Company and certain underwriters, composed of Kuhn, Loeb & Co. and others. Is that the original contract?

A. Yes, sir.

Mr. KELLOGG. I offer in evidence the two contracts. 1607

Contract of November 18, marked by the special examiner as "Defendant's Exhibit No. 12."

DEFENDANT'S EXHIBIT No. 12.

Agreement made this 18th day of November, 1901, between the Standard Trust Company of New York (hereinafter called the "Trust Company"), party of the first part, and the other signers of this agreement, or of counterparts thereof (hereinafter called the "Subscribers"), parties of the second part.

The Trust Company, at the request of the Subscribers, has made or is about to make an agreement with the Northern Pacific Railway Company of even date herewith (a copy of which is hereto annexed and marked "Exhibit A"), upon the express condition that the subscribers hereto enter into this agreement.

In consideration of the premises, the parties have agreed as follows:

I. The Subscribers hereby severally agree with the Trust Company and with each other to pay to the Trust Company upon its demand, in the proportions set opposite their respective signatures hereto, such sums of money as the Trust Company may from time to time require to meet its obligations under this agreement with Northern Pacific Railway Company, and the Subscribers further agree in such several proportions to hold the Trust Company harmless from any loss, liability, or expense under or by reason of said agreement with the Northern Pacific Railway Company, or because of any distribution hereunder of the securities to be received by the Trust Company under said agreement.

II. The Subscribers shall severally be entitled to share, in the proportions set opposite their respective signatures hereto, in the benefits of said agreement and in all convertible certificates and common stock of the Northern Pacific Railway Company which shall remain with the Trust Company after the performance of its obligations under said agreement.

III. The Trust Company shall issue to the Subscribers suitable certificates of participation referring to this agreement, upon which certificates any payments made by the Subscribers shall be endorsed. The Trust Company shall be entitled to reimbursement for its expenses and to reasonable compensation. The written advice of counsel shall be full protection to the Trust Company, as against the Subscribers, for any action it may from time to time take hereunder or in connection with said agreement. This agreement shall bind the executors and administrators of the respective Subscribers.

In witness whereof The Standard Trust Company of New York has caused this instrument to be executed, and its corporate seal to be hereunto affixed by its proper officers, and the parties of the second part have hereunto set their hands the day and year first above written.

THE STANDARD TRUST COMPANY OF NEW YORK,
By WM. C. LANE, *President.*

[CORPORATE SEAL.]

Attest:
W. C. COX, *Secretary.*

Signature of subscriber.	Proportion of entire obligation taken by subscriber.	1612
Kuhn, Loeb & Co.	One-third (1/3) or twenty-five million dollars ($25,000,000).	
J. P. Morgan & Co.	One-third (1/3) or twenty-five million dollars.	
Jas. J. Hill	One-ninth (1/9) } or	
Geo. F. Baker	One-ninth (1/9) } 1/3	
John S. Kennedy	One-ninth (1/9) }	

EXHIBIT A.

Memorandum of agreement, made this —— day of November, A. D. 1901, by and between Northern Pacific Railway Company, a corporation of the State of Wisconsin, of the first part, and The Standard Trust Company of New York, a corporation of the State of New York (hereinafter termed the 1613 "Trust Company"), of the second part.

Witnesseth, that the parties hereto have mutually agreed as follows:

ARTICLE I.

On January 1, 1902, Northern Pacific Railway Company agrees to sell and to deliver to the Trust Company, and the Trust Company agrees to buy from Northern Pacific Railway Company, at their face value, all the convertible certificates of indebtedness of the Northern Pacific Railway Company for the aggregate principal sum of seventy-five million dollars ($75,000,000), of the issue authorized by vote of the directors of said company passed November 13, 1901, except such of said certificates as shall be purchased by the holders of the com- 1614 mon stock of said corporation, as recited in Article III of this agreement.

Such convertible certificates are to be dated November 15, 1901, and to be payable on January 1, 1907, in gold coin of the United States of the present standard of weight and fineness, at said company's office in the city of New York, and to bear interest in like gold coin at the rate of four per cent per annum from January 1, 1902, payable semiannually at said office. Every such certificate shall be convertible into shares of the common stock of the Northern Pacific Railway Company at the rate of one share of one hundred dollars ($100) par value for each one hundred dollars ($100) of the principal of such certifi- 1215 cate remaining unpaid at the date of such conversion; and upon surrender to it of any such certificate said railway company will issue to the holder of such surrendered certificate shares of its common stock at the rate aforesaid. Such conversion may be made by the Northern Pacific Railway Company, at its option, at any time after November 15, 1901, and shall be made at the demand of any holder of such certificate at any time on or after January 1, 1902. Such certificates shall be in denominations

each of one thousand dollars, or some multiple thereof, and shall be substantially of the tenor of the draft thereof, marked "Exhibit A," hereto attached.

Until engraved or lithographed certificates can be prepared, temporary certificates, in form satisfactory to the Trust Company, shall be deliverable hereunder, which temporary certificates shall be exchangeable for engraved or lithographed certificates as soon as the same shall be ready for delivery.

ARTICLE II.

Northern Pacific Railway Company covenants and agrees with the Trust Company that all moneys received for such certificates shall be specifically appropriated and used exclusively for the retirement of the preferred stock of the Northern Pacific Railway Company at par, and shall be set apart as a trust fund for such purpose.

ARTICLE III.

It is understood and agreed that suitable opportunity shall be given to every holder of common stock of the Northern Pacific Railway Company registered at the closing of the transfer books on December 10, 1901, to purchase and to pay for, at the price hereinafter stated, an amount of such certificates (subject to a proper adjustment for fractional amounts of certificates) equal to seventy-five eightieths of the par amount of such common stock owned of record by such stockholder.

At any time prior to the sale and delivery of such certificates to the Trust Company, the Northern Pacific Railway Company may sell and deliver, at the price hereinafter stated, to any such holder of common stock, the amount of such certificates which such holder of common stock is to be given such opportunity to purchase; but in case any such sale be made to any stockholder prior to the closing of the transfer books on December 10, 1901, such arrangements shall be made as will prevent any transfer of such stock before the reopening of the transfer books on January 2, 1902, except subject to the condition that the transferees and subsequent holders of such stock prior to such reopening of the transfer books shall release any and all right to purchase any of such certificates from the Northern Pacific Railway Company. As soon as practicable the Northern Pacific Railway Company, by notice, shall extend to each holder of its common stock registered at the closing of the transfer books on December 10, 1901, suitable opportunity until January 1, 1902, to purchase at the price hereinafter stated an amount of such certificates (subject to adjustment as aforesaid) equal to seventy-five eightieths of the par amount of such common stock owned of record by such stockholder.

After the sale and delivery to the Trust Company of such of 1620
said certificates as shall not have been purchased by the stockholders of the Northern Pacific Railway Company, the Trust Company will give to every holder of common stock of said company registered at the closing of the transfer books on December 10, 1901 (other than holders of common stock who previously shall have purchased or shall have had suitable opportunity to purchase a ratable share of such certificates as aforesaid), suitable opportunity, not later than March 1, 1902, to receive, on demand, through or from the Trust Company, upon payment to the Trust Company of the price hereinafter stated, an amount of such certificates (subject to adjustment as aforesaid) equal to seventy-five eightieths of the par amount of such common stock 1621
owned of record by such stockholder (or a like amount of common stock received upon conversion of such certificates if theretofore converted).

The price payable for all such certificates sold under this article on or before January 1, 1902, shall be a sum equal to the principal thereof. The price payable for all such certificates sold and delivered under this article after January 1, 1902, shall be a sum equal to the principal thereof, and the interest accrued thereon. The price payable for any stock received upon conversion of such certificates shall be the same as the price which would have been payable for a corresponding amount of such certificates.

Under the provisions of this article every such holder of com- 1622
mon stock shall only be given the opportunity to purchase, either from the Trust Company or from the Northern Pacific Railway Company, such amount of such certificates (or stock) as in the aggregate shall be equal to seventy-five eightieths of the par amount of the common stock owned of record by such stockholder at the closing of the transfer books on December 10, 1901.

ARTICLE IV.

In case the Northern Pacific Railway Company shall fail to sell and to deliver such certificates to the Trust Company at the times and in the manner herein provided, or shall fail to comply with all its agreements herein contained, or in case the Northern Pacific Railway Company shall fail to issue its common stock 1623
in exchange for all certificates delivered hereunder to the Trust Company when and as demand therefor shall be made by the Trust Company or other holder, then and in any such case the Trust Company, at its option, by notice delivered at the office of the Northern Pacific Railway Company in the city of New York, may forthwith rescind this agreement, and thereupon the Northern Pacific Railway Company, upon surrender to it of any of such certificates, shall be bound to repay to the Trust Company or

other holder the price paid for such certificates hereunder, with proper allowance of interest.

This agreement shall be deemed strictly *inter partes*, and shall not give any rights to any person or corporation except the Trust Company and the Northern Pacific Railway Company, except as provided in the certificates themselves.

In witness *whereof the parties* hereunto have caused these presents to be signed by their officers duly authorized the day and year first above written.

NORTHERN PACIFIC RAILWAY COMPANY,

By ——— ———.

THE STANDARD TRUST COMPANY OF NEW YORK,

By ——— ———.

Mr. KELLOGG. I offer now the charter of the Northern Pacific Railway Company, together with the proceedings of the stockholders and officers changing the name of the corporation to the Northern Pacific Railway Company, which has been marked by the special examiner as "Defendant's Exhibit No. 13," and which reads as follows:

The proceedings of the stockholders and officers changing the name to Northern Pacific Railway Company appears in defendant's Exhibit No. 4 and defendant's Exhibit No. 5.

DEFENDANT'S EXHIBIT No. 13.

CHARTER OF THE NORTHERN PACIFIC RAILWAY COMPANY

(Formerly Superior and St. Croix Railroad Company)

AND LAWS RELATING THERETO.

CHAPTER 326.

(Published April 6, 1870.)

AN ACT to incorporate the Superior and St. Croix Railroad Company.

The people of the State of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. That I. W. Gates, R. G. Coburn, E. W. Anderson, jr., Hiram Hayes, S. H. Clough, Hiram Robbins, D. W. Maxon, John J. Tallmadge, H. L. Palmer, S. B. Dresser, O. S. Powell, and such other persons as may be associated with them who shall become stockholders in the association or corporation hereby created, in accordance with the provisions of this act,

shall be, and they hereby are, created a body corporate and 1628
politic by the name and style of the Superior and St. Croix Rail-
road Company, and by that name shall have perpetual succession,
be competent to contract and be contracted with, sue and be sued,
implead and be impleaded, answer and be answered, defend and
be defended, in any court whatever. That the corporation may
make, have, and use a common seal, which it may alter or re-
new at pleasure; it shall be capable of acquiring by deed, lease,
or other conveyance, a fee simple or any less estate in lands, tene-
ments or easements in the same, and of conveying any such
estate or interest by deed, lease, or other conveyance, or of hold-
ing such estate or interest, or any other estate necessary for the
use of the said railroad, either real, personal, or mixed, and shall 1629
have and enjoy all the privileges incident to a corporation, and
may do and perform all and singular the acts and matters which
to any corporation it shall lawfully appertain to do and perform
for the well-being of said corporation.

SECTION 2. The said company by this act created is hereby authorized and empowered to survey, locate, and from time to time alter, change, and relocate (so as not materially to change the route), and to construct and complete, perpetually to have, use, and enjoy, maintain and operate the said railroad with one or more tracks or lines, over and along the following routes, that is to say: Beginning at some convenient point on the west shore of the bay of Superior or on the south shore of the bay 1630
of St. Louis, in the county of Douglas; running thence south-
erly, by a route as direct as may be practicable, through the
counties of Douglas, Burnett, Polk, St. Croix, and Pierce via
St. Croix Falls and Hudson to Prescott, with a branch or exten-
sion running westerly from the above-designated place of begin-
ning in Douglas County to such point on the Minnesota boundary
north of the Nemadji River as may be deemed desirable by the
directors of said railroad company.

SECTION 3. The company hereby created shall have the per-
petual right, power, and authority to transport, take, and carry
property and persons upon said railroad by steam or other power,
and to receive and store away any property in any of its depots 1631
or other buildings, and to make, construct, maintain, and use all
such switches, turn-outs, and side tracks as it may deem neces-
sary, and also to construct, erect, and maintain all such depots,
station houses, warehouses, car houses and shops, engine houses,
and all other buildings, fixtures, and things for the accommoda-
tion of said company and its roads and those using the same;
and said railroad company shall have power to connect its road
with any other railroad, and to operate the same, or to run in
connection with any such railroad in such manner as may be
agreed upon between the boards of directors of this company

and any such railroad; and any railroad company or association having a railroad, built or partly built, running in the direction of the line of railroad which the railroad company hereby created is authorized to construct and operate, which this company by this act created shall agree to use or connect with, is hereby authorized to make such lease or sale to this company or corporation, perpetually or for a limited time, of the whole or any part of their railroad so constructed or partly constructed, together with the rolling stock, machinery, buildings, tenements, or fixtures, and all other property, real, personal, or mixed, of the said company or association, together with its franchises, rights, privileges, and immunities, or to sell the same, and in consideration of such lease or sale to take and receive such rents or payments as may be agreed upon.

SECTION 4. The said company shall have the right, authority, and power, and it is hereby authorized and empowered, to construct its railroad along and upon, across, under, and over any public or private highway, roads, streets, plank roads, or railroad, if the same shall be necessary; but the said company shall put such highway, road, street, plank road, or railroad in such condition and state of repair as not to impair or interfere with the free and proper use, and also to erect and maintain all necessary bridges for the use of their railroad over any stream of water or water course at such points of crossing the same as said road may be located, with all necessary abutments, piers, arches, and foundations.

SECTION 5. It shall be lawful for the company hereby created, and it shall have the right, power, and authority, by its officers, engineers, agents, servants, and workmen, to enter upon any land for the purpose of exploring, surveying, locating, and determining the routes of said railroads; and when the said routes or any portion thereof shall be determined by resolution adopted by its board of directors, it shall be lawful for said company, and it shall have the right, power, and authority, by its officers, engineers, agents, contractors, surveyors, servants, and workmen, at any time, to enter upon, take, possess, occupy, and use any land along and including the line of said route, not exceeding one hundred feet in width. It shall also be lawful for said company, and it shall have the right, power, and authority at any time, to enter upon, take, possess, and occupy and use any other lands beyond said limits of one hundred feet which the directors shall, by resolution adopted by them (a copy of which shall be recorded at the expense of said company in the office of the register of deeds in the county in which said lands are located), declare to be necessary for the use of said company for the purposes of erecting depot buildings, station houses, machine shops, freight houses, engine houses, warehouses, or

buildings or fixtures of any kind, or ground about the same, for 1636
the convenient operation of the road, or for making drains or giving proper direction to water courses, or of directing or changing the channel of water courses, or for the purpose of removing such substances or things as may endanger, obstruct, or interfere with the free use of said road, or for the purpose of depositing earth, gravel, stone, timber, or other material for embankments, structures, or superstructures necessary to the construction, repair, or removal of said road. Said company shall, however, at such time and in such manner as is provided by and in this chapter and act, be liable to pay the full value of all earth, gravel, stone, timber, and land which may be so as aforesaid taken, possessed, occupied, or used for any of the purposes afore- 1637
said, which is the private property of either persons or corporations, which value (unless the owner thereof and said company shall agree as to the same) shall be ascertained and determined in the manner hereinafter provided; and whenever the same shall have been paid, tendered or deposited as provided in this act, an estate in and to all and every such lands in fee simple absolute forever shall be and become vested in said company by virtue thereof, and of the provisions of this act, and by the same means a complete title shall vest in said company in and to all such earth, gravel, stone, and timber; and whenever said company shall deem that such property or any part or portion of such property shall no longer be necessary for the purposes for 1638
which the same were taken, it is hereby authorized and empowered, by deed or other instrument in writing, to lease or sell the same or any part thereof.

SECTION 6. On the completion of said road or any part thereof it shall be lawful for said company, and it is hereby authorized and empowered, to demand and receive such sum or sums of money for the transportation of persons and of property and for the storage of property as it shall from time to time deem reasonable.

SECTION 7. Said company hereby created shall also have full power and authority to transport persons and property in boats, vessels, barges, and other water craft on any of the navigable 1639
waters which its said railroad or roads run into or connect with, and to receive and collect reasonable compensation for the same, and for that purpose may build or purchase, own, and use such boats, vessels, barges, and other water craft as it may require.

SECTION 8. The company hereby created shall be capable in law of taking and holding any land granted to it by the Government of the United States or of this State, or by individuals or corporations, to aid in the construction of its road, and may also pledge, mortgage, and otherwise dispose of all their rights,

1640 title, and interest in and to said lands, and in any other estate, real, personal, or mixed, of which they may be seized at the time of the execution of such mortgage, or which they may acquire subsequently thereto, in such manner and on such terms as the directors may think proper.

SECTION 9. All the affairs of said company shall be managed by a board of directors, who shall be stockholders, and who are hereby invested with all the powers of the corporation. They shall be chosen annually by ballot, by the stockholders, at the annual meeting of the company, which shall be held on such notice and at such time as shall be prescribed by the by-laws, and at such place as shall be prescribed by the board of directors
1641 and stated in such notice. At all meetings of the stockholders every stockholder shall be entitled to one vote for each share of stock held by him or her and may vote in person or by proxy duly authorized, and no business shall be transacted at any meeting of the stockholders unless a majority of the stock subscribed is represented. In all elections of directors those stockholders equal to the number to be elected having the greatest number of votes shall be deemed and declared duly elected. The elections shall be conducted in such manner as shall be prescribed by the by-laws of the company; and if from any cause an election of directors shall not be had at the time when, by the provisions of this act or of the by-laws, it should be had, the same may be held
1642 at any other time, on notice to be given as aforesaid; and until such election be had the directors of the preceding year shall continue to act, and the corporation hereby created shall not forfeit or lose any of its privileges, franchises, or immunities for a less period than ten consecutive years. The board may at any time increase or diminish the number of directors to be elected at the next annual meeting of the stockholders, and the number to be elected shall be specified in the notice of election, but shall never be less than five or more than eleven.

SECTION 10. A majority of the board of directors shall constitute a quorum for the transaction of any business. They shall meet at such times and places and be convened in such manner
1643 as they shall decide upon. They shall elect one of their own number to be president, and one to be vice-president. The president shall, when present, preside at all meetings of the board and of the stockholders, and when absent, the vice-president shall discharge the duties of the president, and when both are absent, the directors may appoint a president *pro tem.* The board of directors shall have power to appoint an executive committee and prescribe its powers and duties; to appoint a secretary, treasurer, and such engineers, superintendents, agents, and other officers as they may deem necessary, and remove them at pleasure; prescribe their duties and compensation, and may demand

adequate security for the discharge of their respective duties and 1644
trusts.

SECTION 11. The persons named in the first section shall be the first directors, and shall hold their offices until the first Wednesday of May, A. D. 1871, and until others are chosen in their places, and in case of a vacancy in the directors by reason of the death or resignation of any director, or of his ceasing to be a stockholder, it may be filled by the remaining directors until the next annual election or until some other person shall be elected to fill the same. The directors herein named may appoint three persons, who shall be stockholders, to be inspectors at the first election, after which the stockholders shall choose three such inspectors at the annual elections. If no inspectors 1645
are chosen, the directors may appoint three from time to time. If at any time an election of directors shall not take place on the day appointed by this act, the corporation shall not for that cause be dissolved, but an election may be held on another day, in such manner as shall be prescribed by the directors or provided for by the by-laws.

SECTION 12. The said company shall have authority and power, and it is hereby authorized and empowered in its corporate capacity, to borrow any sum of money from any person or persons, corporation, or body politic of any kind, and may make, execute, and deliver all necessary writings, notes, bonds, mortgages, and other papers and securities in amount and kind, as 1646
may be deemed expedient by said corporation in consideration of any such loan, or in the discharge of any liabilities it may incur in the construction, repair, equipment, or running of said road; and the powers of said corporation for the purposes aforesaid, and for all purposes necessary to carrying out the objects of said company, viz, the construction of a railroad from and to the points aforesaid, are hereby ratified and confirmed, and the contracts and official acts of said company declared binding in law and equity upon said corporation and upon all other parties to said contracts. Said company shall also have authority and power, and is hereby authorized and empowered in its corporate capacity to make, execute, issue, and deliver its bonds and obli- 1647
gations from time to time, and at any time, in such an amount that all the bonds of the company outstanding at any one time will not exceed the amount of the capital stock of said company. The directors of said company are hereby authorized and empowered to prescribe by resolution to be by them adopted the sum or sums for which each of said bonds shall be issued, the time or times and place or places when and where the principal and interest of the same shall be payable, and whether payable to order or to bearer, or how otherwise negotiable, the rate of interest which such bonds shall bear, and the manner and form

in which the interest coupons annexed to them shall be executed; and to secure the payment of any and all such bonds the said corporation is hereby authorized and empowered, in its corporate capacity, to make, execute, and deliver a mortgage or deed of trust upon the whole or any part of its railroad, constructed or authorized to be constructed, and of any or all of its estate, real, personal, or mixed, in possession or expectancy, owned and acquired, or to be thereafter owned and acquired by said corporation; and the said company is also hereby authorized and empowered, in and by such mortgage or deed of trust, to confer upon the trustees or mortgagees full and ample powers to enter into and upon, and to take possession of, have, use, and enjoy, or to sell and dispose of the whole or any part of said railroad or its estate, together with the functions appertaining to said railroad, and all corporate and other franchises, rights, and privileges of said corporation; and the directors of said company are hereby authorized and empowered to prescribe, by resolutions to be adopted by them, all matters relating to the forms and terms of any such mortgage or deed of trust, and of its execution and delivery; and they are authorized to provide for the periodical payments to such trustee or receiver as they shall appoint a certain sum to create a sinking fund, with which to pay off or discharge at or before maturity any or all of the bonds by them authorized to be issued; and also to provide the manner in which such trustee or receiver shall pay out or dispose of said sinking fund, and to authorize him to designate, by lot or in any other suitable manner, the bond or bonds to the payment of which such sinking fund or any part of it shall be applied, and the said board of directors are hereby authorized and empowered to sell, pledge, hypothecate, or otherwise dispose of, either for money, work, or material to be used in the construction and equipment of said railroad, all or any portion of such mortgage, bonds, or other securities or bonds received from any county, town, village, or city, at par or at such price less than par as the said directors may by resolution, to be by them adopted, deem advisable; any such mortgage or deed of trust and every discharge or satisfaction thereof, may be recorded in the office of the secretary of state, in a proper book kept for that purpose, and the certificate of such recording endorsed on such mortgage or deed of trust, shall have the same effect as if such mortgage or deed of trust was recorded in the several counties through which such road may run, and such record in the office of the secretary shall be sufficient notice to all persons.

SECTION 13. The company hereby created shall for all and every of the lands and property which it shall appropriate, take, possess, occupy or use (unless the same be donated to them),

pay the value thereof, at the time and in the manner herein pro- 1652
vided; and such value shall be ascertained, fixed, and determined by mutual agreement between the said company and the owner of such land and property, respectively, or by and through the medium and appraisement and determination and award of commissioners appointed as hereinafter provided.

SECTION 14. When the said corporation shall not agree with the owner or owners of such required land for the purchase thereof or as to the compensation to be paid therefor, or when by reason of the legal incapacity or of the absence of such owner or owners no such agreement can be made, then and in that case it shall be lawful for any judge of the supreme, circuit, or county courts of the State on application of the said company, 1653
or the owner or owners of such land, and at the cost and charge of said company, to appoint three disinterested persons residing in the county through which the said road runs, whose duty it shall be to view and examine the lands so taken, with the buildings and improvements if any thereon, and to estimate the value of the lands so taken and required by said company, and all the damages which the owner or owners thereof shall sustain or may have sustained by reason of the taking of the same for the construction and use of said road or works appertaining thereto. And it shall be the duty of said company, or of the owner or owners aforesaid, as the case may be, to give three weeks' notice of their application to the judge of the supreme, circuit, or county 1654
courts for the appointment of said commmissioners, to be published for three successive weeks in a newspaper published (if there be any) in the county in which such land may be situated, and the affidavit of the printer or publisher shall be sufficient legal evidence of such publication; and the persons so appointed, before entering upon the discharge of such duties, shall take an oath before some justice of the peace or other person competent by law to administer oaths faithfully and to the best of their ability to examine the lands so taken or required by said company, and impartially to estimate and appraise the value of the same, and the damage or injury which the owner or owners thereof shall have sustained or may sustain by reason 1655
of the taking and use thereof by said company, whereupon such commissioners shall proceed to examine the premises and estimate the value of such land and the amount of damage, and they or a majority of them shall make a report in writing of such valuation, under their hands and seals, to the circuit court of the county wherein the land lies, and shall return the same within ninety days after their appointment to the clerk of the circuit court of the county where they reside, and it shall be the duty of the said clerk to immediately file the same; and in case no appeal shall be made within thirty days after the filing of the said report,

as hereinafter provided, then the said clerk shall record the same at the expense of said company, and judgment of the said court shall be entered thereon on motion of either party at any term of said court: provided, that either party may appeal to said court within thirty days after said report shall have been filed in the clerk's office, and such appeal may be tried in the same manner as other issues on trial in said court; and the jury empanelled to try the same shall find the value of the land so taken as required by said company and the damages which the owner or owners thereof shall have sustained by the taking of the same, and the judgment of the said court shall be entered accordingly: provided also, that it shall not be lawful for the said commissioners or said court to proceed in the assessment of damages, or in the valuation of any lands or materials as aforesaid, in the absence of the owner or owners, his, her, or their agents or attorneys, unless it be shown to them by competent testimony that the said owner or owners shall have had at least five days' notice of the time and place at which such assessment or valuation was to be made, or that the said owner or owners were absent from the State of Wisconsin; and if the said owner or owners shall be minors or *non compos mentis*, or absent from the State, the service of notice may be made on the guardian or trustee if there be any, or in such manner as the court may direct: provided, also, that upon the making and filing of the report as aforesaid, and payment in legal tender of the amount of any valuation or appraisal specified therein, to the owner or owners of any such lands, his, her, or their legal representatives, on payment thereof into the circuit court of the county in which such land shall be situated, for the owner or owners thereof, the said company, their agents, or the contractor for making or repairing said railroad, may immediately take and use the same without awaiting issue of any appeal brought thereon; and provided also, that in case of an appeal as aforesaid by the owner or owners of such land the said company, immediately on notice of the perfection of such appeal, shall pay into court, to abide the judgment therein, the amount awarded by such commissioners; and in case of any appeal by the company, it shall be the duty of such company to execute a bond, with sufficient surety, to be approved by the court, conditioned to pay any judgment that may be rendered therein, and to abide by the order of the court in the premises; such bond shall be filed at the time of entering the appeal, and in case of neglect or refusal, unless further time so to do shall have been granted by the court, the appeal may be dismissed on motion. Whenever any judgment shall have been entered as herein provided, for the value of any lands, or for any damages for taking and using the same, and the amount specified in such judgment shall

have been paid or tendered to the owner or owners of such land, his, her, or their legal representatives, the said company shall be entitled to the estate and interest in the same, as fully as if it had been conveyed in fee simple; and if such valuation be not received when tendered, it may at any time thereafter be received, or may be collected from said company by action at law, at the cost and expense of the person or persons entitled to the same: provided, that the costs of any proceedings and judgment specified in the last preceding section shall be taxed by the court and paid by such company, except in cases when upon appeal the verdict of the jury shall be for the same or for a less sum than that reported by the commissioners. 1660

SECTION 15. The capital stock of the company hereby created shall in the first instance be five million dollars, which capital stock may be increased to any sum not exceeding ten million dollars; the said capital stock to be divided into shares of one hundred dollars each. 1661

SECTION 16. The several counties, towns, villages and cities upon or contiguous to the line of the said road by this act authorized to be constructed, as the same may hereafter be located and established, are, and each of them hereby is, authorized to aid in the construction of said railroad by subscribing to the stock of the company and paying for the same in money, and levying a special tax to raise money for that purpose, or by issuing bonds to said company in payment for said stock, and levying taxes to pay the interest as it accrues upon said bonds, and to establish a sinking fund for the gradual redemption and ultimate full redemption of said bonds at maturity; and for these purposes the board of supervisors or officers of such counties or towns, the boards of trustees of such villages, and the common council of such cities, respectively and severally, shall have power to negotiate and arrange the terms and conditions upon which such aid shall be granted; to enter into all proper contracts with said company in relation to the same, and to adopt such ordinances and regulations pertaining thereto, or to the taxes to be levied under this act, as may be expedient and proper and consistent with law; provided, that before any such aid shall be granted or contracted for by any such county, town, village, or city the question of granting the same shall be submitted to a vote of the electors thereof, respectively, as hereinafter provided. 1662 1663

SECTION 17. Whenever the president and secretary of the said Superior and St. Croix Railroad Company shall certify under their hands and the seal of the said company to the authorities of any such county, town, village, or city that the route of said

railroad has been located through or contiguous to such county, town, village, or city it shall be the duty of the authorities thereof, hereinbefore mentioned, to call a special election to determine the question whether aid shall be granted to said company in the manner prescribed in the preceding section of this act. Such election shall be called, notice thereof shall be given, the form of ballots shall be prescribed, and all regulations relating to the same be determined by the proper authorities hereinbefore mentioned of such counties, towns, villages, and cities, so that the question be fairly submitted to a vote of the electors. In case at any such election the majority of votes shall be against granting such aid, the proper authorities may afterwards, in their discretion, call another election upon the same subject, and the same shall be conducted in a like manner.

SECTION 18. If at any election authorized by this act any such county, town, village, or city shall vote in favor of granting such aid by a majority of the votes cast at such election, then the authorities thereof shall have and exercise, in their discretion, the powers conferred upon them by the preceding sections of this act, and all contracts made by them by virtue thereof shall be valid and enforceable according to the true intent and meaning thereof.

SECTION 19. The several counties, towns, villages, and cities which shall subscribe for the stock of said company, as authorized by this act, are hereby authorized severally to own, control, and dispose of the same in the same manner as an individual might do, and to vote upon the same by agent duly authorized, at an election held by the stockholders of the said company.

SECTION 20. All property which the company hereby created is authorized to appropriate, take, possess, hold, or use, by making payment therefor, is hereby declared to be for public use as soon as the company shall so appropriate, take, possess, hold, or use the same.

SECTION 21. It is hereby declared that in the judgment of the legislature of this State, the object of the corporation hereby created can not be attained under the general laws.

SECTION 22. This act is hereby declared to be a public act, and the same, immediately after the passage thereof, shall be printed by the State printer, and be in full force and effect from and after its passage.

Approved March 15, 1870.

CHAPTER 2. 1668

AN ACT to amend chapter 326 of the private and local laws of 1870, entitled "An act to incorporate the Superior and St. Croix Railroad Company."

The people of the State of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. Section one of chapter 326 of the private and local laws of 1870 is hereby amended so as to read as follows: "F. W. Gates, R. G. Coburn, E. W. Anderson, jr., Hiram Hayes, S. H. Clough, Hiram Robbins, D. W. Maxon, John J. Tallmadge, H. L. Palmer, S. B. Dresser, O. S. Powell, James Edwards, and Peter E. Bradshaw, and such other persons as may be associated with them, who shall become stockholders in the association or corporation hereby created in accordance with the provisions of this act, shall be and they are hereby created a body corporate and politic by the name and style of the Superior and St. Croix Railroad Company, and by that name shall have perpetual succession, be competent to contract and be contracted with, sue and be sued, implead and be impleaded, answer and be answered, defend and be defended, in any court whatever. The said corporation may make, have, and use a common seal, which it may alter or renew at pleasure; it shall be capable of acquiring by deed, lease, or other conveyance a fee simple or any less estate in lands, tenements, or easements in the same, and of conveying any such estate or interest by deed, lease, or other conveyance, and of holding such estate or interest, or any other estate necessary to the use of the said railroad, either real, personal, or mixed, and shall have and enjoy all the privileges, franchises, and immunities incident to a corporation, and may do and perform it shall lawfully appertain to do and perform for the well being of said corporation."

SECTION 2. Section eleven of said chapter is hereby amended so as to read as follows: The persons named in the first section shall be the first directors, and, unless sooner superseded by an election of directors at the first annual meeting of the company, shall hold their offices until the first Wednesday of May, A. D. 1871, and until others are chosen in their places; and in case of vacancy in the directors, by reason of the death or resignation of any director, or of his ceasing to be a stockholder, it may be filled by the remaining directors until the next annual election, or until some other person shall be elected to fill the same. The directors herein named may appoint three persons, who shall be stockholders, to be inspectors at the first election, after which the stockholders shall choose three such inspectors at the annual election. If no inspectors are chosen, the directors may appoint

three from time to time. If at any time an election of directors shall not take place on the day appointed by this act, the corporation shall not for that cause be dissolved, but an election may be held on another day, in such manner as shall be prescribed by the directors or provided for by the by-laws.

SECTION 3. This act shall take effect and be in force from and after its passage.

Approved January 20, 1871.

CHAPTER 328.

AN ACT to amend section 2, chapter 326, of the private and local laws of 1870, approved March 15, 1870, entitled "An act to incorporate the Superior and St. Croix Railroad Company."

The people of the State of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. Section two of said act is hereby amended so as to read as follows: Section 2. The company by this act created are hereby authorized and empowered to survey, locate, and from time to time alter, change, and relocate (so as not materially to change the route), and to construct and complete, perpetually to have, use, and enjoy, maintain and operate the said railroad, with one or more tracks or lines, over and along the following routes, that is to say: Beginning at some convenient point on the west shore of the Bay of Superior, or on the south shore of the Bay of St. Louis, in the county of Douglas, running thence southerly by a route as direct as may be practicable through the counties of Douglas, Burnett, Polk, St. Croix, and Pierce, via St. Croix Falls and Hudson, to Prescott, with a branch or extension running westerly from the above-designated place of beginning, in Douglas County, to such point on the Minnesota boundary, north of the Nemadji River, as may be deemed desirable by the directors of said railroad company: Provided, said company shall have the right to construct its line of road along the westerly shore of the Bay of Superior, from the extreme end of Connors Point to the southerly end of said bay, or such point thereof as may be deemed advisable by the directors of said railroad company, and shall have the authority to construct and maintain a bridge across the St. Louis River at any point at or above Connors Point, in said county of Douglas, whenever the same shall be assented to by resolution by the board of supervisors of the town of Superior.

SECTION 2. This act shall be in force after its passage and publication.

Approved March 16, 1871.

(Published April 19, 1895. No. 400 S.)

CHAPTER 244. 1676

AN ACT to amend chapter 326 of the private and local laws of 1870, entitled "An act to incorporate the Superior and St. Croix Railroad Company," and chapter 328 of the private and local laws of 1871, entitled "An act to amend section 2, chapter 326, of the private and local laws of 1870, approved March 15, 1870, entitled 'An act to incorporate the Superior and St. Croix Railroad Company.'"

The people of the State of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. Section 2 of chapter 326 of the private and local laws of 1870, entitled "An act to incorporate the Superior and St. Croix Railroad Company," as amended by chapter 328 of the private and local laws of 1871, entitled "An act to amend section 2, chapter 326, of the private and local laws of 1870," 1677
approved March 15, 1870, entitled "An act to incorporate the Superior and St. Croix Railroad Company," is hereby amended so as to read as follows: Section 2. The said company is hereby authorized and empowered to survey, locate, and construct, and to acquire, by purchase or otherwise, and to equip, maintain, operate, and perpetually to have, use, and enjoy a railroad or railroads, with one or more tracks, from a point or points on the Bay of Superior, at the west end of Lake Superior, in Douglas County, Wisconsin, to be selected by the board of directors, upon such route or routes as such board shall adopt, to such point or points on the Minnesota State line as such board shall select, and thence westward upon such route or routes as such board shall 1678
adopt, to such point or points on the Pacific coast as such board shall select; and from said point or points in Douglas County easterly, upon such route or routes as such board shall adopt, to or near Ashland, in the county of Ashland, in the State of Wisconsin, and thence by such route or routes and to such point or points in the State of Michigan, as such board shall select; also from said point or points in Douglas County, upon such route or routes as such board shall adopt, through the counties of Douglas, Burnett, Polk, St. Croix, and Pierce, or any of them, to Prescott on the Mississippi River, with a branch from some point in one of said counties, to be selected by the board of directors, to St. Paul and Minneapolis, Minnesota, or to either 1679
of said places; also from said point or points in said Douglas County, or from some point to be selected by such board on any railroad or railroads which the said company is or hereafter may be authorized to construct or otherwise acquire upon such route or routes as such board shall adopt, through the States of Wisconsin and Illinois to or into the city of Chicago, in the county of Cook, in said last-named State. And the said company is further authorized and empowered to survey, locate, construct,

and to acquire, by purchase or otherwise, and to equip, maintain, and operate, and perpetually to have, use, possess, and enjoy branch lines of railroad from its main line or lines in and into or through any State or Territory of the United States, or extending into or lying within the Dominion of Canada, or any portion or province thereof, from and to such points as shall be determined by such board of directors.

SECTION 2. Section 3 of said chapter 326 is hereby amended so as to read as follows: Section 3. The said company shall have the perpetual right, power, and authority to transport, take, and carry property and persons upon such railroad or railroads, by steam or other motive power, and to receive and store any property in any of its depots or other buildings, including elevators, and to make, construct, maintain, acquire, and use all such switches, turn-outs, side tracks, spur and other tracks as it shall deem necessary; also to construct, erect, acquire, and maintain all such depots, station houses, warehouses, car houses, shops, engine houses, elevators, and other buildings, fixtures, structures, and things necessary or convenient for use by said company in the operation of its railroads and in the transaction of its business as a carrier of freight and passengers. And said company shall have power to connect its railroad or railroads with any other railroad or railroads, and to operate the same under lease or otherwise, or to run in connection with any such railroad or railroads, in such manner as may be agreed upon between the board of directors of said company and the board of directors of the company or companies owning or operating any such connecting railroad or railroads. And any railroad company, person, association, or corporation having a railroad or railroads, constructed or partly constructed, running in the direction of the line or lines of railroad which the said company is by this act or may hereafter be authorized to construct, acquire, and operate, which said company shall agree to use or connect with, is hereby authorized to make to said company (created by said chapter 326) a lease, sale, or trackage arrangement, perpetual or for a time limited, of the whole or any part of said railroad or railroads so constructed or partly constructed, together with the rolling stock, machinery, buildings, tenements, or fixtures, and all property, real, personal, or mixed, of the said railroad company, person, association, or corporation, together with its or their franchises, rights, privileges, and immunities, and in consideration of such lease, use, or sale to take or receive such rent, commutation of rental, payment, or other consideration as may be agreed upon.

SECTION 3. Section 4 of said chapter 326 is hereby amended so as to read as follows: Section 4. Said company shall have the right, authority, and power, and it is hereby authorized and empowered, subject to the provisions of section 1836 of the

Revised Statutes, to construct, maintain, and operate its railroad 1684
or railroads across, along, or upon any stream of water, water course, street, highway, plank road, turnpike, or canal which its route or routes shall intersect or touch; to carry any highway, street, turnpike, or plank road which it shall touch, intersect, or cross over or under its tracks, as may be most expedient for the public good; to change the course and direction of any highway, street, turnpike, or plank road, when made necessary or desirable to secure more easy ascent or descent by reason of any embankment or cut made in the construction of its railroad or railroads, and to take land necessary therefor, provided such highway or road be not so changed from its original course more than six rods, nor its distance thereby lengthened more than five 1685
rods; and the said company shall also have power, and it is hereby empowered, to cross, intersect, join, and unite its railroad or railroads with any railroad now or hereafter constructed, at any point on its route, and upon the grounds of such railroad corporation, with the necessary turn-outs, sidings, and switches and other conveniences in furtherance of the objects of its connection. And the said company shall also have power, and it is hereby empowered, to erect, purchase, and maintain all necessary bridges for the use of its railroad or railroads, main and branch, over any stream of water or water course at such point or points of crossing the same as said railroad or railroads may be located or constructed, together with all necessary abutments, piers, 1686
arches, foundations, and other structures.

SECTION 4. Section 5 of said chapter 326 is hereby amended so as to read as follows: Section 5. It shall be lawful for the said company, and it is hereby authorized and empowered by its officers, engineers, servants, and workmen, to enter upon any land or lands for the purpose of exploring, surveying, locating, and establishing the route or routes of said railroad or railroads; and when the said route or routes or any portion thereof shall be determined by resolution adopted by its board of directors, it shall be lawful for said company, and it is expressly authorized and empowered, to purchase and hold such land or lands for right of way, side tracks, spur tracks, water tanks, construction 1687
of roadbed and maintenance of same, station houses, warehouses elevators, engine houses, shops, and for such other purposes as may be necessary, usual, or convenient for the operation of said railroad or railroads or in connection therewith; and whenever said company can not agree with the owners and other parties interested in any such land upon the price to be paid therefor, or for the occupation thereof, or for any interest therein, it shall have the right, and it is hereby expressly authorized and empowered, to acquire the same by condemnation proceedings, to

the extent and in the manner provided by sections 1845 to 1856, inclusive, of the Revised Statutes of 1878.

SECTION 5. Section 6 of said chapter 326 is hereby amended so as to read as follows: Section 6. Upon the completion or acquisition of said railroad or railroads, or any part thereof, it shall be lawful for said company, and it is hereby authorized and empowered, to demand, collect, and receive such sum or sums of money for the transportation of persons and property, and for the storage of property, as shall be reasonable.

SECTION 6. Section 7 of said chapter 326 is hereby amended so as to read as follows: Section 7. Said company shall also have full power, and it is hereby expressly authorized, to carry and transport persons and property in boats, steamships, vessels, barges, and other water craft upon any of the navigable waters which its railroad or railroads shall run to, over, or connect with, and to demand, receive, and collect such compensation for the same as it shall from time to time deem reasonable, and for that purpose the said company is authorized and empowered to build, lease, purchase, own, and use, either directly or through a corporation or corporations organized by it or otherwise for the purpose, and whose stock in whole or in part it shall own, such boats, steamships, vessels, barges, and other water craft as in its judgment may be necessary or convenient for its use.

SECTION 7. Section 8 of said chapter 326 is hereby amended so as to read as follows: Section 8. The said company shall be capable in law of taking, holding, and selling any lands granted to it, or to any company whose property it shall acquire, by purchase or otherwise, by the Government of the United States, or by this State, or by any State or Territory through or in which it shall acquire in any manner, and operate, any railroad or railroads, wherever the said lands may be situated, or by grant by persons, companies, corporations, or associations, within or without this State, to aid in the construction or operation of any railroad or railroads by it constructed or otherwise acquired, or authorized to be by it constructed or acquired; and the said company may also pledge, hypothecate, mortgage, or otherwise dispose of all of its right, title, and interest in and to said lands, or any part thereof, and in and to any other estate, real, personal, or mixed, of which it, the said company, may be seized at the time of the execution of any mortgage or deed of trust, or of which it may become seized subsequent to the execution and delivery of any such instrument or instruments, including its franchise to be a corporation and to own, maintain, and operate such railroad or railroads; and the said company may sell or lease any of its branch roads, however acquired, whenever it shall be declared by resolution of the board of directors, subject to the approval of the holders of record of

a majority of the outstanding capital stock, that the interests of 1692
the company and its stockholders will be thereby subserved.

SECTION 8. Section 9 of said chapter 326 is hereby amended so as to read as follows: Section 9. All of the affairs of said company shall be managed by a board of directors, who shall be stockholders, and who are hereby invested with all the powers of the corporation, save as hereinafter provided. They shall be chosen annually by ballot by the stockholders at the annual meeting of the company, which shall be held on such notice and at such time as shall be prescribed by the by-laws, and at such place, within or without the State, as shall be prescribed by the board of directors, and stated in such notice. At all meetings of the stockholders each stockholder shall be entitled to one vote 1693
for each share of stock held by him, under such conditions and regulations as may be prescribed or referred to in the certificates thereof, and may vote the same in person or by proxy duly authorized, and no business shall be transacted at any meeting of the stockholders unless a majority of the stock subscribed and outstanding is represented. In all elections of directors those stockholders having the greatest number of votes shall be deemed and declared duly elected. Elections shall be conducted in such manner as shall be prescribed by the by-laws of the company, and if for any cause an election of directors shall not be had at the time when by the provisions of this act or by the by-laws it should be had, the same may be held at any other 1694
time, on notice to be given as aforesaid, and until such election be had the directors of the preceding year shall continue to act until their successors are duly elected and qualified. The company may at any time increase or diminish the number of directors to be elected at the next annual meeting of the stockholders, and the number to be elected shall be specified in the notice of meeting, but shall never be less than five nor more than seventeen; and the said company may, by a vote of a majority of the stockholders present or represented at any annual meeting, classify its directors into three classes, each of which shall be composed as nearly as may be of one-third of the directors, the term of office of the first class to expire in one year, of the 1695
second in two years, and of the third in three years. At each annual election thereafter a number of directors shall be elected for three years equal to the number whose term of office shall then expire. All vacancies shall be filled in accordance with the by-laws.

SECTION 9. Section 10 of said chapter 326 is hereby amended so as to read as follows: Section 10. A majority of the board of directors shall constitute a quorum for the transaction of any business. They shall meet at such times and be convened in

such manner as the by-laws shall prescribe, and at such places as the board shall decide upon. Whenever all of the members of the board of directors are present at any meeting it shall be competent for them, having signed upon the minutes a waiver of notice of meeting, to transact business as fully to all intents and purposes as if the said meeting had been duly convened pursuant to notice. They shall elect one of their own number to be president and one to be vice-president, and they may elect additional vice-presidents and such other officers of the board, and impose upon them such duties and confer upon them such powers, as the board may by resolution prescribe. The duties of the president and other officers at meetings of the board and stockholders shall be prescribed by the by-laws. The board of directors shall have power to appoint an executive committee and to confer upon and to delegate to said committee the full power of the board of directors when the latter is not in session; and the board may appoint a secretary, treasurer, comptroller, and such other officers and agents as it may deem necessary, and it may remove them at pleasure, prescribe their duties and compensation, and may demand adequate security for the discharge of their respective duties.

SECTION 10. Section 11 of said chapter 326 is hereby amended so as to read as follows: Section 11. The capital stock of said company may be increased from time to time to such an amount as may by its stockholders be deemed necessary for the construction, acquisition, or operation of any of its railroad or railroads, by a vote of the owners of record of at least a majority of all its outstanding stock, in person or by proxy, at any annual meeting, or at any meeting called for that purpose, by a notice in writing to each stockholder, to be served upon him personally, or by depositing the same in the post-office, postage paid, properly directed to him at the post-office nearest his usual place of residence, at least twenty days prior to such meeting. Such notice shall state the time and place of such meeting, its object, and the amount to which it is proposed to increase such capital stock. No vote in favor of such increase shall take effect until the proceedings of such meeting, showing the names of the stockholders voting therefor and the amount of stock owned by each, shall be entered upon the records of said corporation, and the said company may at any such time, by a vote of the holders of record of two-thirds of said outstanding stock, classify its said stock into common and preferred, and it may further classify its said stock by dividing its preferred into different classes, and it may make any or all of said classes of preferred stock cumulative or noncumulative as to dividends thereon, and any or all of said preferred stock may be with or without preference over

any other stock or classes of stock in the event of the liquida- 1700
tion of the company's affairs, either through insolvency or otherwise. And the said company may make such preferred stock convertible into common stock, upon such terms and conditions as may be fixed by the board of directors.

SECTION 11. Section 12 of said chapter 326 is hereby amended so as to read as follows: Section 12. The said company is hereby expressly authorized to borrow from time to time such sums of money, and upon such terms, as the corporation or board of directors shall agree upon or authorize as necessary and expedient; and in its corporate name to execute and deliver its notes, bonds, debentures, or other evidences of indebtedness in such form as shall be from time to time prescribed by the board of 1701
directors, and in such amount as shall be deemed from time to time by said board expedient; and may make the same convertible into its capital stock of any class, upon such terms and conditions as to the board of directors may seem advisable, and it may pledge or hypothecate such notes, bonds, debentures, or other evidences of indebtedness as collateral security for loans made to it by any person or persons, corporation, association, or body politic, and it may sell such notes, bonds, debentures, or other evidences of indebtedness, at such prices and upon such terms as the board of directors shall prescribe; and it may deliver the same in discharge of any liabilities which it may have incurred, or proposes to incur, in the construction, purchase, 1702
or other acquisition of any railroad or railroads or other property which it is or may hereafter be by law authorized to construct, purchase, or acquire, and in the repair, equipment, or operation of its railroad or railroads, main line or branch, or of any part or parts thereof, or of any steamships, steamboats, barges, ferries, or other water craft acquired or owned by it, or which it desires to acquire by construction or purchase; and it may exchange the same for the stocks, bonds, or other evidences of indebtedness of any railroad company whose railroad or railroads it is or may hereafter be authorized to purchase, and it may generally use the same in such manner as shall in the judgment of the board of directors subserve and promote the cor- 1703
porate purposes; and the powers of said company for the purposes aforesaid, and for all purposes necessary for the carrying out of the objects, or any thereof, of said company, are hereby ratified and confirmed; and the said company may, and it is hereby expressly authorized and empowered, in order to secure the payment of any such notes, bonds, debentures, or other evidences of indebtedness, execute and deliver from time to time collateral trust indentures or other security, agreements, or indentures, and it may from time to time execute and deliver trust deeds, or mortgages, or both, as occasion may require, of and upon any of

its railroad or railroads or parts thereof, constructed or thereafter to be constructed or in process of construction, and it may by any such mortgage or trust deed convey and mortgage all or any of its railroad track or tracks, rights of way, depot grounds, rights, privileges, franchises, immunities, exemptions, machine houses, rolling stock, furniture, tools, bridges, elevators, steamboats, steamships, and all appendages and appurtenances, and all other property, real, personal, and mixed, in any manner whatever then belonging to the corporation, or which it may thereafter acquire; and it may include in any such mortgage or trust deed any grant or grants of land, or any parts thereof, owned or held by it, or in which it may be or may become interested; and it may also grant, convey, and transfer by any such mortgage or deed of trust its franchise to be a corporation and its franchise to have, possess, maintain, and operate the railroad or railroads and other property described in any such instrument and covered thereby; and it may also give and grant to individual bondholders the right and power to vote at meetings of stockholders upon all such questions, other than the election of directors, as may come before such meetings; and every such mortgage, deed of trust, collateral trust indenture, or security agreement to be executed by said company shall be in such form and contain such provisions as the corporation or board of directors shall think proper. And in any such mortgage, deed of trust, collateral trust indenture, or security agreement there may be inserted provisions limiting the right of individual holders of the bonds, notes, or evidences of indebtedness secured thereby to sue or recover upon any such bonds, notes, or other evidences of indebtedness, or upon any coupon annexed thereto secured by said instrument, either at law or in equity, except through the trustee or trustees to whom or to which or with whom or with which such instrument is made, and every such provision shall be binding upon the holders of said bonds, notes, or other evidences of indebtedness, and all thereof, and upon any court whose jurisdiction and aid may be invoked in foreclosing the lien or liens created thereby. And every such mortgage or mortgages, deed or deeds of trust or collateral trust indenture, and every discharge of satisfaction thereof, may be recorded in the office of the secretary of state, in a proper book kept for that purpose, and the certificate of such recording, indorsed on such instrument, shall have the same effect as if such instrument were recorded in the several counties in which such railroad or railroads may be located, and such record in the office of the secretary of state shall be sufficient notice to all persons of the existence and lien created by said instrument, and of the property covered by the same.

SECTION. 12. The said company may lease or purchase, and 1708
take a conveyance or assignment of the railroad or railroads, franchises, immunities, and all other properties and appurtenances, and the stocks or bonds, or both thereof, of any other railroad corporation, or any portion thereof, within or without this State, when their respective railroads can be lawfully connected and operated together to constitute a continuous line, or when the railroad or railroads so leased or purchased will constitute branches or feeders of any railroad or railroads maintained and operated by such leasing or purchasing company; and the said company may purchase and hold the stock and bonds, or either thereof, or any railway company to which it has furnished the money for the construction of its railway, or may purchase 1709
for the money so furnished, or for such other consideration as may be agreed upon between the companies by their respective boards of directors, and take a conveyance of the whole or any portion of the franchise of said corporation, and of the railway property and appurtenances thereof.

SECTION 13. And the said company may, and it is hereby expressly authorized and empowered to, purchase or otherwise acquire and hold the stock or bonds, or both thereof, of any corporation (wherever organized) the franchises, functions, or operations of which may or would in any wise be utilized for the convenient or more economical or safe operation of its railroad or railroads, or of any thereof; and the said company may 1710
guarantee the principal or interest, or both thereof, of the bonds, or may endorse the same, or may guarantee the dividends upon the stock, or the rentals or obligations of any lease or traffic contract of any corporation which it may control by virtue of the ownership of its stock or otherwise, and may endorse the notes of any such company, or other evidences of indebtedness of any such company, and may guarantee, by endorsement or otherwise, the bonds or other evidences of indebtedness, and the dividends upon the stock, or the rentals or obligations of any lease or traffic contract of any corporation or corporations whose property the said company may now or hereafter be authorized by law to acquire by purchase or lease of the physical property 1711
thereof, or by purchase of the stock thereof.

SECTION 14. The said company shall, in addition to the special powers conferred upon it by said chapter 326, and by this act, have, possess, and enjoy all of the rights, powers, privileges, and immunities conferred upon railroad corporations by chapter 87 of the Revised Statutes of 1878, and the acts amendatory thereof and supplementary thereto, and shall be subject, save where inconsistent herewith, to the restrictions, duties, and liabilities imposed upon railroad corporations by said chapter, and all amendatory and supplementary acts.

1712 SECTION 15. Sections 13, 14, 15, 16, 17, 18, and 19 of said chapter 326 are hereby repealed.

SECTION 16. All acts and parts of acts inconsistent with or in any manner contravening the provisions of this act are hereby repealed.

SECTION 17. This act shall take effect and be in force from and after its passage and publication.

Approved April 15, 1895.

At a meeting of the stockholders of the Superior and St. Croix Railroad Company, held at the office of John C. Spooner, in the city of Madison, State of Wisconsin, on the 8th day of October, 1895, at 10 o'clock a. m., pursuant to adjournment, all 1713 of the stockholders being present, in person or by proxy, the following resolutions were duly and unanimously adopted, by a stock vote, to wit:

Resolved, That the action of Hiram Hayes, secretary, in applying for and procuring the amendment to the charter of the company made by chapter 244 of the laws of 1895, entitled "An act to amend chapter 326 of the private and local laws of 1870, entitled 'An act to incorporate the Superior and St. Croix Railroad Company,'" and chapter 328 of the private and local laws of 1871, entitled "An act to amend section 2, chapter 326, of the private and local laws of 1870, approved March 15, 1870, entitled 'An act to incorporate the Superior and St. Croix 1714 Railroad Company,'" be, and the same is hereby, ratified and approved.

Resolved further, That this company does hereby accept the said chapter and each and every part thereof.

Resolved, That the president and secretary of the company be, and they are hereby, authorized and instructed to execute, on behalf of the company, and under its corporate seal, and to file with the secretary of state, a certified copy of the foregoing resolution accepting said chapter 244 and the amendments to the charter therein and thereby made.

STATE, COUNTY, AND CITY OF NEW YORK, *ss:*

We, Edward D. Adams, president, and George H. Gardiner, 1715 secretary, of the Superior and St. Croix Railroad Company, a corporation organized and existing under the laws of the State of Wisconsin, do hereby jointly and severally certify that we have compared the foregoing with the originals thereof as they appear upon the records of the company, and that the same are true and correct copies of said originals, and of the whole thereof, and that the same were adopted at a meeting of said company duly held as in the caption hereof stated and set forth.

In witness whereof we have hereunto, pursuant to the

instructions of the stockholders, as aforesaid, set our hands and 1716
caused the common corporate seal of the company to be hereto affixed.

EDWARD D. ADAMS,
President.

[CORPORATE SEAL.] GEORGE H. GARDINER,
Secretary.

[Indorsed.]

STATE OF WISCONSIN, DEPARTMENT OF STATE, *ss:*

Received this 10th day of July, A. D. 1896, and recorded in volume 8 of R. R. Inc. and Res., on page 625.

G. E. VANDERCOOK, 1717
Assistant Secretary of State.

At a meeting of the stockholders of the Superior and St. Croix Railroad Company, duly held at the office of Spooner, Sanborn, Kerr & Spooner, in the city of Madison, State of Wisconsin, on the 1st day of July, A. D. 1896, at 2 o'clock p. m., all of the holders of record of the capital stock of said company being duly represented at said meeting, the following, among other proceedings, were duly had, to wit:

On motion of Mr. Spooner, seconded by Mr. Reed, the following resolution was, by a stock vote, unanimously adopted, every share of the outstanding stock of said company voting 1718
therefor, to wit:

Resolved, That the corporate name of this corporation be, and the same is hereby, changed from the "Superior and St. Croix Railroad Company" to "Northern Pacific Railway Company," which latter name is hereby adopted as the corporate name of this corporation.

STATE, COUNTY, AND CITY OF NEW YORK, *ss:*

I, George H. Gardiner, secretary of the Superior and St. Croix Railroad Company, and the custodian of its books, records, and common corporate seal, do hereby certify that I have compared the above and foregoing with the original resolution, and 1719
with the record of its adoption above set forth, and that the same is a true and correct copy of the said resolution, and of the whole thereof, and of the record of the adoption thereof, at a meeting of the stockholders of said company duly held as in the caption hereof set forth.

In witness whereof, I have, pursuant to the order of the stockholders in this behalf duly made, hereunto set my hand and affixed the said corporate seal this 8th day of July, A. D. 1896.

[CORPORATE SEAL.] GEORGE H. GARDINER,
Secretary Superior and St. Croix Railroad Company.

1720 [Indorsed.]

STATE OF WISCONSIN, DEPARTMENT OF STATE, *ss:*

Received this 10th day of July, A. D. 1896, and recorded in Vol. 8 of R. R. Inc. & Res., on page 624.

G. E. VANDERCOOK,
Assistant Secretary of State.

The following is a copy of laws constituting charter of Great 1721
Northern Railway Company, offered in evidence by complainant:

COMPLAINANT'S EXHIBIT A.

LAWS CONSTITUTING CHARTER OF GREAT NORTHERN RAILWAY COMPANY.

CHAPTER CLX.

Laws of 1856.

AN ACT to incorporate the Minneapolis and Saint Cloud Railroad 1722
Company.

Be it enacted by the legislative assembly of the Territory of Minnesota:

SECTION 1. John H. Stevens, William Hanson, Franklin Steele, Alfred E. Ames, R. P. Russell, J. P. Wilson, J. L. Crocker, George F. Brott, J. M. Winslow, A. M. Fridley, John Banfil, and all such other persons as shall hereafter become stockholders in the company hereby incorporated, shall be and are hereby made a body politic and corporate, by the name and 1723
style of the "Minneapolis and Saint Cloud Railroad Company," and by and under that name and style shall be capable of suing and being sued, impleading and being impleaded, defending and being defended against in law and equity, in any and all courts and places whatsoever as fully as natural persons; and the said corporation may make and use a common seal and alter and renew the same at pleasure, and by their corporate name and style shall be capable of contracting and being contracted with, 1724
and by acquiring by purchase, gift, grant, devise, or otherwise, and of holding and conveying all such estate and property, real and personal, as may be necessary or convenient to carry into effect the object and purposes of this act and of the said corporation.

SEC. 2. The said corporation is hereby authorized and empowered, and it is hereby declared to be the objects and purposes

thereof, to survey, locate, construct, complete, maintain, use, and operate, and at their pleasure alter the line thereof, a railroad with one or more tracks or lines of rails, from a point to be selected by this company, in Minneapolis, in the county of Hennepin, in the Territory of Minnesota, by the most feasible and practicable route to Saint Cloud, in the county of Stearns, on the Mississippi River, and also a main line of road by way of Mille Lac to a point at or near the mouth of the Saint Louis River, together with all necessary and proper stations, depots, turn-outs, engines, cars, and other appurtenances and furniture of a railroad.

SEC. 3. The capital stock of the corporation hereby created shall be two millions of dollars, and shall be divided into shares of one hundred dollars each, which shall be deemed personal property, and shall be transferable in such manner as the corporation by its regulations or by-laws shall prescribe, but no share of said stock shall be transferred while there shall be any installments assessed thereon unpaid; and the directors of said corporation may, with the consent of the holders of a majority of the stock thereof, increase the capital stock thereof to such sum as may be necessary or convenient to carry into effect all the rights and privileges hereby granted thereto, not exceeding thirty millions of dollars. The shares of any increase of stock shall be the same and transferable in the same manner as the shares of the original stock.

SEC. 4. The said company is hereby authorized to borrow money to be expended in the construction and equipment of their said road and its appendages, and to issue bonds for the payment thereof in the usual form; such bonds not to exceed in the aggregate at the period of the completion of said road three-fourths of the whole amount actually expended on said road and its appendages aforesaid; and may make and execute in the corporate name of said company all necessary mortgages, writings, notes, bonds, or other papers, for any liability that it may incur in the construction or equipment of said road.

SEC. 5. The said company is hereby authorized and empowered to construct their said railroad and its branches in sections as fast as they may obtain the means for so doing; and the franchise of the portions so completed and put in operation shall

vest in said company the same as though the whole was com- 1729
pleted.

SEC. 6. Said company is hereby authorized and empowered to connect its road by branches with the road of any railroad company or companies in the Territory or future State of Minnesota that are now chartered or may hereafter be chartered, or to become part owner or lessee of any railroad in said Territory; and any railroad company in said Territory of Minnesota duly organized or which may hereafter be organized under the laws of said Territory or future State of Minnesota may connect its road with the road of said company, and may in like manner, 1730
with the consent of said company, become part owner or lessee of the road of said company, or of any of its branches, or any portion thereof, situated in this Territory; and the said company are hereby authorized and empowered to run a branch of said road from Minneapolis, by way of West St. Paul to some point to be selected by said company on the Iowa State line.

SEC. 7. The said corporation shall have the right of way upon and may appropriate to its own use and control, for the purpose of the said railroad and its appurtenances, land not exceeding two hundred feet in width throughout its entire length, and 1731
may, by its engineers, agents, and contractors, enter upon and take possession of and use all and singular any lands, streams, timber, and materials of any and every kind, for the purpose of making the survey and location of said railroad, and of all stations, depots, turn-outs, and other things necessary, proper, or convenient for the same, and the full use and protection thereof, and of all its appendages and appurtenances.

SEC. 8. The said corporation may take and hold for the said purposes, or any of them, such additional lands as may be requisite or convenient therefor, but unless such lands taken 1732
by said corporation for any of said purposes shall be purchased of or voluntarily given by the owner or owners thereof, full and proper compensation therefor shall be made by said corporation to the owner or owners thereof, which compensation shall be ascertained and determined in the manner following:

The said party or parties interested may present to a court, in the county in which the lands or real estate proposed to be taken shall be situate, having jurisdiction competent to entertain,

adjudicate, and determine questions of title to real estate, a petition signed by him or them, describing with reasonable certainty and accuracy by map, plat, survey, or otherwise the lands or real estate so proposed or required to be taken and setting forth the name of each and every owner, incumbrancer, and other persons interested in the same, or any part thereof, so far as the same can be ascertained by the legal records affecting the same and by view of the premises or other inquiry touching the occupation thereof, and praying the appointing of three competent disinterested persons, who shall be freeholders in said county, as commissioners to ascertain and determine the compensation to be made to the said owner or owners, respectively, and to all tenants, incumbrancers, and others interested for the taking or injuriously affecting such land or real estate. A copy of such petition, with a notice of the time and place, when and where the same will be presented to the court, shall be served on each and every person named therein as owner, incumbrancer, tenant, or otherwise interested therein, at least ten days previous to the time designated in such notice for the presentation of such petition. Such service shall be made by delivering such copy of petition and notice to each of the persons so named therein, if a resident of this Territory, or, in case of the absence of such person, by leaving such copy of petition and notice at his or her usual place of abode, with some person of sufficient age and understanding to comprehend the object thereof, which shall be communicated to such person with a request to deliver the same to the individual for whom it is thus left at the earliest opportunity. In case there shall be any persons named in such petition who are not residents of this Territory and upon whom service can not be made in the manner above prescribed, a notice stating briefly the objects of the petition, a description of the lands proposed to be taken, and the time and place of the presenting the petition to the court, and directed to such person or persons, shall be published in the newspaper published nearest the location of such lands, and in a newspaper published at the seat of government of the Territory or State in which the said lands shall be situate, once in each week for six consecutive weeks previous to the time designated for presenting such petition. The court to

whom such petition shall be presented shall not make any order 1737
for the appointment of commissioners to ascertain and determine the compensation to be paid to any owner or person who shall not appear in person or by attorney or counsel, except upon proof by affidavit and to the satisfaction of the court of the service of the petition and notice in the manner hereinbefore prescribed, but may do so upon the appearance of the party or parties, or upon such proof of service in the absence of a party or parties. The court may, upon the application of the said corporation or of any owner or party interested, for reasonable causes adjourn the proceedings from time to time, and may 1738
order new or further notice to be given to any party whose interest may be affected thereby. When the court shall have proof satisfactory that all parties interested in any parcel of land have been duly served with the petition and notice in the manner herein prescribed, and of the nature and extent of the interest or estate of each and every party in the same, the court may make an order, to be recorded in the minutes thereof, appointing three disinterested competent persons commissioners to ascertain and determine the amount to be paid by the said corporation to each of such persons as compensation for his in- 1739
terest or estate in such parcel or parcels of land, and specifying the time and place of the first meeting of such commissioners. Said corporation shall without delay procure and deliver to each of such commissioners a copy of such order. Before the said commissioners shall enter upon the discharge of their duties they shall respectively take and subscribe an oath that they will faithfully and impartially, and without fear, favor, reward, or the hope or promise of reward, discharge their duties as commissioners to ascertain and determine the compensation to be paid by the Minneapolis and Saint Cloud Railroad Company 1740
(here insert the name of the person whose property is to be appraised) for lands or interest in lands to be taken for the use of said company. Such oath may be taken before any officer authorized by law to administer oaths. Whenever the place of any commissioner shall become vacant, the court may, upon such notice to the parties as he may prescribe, and by like order, supply the place by the appointment of another person as such commissioner, who shall be in like manner served with

a copy of the order appointing him, and take the like oath. The commissioners shall meet at the time and place specified in the order appointing them, and in the order supplying any vacancy in such commission. When met and all present [they] may proceed to the hearing of the proofs and allegations of the parties present or reasonably notified by the company to be present and authorized to administer oaths to witnesses before them; and before making any report they shall, if requested by the party interested, or by either of their number, view the premises for which compensation is to be made, and the amount of which they are to determine. The commissioners may, as the exigency of any case, or the convenience of the parties or themselves may require, adjourn from time to time and to such places as may, in their judgment, be most conductive to the purposes of their investigations. No proceedings shall be had by the said commissioners unless all of them be present, except to adjourn, but any and every question submitted to them may be decided by a majority, and shall be valid. The said commissioners shall keep minutes in writing of all their proceedings, in which they shall enter the time and place of their meetings and adjournments, the names of parties appearing before them in person or by attorney, the substance of the testimony of witnesses sworn and examined before them, and all disputed questions which shall be submitted to them, and their decisions thereon. They shall make and sign a report which shall contain a description by metes and bounds survey, map, or plat of each separate parcel of land proposed to be taken by the said company for its use, and the compensation for which they shall ascertain and determine, and the amount (if anything) to be paid by said company to each person whose interests are to be affected thereby. They shall, as soon as their report shall be made, attach thereto their minutes and oaths of office and file the same in the office of the clerk of the court appointing the said commissioners, and notify the parties interested in such report that the same is made and filed. In case the said company or any person interested in such report shall deem the same unjust in any manner affecting the amount of the compensation to be paid, the company or such party may appeal therefrom at any time within twenty days

after the service of notice of filing of said report. The party 1745
appealing shall file a notice of such appeal with the clerk of the
court with whom the report shall have been filed, stating the
grounds of the appeal, and serve a copy thereof on the opposite
party, within the time above prescribed for taking appeal, and
by giving a bond in such penalty as the judges of the same court
shall prescribe, conditioned to prosecute the appeal without un-
necessary delay, to abide the order the court may make on such
appeal, and pay the costs of appeal if he shall fail to sustain
the grounds of error or injustice prescribed in his notice of
appeal. Upon the filing of the notice and bond for appeal 1746
with proof by affidavit of the service of such appeal, as above
prescribed, all further proceedings on the report shall be
stayed until the further order of the court, and the cause upon
such appeal shall be entered, proceeded in, and determined
in the same manner as cases on appeal from courts of justices
of the peace; and in case the appeal shall involve the deter-
mination of any question of fact, the same shall be tried by
jury, unless the jury shall be waived by both parties. The
report of the commissioners shall be final and conclusive,
unless appealed from in the manner above prescribed. 1747
Whenever the company shall take an appeal from any report
of commissioners, such appeal shall not stay the work on the
road or other structure on the premises or lands involved in the
appeal, provided the company shall deposit in court the amount
awarded or assessed by the report, or part or portion of the
report, appeal from, to abide the order to be made by the court
on the appeal. An appeal from any report, or part or portion
of a report, of commissioners by or on the part of any person
interested in any parcel of land or real estate proposed to be
taken by the company shall stay all work on the road or other 1748
structure on the premises in question, unless the company shall
deposit in court the amount of money claimed by such appellant
before the commissioners, to abide the order of the court on the
said appeal. Whenever any report or part of report of commis-
sioners shall have become final, and whenever any appeal from
such a report shall have finally determined, the said corporation
shall, upon the payment to each party interested the sum thereby
determined to be due to him or her as a compensation for prop-
erty taken, or deposit the same in the court for his or her use,

become invested and seized of the title to the lands or real estate for which such payment or deposit shall have been made, and entitled to the full, free, and perfect use and occupation of the same for the purposes aforesaid, which are, for all the objects of this act, hereby declared to be public purposes. The said commissioners shall be entitled to receive three dollars per day for their services; and their compensation, and all the fees of officers previous to and including the filing of the report of the commissioners, shall be paid by the said company. In case the title thus acquired to any lands by the said company for their use in the manner hereinbefore mentioned or otherwise shall prove defective, they are hereby authorized to take the proceedings prescribed in this section to procure the title from the real owner.

SEC. 9. If the incorporators named in this act determine to accept this charter, they shall appoint three or more of their number, and such other person or persons as they may deem proper, as agents or commissioners to receive the subscriptions to the stock of this corporation and direct the times and places when and where the books for receiving such subscription will be opened; and such books may be opened by different agents or commissioners at different places at the same time. Every person who shall subscribe for any stock of this corporation shall, at the time of subscribing, pay to the agent or commissioners two per cent on the amount of stock so subscribed.

SEC. 10. Whenever a hundred thousand dollars shall have been subscribed to the stock of this corporation, and two per cent thereon paid as aforesaid, the stockholders shall meet in person or by proxy, at such time and place as the holders of a majority of the stock shall prescribe, and proceed to elect twelve directors from among the stockholders, each share of stock being entitled to one vote by the holder thereof, which shall be cast in person or by proxy. The directors shall elect one of their number to be president of the board of directors, and he shall preside at all the meetings thereof at which he shall be present. The directors shall also elect one of their number a vice-president, who shall preside in the absence of the president. The directors shall also elect some suitable and competent person to be secretary. They shall also elect a treasurer, who shall give such security for the safe-keeping and

payment of the moneys of the company as the directors shall 1753
require. At a meeting of the directors, seven shall form a quorum for the transaction of business; and all the affairs and business of the said company shall be conducted by or under the directions of the board of directors, and they are authorized for the purposes specified in this act to make and establish regulations and by-laws, and to do all things necessary to be done, and not inconsistent with the Constitution and laws of the United States, or by the laws of this Territory, or this act.

The directors first elected shall by lot divide into three classes. The first class shall hold their offices one year, and 1754
until their successors shall be elected and enter upon their duties; the second class shall hold their offices two years, until their successors be elected and enter upon their duties; and the third class shall hold their offices three years and until their successors are elected and enter upon their duties; and thereafter there shall annually be elected, in the manner hereinbefore specified, four directors of the said corporation, who shall hold their offices three years and until their successors shall be elected and enter upon their duties. Vacancies which may from any cause occur in said board of directors may be filled 1755
by appointment by the majority of the directors in office; and such appointment shall continue until the next annual election of directors, when all vacancies shall be filled by election. The annual election shall be held at the office of the secretary of said company, and the secretary and two disinterested persons, to be appointed by the board of directors, shall be the inspectors of elections, and shall canvass the votes, and make and sign a certificate of the result, and the secretary shall immediately notify the persons elected of their election.

SEC. 11. The board of directors may, at such times as they 1756
may deem necessary or proper, assess upon the stock subscribed an installment of not less than five or more than twenty per cent, and require payment of such installment within a reasonable time, not less than thirty days from notice thereof, under the penalty of a forfeiture of the stock upon which the assessment was made.

SEC. 12. The said corporation shall locate at least thirty miles of said road between Minneapolis and Saint Cloud (by way of Manhattan) and commence work thereon within two

years from the time this act shall take effect, and shall complete and equip at least one track from Minneapolis and Saint Cloud, with suitable and safe switches and turn-outs, within seven years from the same time; and the said corporation are hereby authorized and empowered to connect with any railroad running in the same direction with this road, and where there may be any portion of another road which may be used by this company. This company shall not be bound to build such portions of road so long as they may use the portions of any other road which may answer the same purpose.

SEC. 13. For the purpose of constructing and using said railroad the said corporation is authorized to construct their said railroad and the necessary bridges across and over public highways and navigable streams: *Provided*, That it be so done as not to obstruct the highways, or to materially obstruct or impede the navigation of any navigible stream. And the said corporation is hereby authorized to contract with any other railroad company or corporation with whose road their road may come in contact for the crossing or connection of such roads and for the joint use thereof.

SEC. 14. If any person shall wilfully obstruct, or in any way injure, spoil, or destroy the railroad, or any part of the railroad, or anything affixed or appurtenant thereto and necessary or convenient for its free and safe use, or any of the materials for the construction thereof, or any building, fixture, or other structure, or carriage, engine, or car, erected or kept for the use thereof, such person shall be deemed guilty of a misdemeanor, and liable to be indicted and punished therefor in the Territorial prison, for not more than ten years and for not less than five years, and shall also be liable to pay the company twice the amount of the damage occasioned thereby. And in case the death of any person shall be produced by or in consequence of any wilful or malicious obstruction or injury to the said railroad, or to any engine or car thereon, the person who shall so obstruct or injure the said railroad, or car or engine thereon, shall be deemed guilty of murder in the second degree.

SEC. 15. Every conductor, baggage master, or other agent or servant of the said company, and who shall be engaged in the ticket office or on the cars on said railroad, shall wear upon his

hat or cap a plain badge which shall indicate his office or station; 1761
and no conductor or collector shall demand or be entitled to receive any fare or toll from any freighter or passenger, or exercise any control or direction in his station, or be authorized or allowed to interfere with any passenger, baggage, or freight without wearing such badge.

SEC. 16. Every locomotive engine on said railroad shall be furnished with a good and sufficient alarm bell or whistle, and be fully sounded at least eighty rods distant from every highway crossing, while the engine, either with or without a train of cars, shall be passing over said road; and for every violation 1762
of this section the said company shall forfeit and pay to whomsoever shall prosecute for the same the sum of one hundred dollars.

SEC. 17. This act is hereby declared to be a public act, and may be amended by any subsequent legislative assembly in any manner not destroying or impairing the vested rights of said corporation.

SEC. 18. This act shall take effect immediately after its passage.

CHARLES GARDNER, 1763
Speaker of the House of Representatives.
JOHN B. BRISBIN,
President of the Council.

Approved March 1, 1856.

CHAPTER V.

Laws of 1864.

AN ACT to amend an act entitled "An act to incorporate the Minneapolis and St. Cloud Railroad Company," passed March 1, 1856.

Be it enacted by the legislature of the State of Minnesota:

SECTION 1. That the first section of said act, to wit, an act 1764
to incorporate the Minneapolis and St. Cloud Railroad Company, be, and the same is hereby, amended so as to read as follows:

That E. M. Toby, Francis Morrison, B. B. Meeker, H. C. Burbank, J. P. Wilson, O. S. Freeman, H. C. Waite, R. C. Corbett, Charles A. Gilman, R. M. Richardson, J. J. Porter,

and Henry Hill, their assigns or survivors, and all such persons as shall hereafter become stockholders in the company hereby incorporated, shall be and are hereby made a body corporate, by the name and style of the Minneapolis and St. Cloud Railroad Company, and by and under that name and style shall be capable of suing and being sued, impleading and being impleaded, defending and being defended, in any and all courts of law and equity as fully as natural persons; and the said corporation may make and use a common seal, alter and renew the same at pleasure, and by their corporate name and style shall be capable of contracting and being contracted with, and of acquiring by purchase, gift, grant, or otherwise, and of holding and conveying, all such estate and property, real or personal, as may be necessary or convenient to carry into effect the object and purposes of this act and of the said corporation.

SEC. 2. That the second section of said act to which this is an amendment shall be and read as follows: The said corporation is hereby authorized and empowered to survey, locate, construct, complete, maintain, use, and operate a railroad from Minneapolis to St. Cloud, and from St. Cloud to the navigable waters of Lake Superior, with all necessary and proper stations, depots, turnouts, engines, cars, and other appurtenances and furniture of a railroad. The said corporation are also authorized and empowered to survey, locate, build, and operate a branch railroad from St. Cloud to some point on the Minnesota River between township ranges twenty-five and thirty-one, west of the fifth principal meridian, with like privileges for stations, depots, turnouts, engines, cars, and the usual furniture of a first-class railroad.

SEC. 3. That section twelve of said act to which this is an amendment be repealed, and in the place thereof it is enacted: That said E. M. Toby, Francis Morrison, B. B. Meeker, H. C. Burbank, J. P. Wilson, O. S. Freeman, H. C. Waite, R. C. Corbett, Charles A. Gilman, R. M. Richardson, J. J. Porter, and Henry Hill, their assigns, survivors, and each of them, be, and are hereby, declared directors of said company or corporation for the term of one year from the passage of this act, and until one hundred thousand dollars stock is subscribed and taken, when the stockholders shall choose a new directory, who shall organize in the manner and for the purpose set forth in the tenth section

of the act herein amended. And the said directors first above 1769
named shall choose a president, vice-president, secretary, treasurer, whose powers, duties, and manner of proceeding shall be in conformity to said tenth section of said amended act, till they are superseded by the directors to be chosen by the stockholders, as required by this section: *Provided*, That they accept this charter as amended by organizing for the purpose of executing and carrying the same into effect within six months from the passage of this act.

SEC. 4. *And be it further enacted*, That the said "act to incorporate the Minneapolis and St. Cloud Railroad Company" is 1770
hereby declared to be in full force and effect except so far as the same is repealed or modified by this act.

Approved February 23, 1864.

CHAPTER III.

Laws of 1865.

AN ACT granting swamp lands to aid the Minneapolis and St. Cloud Railroad Company in building branches to connect with the Lake Superior and Mississippi Railroad and the Winona and St. Peter Railroad, or any other railroad in southern Minnesota.

Be it enacted by the legislature of the State of Minnesota: 1771

SECTION 1. That there be, and are hereby, granted to the Minneapolis and St. Cloud Railroad Company, incoporated by and organized under an act of the legislature of the late Territory of Minnesota, approved March 1, 1856, to aid said company in the construction of a branch railroad from St. Cloud to connect with the Lake Superior and Mississippi Railroad (or any other road connecting with the waters of Lake Superior) at some point between Chengwatana and the head of Lake Superior, to be determined by said company, all the swamp lands belonging to or that may hereafter belong to the State of Minnesota, which 1772
have not been otherwise appropriated in the sections designated by odd numbers and lying within the several counties through or into which said branch road may run, not exceeding four sections per mile of said branch road, upon the terms and conditions hereinafter specified.

SEC. 2. That to aid said company in constructing a branch road from said St. Cloud to connect with the Winona and St.

1773 Peter Railroad, or any other railroad running in southern Minnesota from east to west, and to strike the Minnesota River at St. Peter or some point between St. Peter and the mouth of Redwood River, there be and are hereby granted to said company all the swamp lands belonging to or that may hereafte-belong to said State in the sections designated by odd numbers, and lying within the counties through or into which said branch road may run, not exceeding four sections per mile of said branch road, upon the terms and conditions hereinafter specified.

SEC. 3. And if upon the completion of either of said branch
1774 roads it shall be found that there shall not be an amount of odd-numbered sections of said swamp lands within the counties through or into which said branch road may pass, equal to four full sections per mile of said branch roads, then the said company shall have the right to and may select from the swamp lands then belonging to said State, and within the several land districts through or into which said branch roads shall pass, other swamp lands designated by odd numbers equal to such deficiency, and the lands so selected by said company shall be certified and conveyed to said company by the governor of the
1775 State.

SEC. 4. And be it further enacted, that whenever and as often as either of said branch roads shall be continuously graded and ready for the ties throughout all of that portion thereof lying in any one or more of the counties through or into which the same may pass, it shall be the duty of the governor to execute, on behalf of the State, a deed of conveyance to said company of the swamp lands designated as aforesaid, and lying within the said county or counties, and to be selected by said company, equal to two sections per mile of the road so graded; and when-
1776 ever, and as often as either of said roads is so far completed through any one or more of the counties through which it may pass as to be ready for the rolling stock, in the judgment of a competent engineer whom the governor shall appoint to report thereon, it shall be the duty of the governor aforesaid to execute a deed of conveyance on behalf of the State to said company for two additional sections of said swamp lands in said county or counties for each mile of the road so finished. And whenever either of said branch roads shall be ready for the roll-

ing stock throughout its entire length, it shall be the duty of 1777
the governor so to deed and convey to said company all the swamp lands designated as aforesaid, in the counties and land districts aforesaid, not exceeding four sections per mile of said branch road: *Provided, always*, That this act shall not be construed to interfere with the vested rights previously acquired by any other company under the laws of this State or the United States, or with grants for school or other purposes by Congress: *Provided*, That if said company shall not within five years construct and equip for business with the cars running thereon, at least ten miles of said road, or either of its branches, and the residue 1778
within seven years from the passage of this act, then and in that case all the lands hereby granted, pertaining to the unbuilt portions of said road, or either of its branches, shall be forfeited to the State, except such as are by this act granted to said company for and upon the grading of its line or lines or portions thereof, as herein provided, which last-mentioned lands shall revert to the State, unless the grading is done within the time hereinbefore mentioned for the completion of said road: *And provided further*, That this grant shall not prejudice or apply to any grant heretofore made to the Southern Minnesota Railroad 1779
Company: *And provided always*, That this act shall not be construed to interfere with the vested rights previously acquired by any other company under any laws of this State, or the United States, or with grants for schools, asylums, or other charitable purposes made by Congress or the State legislature.

SEC. 5. This act shall take effect and be in force from and after its passage.

Approved February 11, 1865.

CHAPTER IV.

Laws of 1865. 1780

AN ACT to amend an act entitled "An act to incorporate the Minneapolis and St. Cloud Railroad Company," approved March first, 1856, and to repeal certain portions of an act amending the charter of said company, passed February 23, 1864.

Be it enacted by the legislature of the State of Minnesota:

SECTION 1. That whereas the incorporators or persons named in the first section of the act of the legislature of the late Terri-

1781 tory of Minnesota entitled "An act to incorporate the Minneapolis and St. Cloud Railroad Company," and approved March first, 1856, did, in the manner prescribed by said act, open books and receive subscription to the capital stock of said railroad company to an amount exceeding one hundred thousand dollars, upon which said stock so subscribed the amount or sum of two per cent was actually paid in on or before the 15th day of March, 1857. And whereas the said stockholders of said company have ever preserved and maintained the status given to them by their said several subscriptions and payments (no
1782 further assessments having been made on the said stock), and whereas the holders of said stock have since organized said company by the election of a board of directors, and the other officers named in said act, in the manner therein pointed out, and have received additional subscriptions to the capital stock of said company, upon all of which, two per cent thereof has been actually paid into the treasury of said company, and said company is and ever has been desirous of availing themselves of all the franchises granted by said act. And, whereas, without the consent of said stockholders, or said company, the legis-
1883 lature of the State of Minnesota, by an act approved February 23, 1864, and entitled "An act to amend an act entitled 'An act to incorporate the Minneapolis and St. Cloud Railroad Company,' passed March 1, 1856," did undertake to amend said first-mentioned act by inserting as corporators persons other than those named as corporators in said first mentioned or original act, and other than the stockholders aforesaid; and did, also, in said amendatory act, in like manner, declare the said persons named therein, their assigns, survivors, and each of them, directors of said Minneapolis and St. Cloud Railroad
1784 Company, or said corporation, for the term of one year from the passage of said amendatory act, and until one hundred thousand dollars stock should be subscribed and taken, when the holders of the stock so subscribed and taken were directed to choose a new directory, and to organize in the manner set forth in said original act, and also directing said persons therein named as such directors to choose all the other officers pertaining to said company, and empowering them to act as such until superseded by the directors chosen by the said stockholders, with a proviso, however, that the said persons named in said

amendatory act should accept the charter as thus amended, by 1785
organizing for the purpose of executing and carrying the same into effect within six months from the passage thereof; and whereas no stock has been ever subscribed to the capital stock of said railroad company under or pursuant to or by virtue of said amendatory act. Therefore, the first and third sections of said amendatory act are, and each of them is, hereby repealed, and all power or authority conferred or attempted to be conferred by said sections or either of them, as against the incorporators, or persons named in the act thereby amended, or their associates, successors, or the organization in this act first named, 1786
is hereby revoked and annulled.

SEC. 2. The first section of said act, entitled "An act to incorporate the Minneapolis & St. Cloud Railroad Company," passed March 1, 1856, is hereby reenacted the same as if it was here repeated at length; but the reenactment thereof shall not in any manner injuriously affect the organization of said company first mentioned and referred to in this act, which said organization of said company is hereby in all respects legalized and confirmed, and declared to be the only legal representative of said company or corporation, and shall be recognized and 1787
treated as such in all courts or tribunals in this State or elsewhere; and the several directors and officers thereof, of said organization, and their successors, shall, whenever it shall or may become necessary or important to the interests of said company, be deemed the successors of the persons named as directors in said amendatory act, and of each and every of the officers by said persons chosen under the provisions of said amendatory act. Provided, that no provision in this act or the act to which this act is an amendment shall be so construed as to interfere with the rights, privileges, and franchises of any 1788
other land grant railroad company in this State existing at the time of the passage of this act or of the act to which this is an amendment.

SEC. 3. That the twelfth section of the said act, entitled "An act to incorporate the Minneapolis & St. Cloud Railroad Company," approved March 1, 1856, is hereby reenacted and amended so as to read as follows:

1789 "SEC. 12. The said corporation is hereby authorized and empowered to connect with or adopt as its own, on such terms as may be agreed upon between the parties or companies interested, any other railroad running in the same general direction with either of its main lines or any branch road which said corporation is authorized to construct, and where there may be any portion of another railroad which may be so used by this company or corporation, it shall not be bound to build such portion of its own road or branches so long as it may use the portion of any other road which may answer the same purpose."

1790 SEC. 4. That section two of said charter or incorporating act is hereby amended by striking out the words "by way of Mille Lac," where they occur in said section.

SEC. 5. That section ten of said act incorporating said company is hereby amended by adding thereto the following:

The said board of directors shall have power at any meeting thereof, upon the written request of the holders of a majority of the stock, to increase or diminish the number of directors therein: *Provided, however*, That any change so made shall equally effect each class of directors herein provided for. And

1791 in case the number is at any time reduced by virtue hereof, that the director or directors who shall go out of office shall, unless otherwise agreed upon, be determined by lot, by the directors belonging to either class, if they shall be present; and if any one or more shall be absent, the presiding officer at said meeting may appoint some stockholder to act for such absent director. A majority of the directors of the board, after any such change, shall constitute a quorum for the transaction of business.

SEC. 6. The said Minneapolis & St. Cloud Railroad Company shall also have power, in such manner as may be provided

1792 by resolution of its board of directors, to open books and receive subscriptions for stock pertaining solely to any one or more of its main lines, or branch roads, or to any portion of either, in any amount necessary and within the limits prescribed by its charter, and to provide for issuing certificates therefor; and whenever fifty thousand dollars of stock shall be so subscribed, the said stockholders may meet in person or by proxy, at such time and place as said company shall have prescribed, or a majority of the holders of said stock may prescribe, and proceed to elect a subboard of directors, not exceeding nine nor less than

five in number, each share of said stock being entitled to one 1793
vote by the holder thereof, which shall be cast in person or by written proxy. The said subdirectors shall elect one of their number to be president of said subboard of directors, and he shall preside at all the meetings thereof at which he shall be present. The said directors shall also elect one of their number vice-president of said subboard, who shall preside in the absence of the president. They shall also elect some suitable person to be secretary, and some suitable person to be treasurer, who shall give such security for the payment of the moneys entrusted to him as such officer as the directors may from time to time re- 1794
quire. A majority of said subdirectors shall form a quorum for the transaction of business. All the affairs of the said Minneapolis and St. Cloud Railroad Company, pertaining to the line or branch for the construction of which said stock may be subscribed as aforesaid, shall be conducted by or under the direction of said subboard of directors, and their successors in office, after the organization of said subboard; and the said subboard are hereby authorized for the purposes in this section specified to make and establish regulations and by-laws for their government, and the government of the line or branch to which their 1795
said stock may pertain as aforesaid, and shall have and may exercise all the powers over said line or branch which the board of directors of the said Minneapolis and St. Cloud Railroad Company could have exercised over the same had such subboard of directors been organized; and may do all things necessary to be done in the premises, not inconsistent with the laws of the State or the charter of said company or of this act. The number of subdirectors which shall constitute said subboard after the first organization, their terms of office, the term of office of each of the other officers herein provided for, and the manner 1796
of filling vacancies, shall be regulated by the stockholders, and their compensation by said subboard. From and after the organization of such subboard of directors, all the rights, privileges, franchises, and immunities granted by this or any other act of the legislature of the State or Territory to said Minneapolis and St. Cloud Railroad Company pertaining to the line or branch for which said subboard of directors may be organized, as aforesaid, and all right, title, interest, or claim of said company in and

to all lands granted by any act of the legislature and also pertaining to said line or branch, shall vest in said subboard of directors for the use and benefit of the stockholders represented by said subboard; but the said Minneapolis and St. Cloud Railroad Company shall remain vested with all its other rights, powers, privileges, franchises, lands, and other property. The said subboard may adopt by resolution any name which may designate the particular line or branch of road which they may propose to construct, and by and under such name the stockholders in said line or branch shall be capable of suing and being sued, impleading and being impleaded, defending and being defended against in law or equity, in any and all courts or tribunals as fully as natural persons; and may make and use a common seal, and alter and renew the same at pleasure, and by said name and style shall be capable of contracting and being contracted with, and of acquiring by purchase, gift, grant, or otherwise, and of holding and conveying all such estate and property, real and personal, as may be necessary or convenient to carry into effect the object and purposes of this section and of the said Minneapolis and St. Cloud Railroad Company, so far as may concern said line or branch. And neither the stockholders mentioned in this section, nor the line, road, or branch which they may construct by virtue hereof, shall be liable for any debt or liability contracted by said Minneapolis and St. Cloud Railroad Company, after the organization of said subboard of directors, or said subcompany; nor shall any of said stockholders be liable on stock subscribed or held by them for debts, or liabilities incurred after he shall have transferred the same; nor shall said Minneapolis and St. Cloud Railroad Company be held to answer for any debt, demand, or liability incurred by or under the management of any subboard of directors authorized by this section, except it should become a stockholder therein, and then only to the same extent as other stockholders in said line or branch.

SEC. 7. That any association of persons, corporation or alleged corporation, to whom or to which any legislature of the State or late Territory of Minnesota have granted or shall grant any swamp lands, or the right, title, interest, or claim of the State or said Territory in or to any lands donated by the Congress of

the United States to the said Territory or State to aid in the 1801
construction of any railroad or line of railroad where or over a
route which the said Minneapolis and St. Cloud Railroad Com-
pany is authorized by its charter to build and construct either
a main line or branch railroad, may, and is hereby authorized,
by deed authorized by a vote of the board of directors of such
association, company, or corporation, duly signed by the presi-
dent, and sealed with the corporate seal thereof, if such associa-
tion, company, or corporation shall have adopted a seal, to
surrender or transfer to said Minneapolis and St. Cloud Railroad
Company, or to any branch or line thereof then having a separate 1802
organization, or subboard of directors, as provided by this act,
all the right, title, interest, and claim of such association, com-
pany, or corporation to any or all lands so granted and applicable
or pertaining to said line or branch road, or to any part thereof.
And the said Minneapolis and St. Cloud Railroad Company, and
each line or branch thereof having a separate organization as in
this act provided, are, and each of them is hereby, made capable
of accepting and receiving such surrender or transfer of any
such grant of lands, or the interest of the Territory or State
therein, and of acquiring title to said lands upon the same terms 1803
and conditions as were or may be imposed on the original gran-
tees or association, company, or corporation so surrendering such
grant, lands, or interest, except that the time or times which
may be limited by such original grant for grading or completing
the road or line to which said grant may apply shall commence
to run from the date of the said surrender or transfer. And
the governor of the State is hereby authorized and required after
such surrender, when notification thereof is filed in the office of
the secretary of state, to deal in all things concerning said grant
with said Minneapolis and St. Cloud Railroad Company, or the 1804
line or branch thereof to whom or to which said surrender shall
be made as aforesaid; and to that end he is hereby authorized
and required, upon proper written demand, to convey from time
to time directly to said company, or the separate line or branch
thereof entitled thereto, all the lands embraced in said grant
and surrender to which said company, line, or branch may
become entitled by virtue hereof, and of said original grant, the
same as he may have been authorized to convey to said original
grantee or grantees had such surrender not been made.

SEC. 8. The said the Minneapolis & St. Cloud Railroad Company, and each of its branches, being organized as aforesaid, shall have power to consolidate the whole or any portion of its capital stock with the capital stock or any portion thereof of the road or branch road of any other railroad corporation or company, road of any other railroad corporation or company, having the same general direction or location, or to become merged therein, by way of substitution, upon such terms or conditions as the two companies may agree, by the consent of a majority of the stockholders of each company, and the two companies, when such consolidation has been made, shall control and manage, by the board of directors of both companies acting jointly, such consolidated road until the first election of directors of said consolidating companies, when the stockholders of said companies shall choose at such time and place as they shall agree upon a board of directors, not to exceed eleven in number, who shall have power to adopt a name for such consolidated road and by which they shall be known and recognized; to adopt a common seal; to sue and be sued; contract and be contracted with, and shall have and enjoy all and singular the rights, right of way, privileges, and immunities of said consolidating companies, or either of them, as to such consolidated line before consolidation, which said agreement of consolidation shall be in writing, signed by the president of said consolidating companies, respectively, and a copy thereof filed in the office of the secretary of state.

SEC. 9. The said Minneapolis and St. Cloud Railroad Company may consolidate any portion of its road and property, and each branch being organized as aforesaid, may consolidate the whole or any portion of its branch road and property, with the franchises of any other railroad company or any portion thereof, upon such terms and conditions as said companies, or a majority of the directors thereof, with the consent of the holders of a majority of the stock, respectively, may agree:

Provided, that said consolidated road shall not be affected by or subject to any liens, judgments, deed of trust, or mortgage, created upon or growing out of any subsequent agreements, liabilities, or transactions connected with any other portion of said Minneapolis and St. Cloud Railroad, or of the road or branch with which it may be so consolidated.

SEC. 10. The Minneapolis and St. Cloud Railroad Company, 1809
and each of its branches organized as herein provided, shall have power to create and issue in such manner and on such terms as it may deem expedient, one or more classes of preferred stock and special stock, and to make such agreements as it may deem proper with the respective holders thereof as to the dividends thereon, and the securities for such dividends, and to make such agreements as it may deem proper with the holders of any special or preferred stock for the appropriation of the net earnings of any portion of the railroad which it may construct or otherwise acquire, to the payment of dividends on such stock as may be 1810
issued in respect thereto, which appropriation, as made by such agreement shall be effectual to secure to the said and future holders of such stock the application of such net earnings as in the said agreement provided, against any future act of the company or branch or any of its general liabilities. And the said company or branches may make such agreement as it may deem proper with the holders of any such special stock as to the administration of the portion of said railroad and any land grant appertaining thereto to which said stock may pertain and for the separate organization of the holders of such special stock 1811
for the purpose of that administration and enabling them or directors chosen by them separately or in conjunction with the other directors, to exercise in respect to the portion of the road to which such special stock may pertain all the powers of the company subject to the provisions of such agreement when made and entered into.

SEC. 11. The Minneapolis and St. Cloud Railroad Company, and each of its branches so organized, shall have power to provide in any mortgage or deed of trust which it may issue covering any portion of its road now built, or hereafter to be built, 1812
that the holders of the bonds secured by such deeds of trust or mortgage, shall have the right to vote at any meetings held for the election of directors of said company or branch or for any other purpose, and such voting power to be to such extent as may be provided for, either in such deed of trust or mortgage, or in the bonds issued by said company. And all meetings both of directors or stockholders of said company or branch, may be held either within or without the State of Minnesota, or any of

the United States, in the city of London, England, or any foreign state or country, as shall be provided for by the by-laws of said company or branch, and all or any of the directors may be residents of the city of London aforesaid, or of any foreign country.

SEC. 12. The Minneapolis and St. Cloud Railroad Company, and each branch thereof having a separate organization as above provided for, may consolidate the whole or any portion of its main lines or branch railroads, and all the property, rights, powers, franchises, grants, and effects pertaining to such roads, with the rights, powers, franchises, grants, and effects of any other railroad company either within or without this State, upon such terms and conditions as such company or branch organization, or a majority of the directors thereof, may respectively agree, and the railroad company in which such railroad shall become vested by such consolidation, shall thereafter hold and enjoy all rights, grants, and powers, and franchises in respect to such with the company or branch possessed before the consolidation, but the said Minneapolis and St. Cloud Railroad Company or branch organization thereof shall remain vested with all its other rights, powers, privileges, and franchises.

SEC. 13. This act shall take effect from and after its passage.

Approved February 28, 1865.

CHAPTER LVI.

Laws of 1869.

AN ACT to amend an act entitled "An act granting swamp lands to aid the Minneapolis and St. Cloud Railroad Company in building branches to connect with the Lake Superior and Mississippi Railroad and the Winona and St. Peter Railroad, or any other railroad in southern Minnesota."

Be it enacted by the legislature of the State of Minnesota:

That section one of the said act be amended so as to read as follows:

SEC. 1. That there be, and there hereby are, granted to the Minneapolis and St. Cloud Railroad Company, incorporated by and organized under an act of the legislature of the late Territory of Minnesota, approved March 1, 1856, to aid the said company in the construction of a branch railroad from St. Cloud

to connect with the Lake Superior and Mississippi Railroad (or 1817
any other road connecting with the waters of Lake Superior) at some point between Snake River and the head of Lake Superior, to be determined by the said company, an amount of swamp lands belonging to, or that may hereafter belong to the State of Minnesota not otherwise granted, equal to ten (10) full sections for each mile of the said road; provided that this grant of lands shall not prejudice or affect the rights of any other railroad company, any asylum, charitable institutions, or school to any lands heretofore granted.

SEC. 2. Whenever any ten consecutive miles of the said rail- 1818
road shall be completed and ready for the rolling stock, it shall be the duty of the governor to execute on behalf of the State a deed of conveyance to the said company, the full quota of said lands for the portion of said road so completed: Provided, That if the said company shall not construct and equip for business, with cars running thereon, at least ten miles of the said road within three years from the first day of December, A. D. 1869, and the residue within six years from the last date aforesaid, then and in that case, all the lands hereby granted pertaining to the unbuilt portion of the said road shall be forfeited to the State.

SEC. 3. This act shall take effect and be in force from and 1819
after its passage.

Approved March 5, 1869.

CHAPTER LIII.

Laws of 1869.

AN ACT to amend the charter of the Minneapolis and St. Cloud Railroad Company.

Be it enacted by the legislature of the State of Minnesota:

SECTION 1. That the name of the Minneapolis and St. Cloud Railroad Company, and that of any of its branches, or any division or portion of its roads, subject to the control of said company, may be changed by a resolution of the board of directors of said company, to any other name or names; and upon filing 1820
a duly authenticated copy of such resolution in the office of the secretary of state, the said company, or branch, division, or portion of said road shall be known by the names or names respectively adopted and designated in such resolution, and the

1821 stockholders may, by resolution, increase their directors to any number not exceeding fifteen or decrease the number to seven.

SEC. 2. The times limited for the grading and completing the respective portions of said road is hereby extended for the period of four years.

SEC. 3. Whenever there shall be a vacancy in the board of directors, by resignation or from any other cause, the vacancies shall be filled for the unexpired term by the president and secretary of said company.

SEC. 4. The said Minneapolis and St. Cloud Railroad Com-
1822 pany are hereby authorized to survey, construct, operate, and maintain, under the provisions and restrictions of their charter, a branch road from St. Cloud up the Sauk Valley to some point upon the St. Paul and Pacific Railroad, or to some point on the Red River of the North, by the way of Alexandria, and all the rights, franchises, privileges, and immunities heretofore granted to said company upon the main line or any branch thereof shall apply to said branch road, as fully to all intents and purposes as the rights and privileges heretofore granted to said company.

SEC. 5. This act shall take effect and be in force from and
1823 after its passage.

Approved March 6, 1869.

CHAPTER LII.

Laws of 1870.

AN ACT to amend the charter of the Minneapolis and St. Cloud Railroad Company.

Be it enacted by the legislature of the State of Minnesota:

SECTION 1. That in consideration of an annual payment of a per centum upon the gross earnings of the Minneapolis and St. Cloud Railroad as herein provided, the road, its appurtenances
1824 and appendages, and all other property, estate, and effects of the Minneapolis and St. Cloud Railroad Company, which they have already acquired or which they may hereafter acquire, purchase, hold, possess, enjoy or use for, in or about the construction, equipment, renewal, repair, maintaining, or operating its railroad, as also the stock and capital of said company, shall be and hereby are forever exempt from all assessments and taxation; and in consideration of the grants made to and privileges

and franchises conferred upon said company, and of the exemp- 1825
tion contained in this section, the said company shall, during the first three years after thirty miles of said railroad shall be completed and in operation, on or before the first day of March of each and every year, pay into the treasury of the State one per cent on the gross earnings of said railroad, the first payment to be made on the first day of March next after the said railroad shall be completed and in operation, and shall, during the seven years next ensuing after the expiration of the three years aforesaid, pay into the treasury of this State on or before the first day of March of each and every year 1826
two per cent on the gross earnings of said railroad; and shall, from and after the expiration of ten years from the completion of thirty miles of said railroad, on or before the first day of March of each and every year, pay into the treasury of this State three per cent of the gross earnings of said railroad. And the payment of such per centum annually, as aforesaid, shall be and is in full of all taxation and assessment whatever. And for the purpose of ascertaining the gross earnings aforesaid, an accurate account of such earnings shall be kept by said company, an abstract whereof shall be furnished 1827
by said company to the treasurer of this State on or before the first day of February in each year, the truth of which abstracts shall be verified by affidavits of the secretary and treasurer of said company; and for the purpose of ascertaining the truth of such affidavits and the correctness of such abstract full power is hereby vested in the governor of this State or any other person appointed by law to examine under oath the officers and employees of said company or other persons, and if any person so examined by the governor or other authorized person shall knowingly or willingly swear falsely concerning the matter 1828
aforesaid, every such person is declared to have committed perjury. And for securing to the State the payment of the aforesaid per centum, it is hereby declared that the State shall have a lien upon the railroad of said company and upon all the property, estate, and effects of said company whatever, real, personal, or mixed, and the lien hereby secured to the State shall take and have precedence of all demands, decrees, and judgments against said company.

1829 SEC. 2. The provisions of the foregoing section are hereby extended to the said Minneapolis and St. Cloud Railroad and all its branches.

SEC. 3. This act shall take affect and be in force from and after its passage.

Approved, March 2, 1870.

CHAPTER CCCXXV.

Laws of 1879.

AN ACT to extend the time for the construction and completion of a branch of the Minneapolis and St. Cloud Railroad.

1830 *Be it enacted by the legislature of the State of Minnesota:*

SECTION 1. That the time for the construction, completion, and equipment of that branch of the Minneapolis & St. Cloud Railroad from St. Cloud, to connect with the Winona and St. Peter Railroad, or any other railroad running in southern Minnesota from east to west, and to strike the Minnesota River at St. Peter or some point between St. Peter and the mouth of Redwood River, being the same branch road mentioned and referred to in section two of chapter three of the special laws of
1831 the year 1865, approved February 11, 1865, be and the same is hereby extended until the 25th day of December, 1885, and all the rights, privileges, franchises, and immunities heretofore granted to the Minneapolis and St. Cloud Railroad Company are hereby continued and extended until the said 25th day of December, A. D. 1885. And if the said branch road shall at the date last aforesaid be fully completed and equipped, then and in such case the said rights, privileges, franchises, and immunities shall continue and be perpetual, as is in and by the
1832 original act of incorporation of said railway company and the acts amendatory thereof provided.

SEC. 2. This act shall not take effect or be in force until a consolidation shall have been perfected in the manner prescribed in chapter four of the special laws of the year 1865, approved February 28, 1865, of the capital stock representing and controlling the said branch road, with the capital stock of the Mankato and St. Cloud Railroad Company, now organized or being organized as a corporation under General Statutes of this

State by articles of incorporation bearing date on the 20th day 1833
of February, A. D. 1879; and from and after such consolidation this act shall take effect and be in force.

Approved March 11, 1879.

CHAPTER 123.

Laws of 1881.

AN ACT to amend chapter fifty-six (56) of the special laws of 1869, page 249, entitled "An act to amend an act entitled An act granting swamp 1834
lands to aid the Minneapolis and St. Cloud Railroad Company in building branches to connect with the Lake Superior and Mississippi Railroad and the Winona and St. Peter Railroad, or any other railroad in southern Minnesota."

Be it enacted by the legislature of the State of Minnesota:

SECTION 1. That section one (1) of chapter fifty-six (56) of the special laws of A. D. 1869, entitled "An act to amend an act entitled An act granting swamp lands to aid the Minneapolis 1835
and St. Cloud Railroad Company in building branches to connect with the Lake Superior and Mississippi Railroad and the Winona and St. Peter Railroad, or any other railroad in southern Minnesota," be, and the same is hereby, amended so as to allow and authorize said Minneapolis and St. Cloud Railroad Company, under the provisions of its charter, and the amendments thereto, and of said act to which this is amendatory, to construct and operate its said branch in said section mentioned, so as to con- 1836
nect with any other railroad at Wyoming or any point north thereof.

SEC. 2. All acts and parts of acts inconsistent with this act are hereby repealed.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved March 7, 1881.

1837

CHAPTER 81.

Laws of 1885.

AN ACT to amend an act entitled "An act granting swamp lands to aid the Minneapolis and St. Cloud Railroad Company in building branches to connect with the Lake Superior and Mississippi Railroad and the Winona and St. Peter Railroad, or any other railroad in southern Minnesota," approved February 11, A. D. 1865, as amended.

Be it enacted by the legislature of the State of Minnesota:

SEC. 1. Section two (2) of the act mentioned in the title hereof, being chapter three (3) of the special laws of 1865, as amended by section one (1) of chapter sixty-five (65) of the special laws of 1881, special session, is hereby amended so as
1838 to read as follows:

SEC. 2. That to aid said company, its successors or assigns, in constructing a branch road from St. Cloud to the Southern Minnesota Railroad, so called, to run by the way of the villages of Litchfield and Hutchinson and the city of Mankato and the city of Austin, there be, and are hereby, granted to said company, its successors or assigns, all the swamp lands belonging to, or that may hereafter belong to the State of Minnesota, in the sections designated by odd numbers, and lying within the counties through or into which said branch road may run, not exceed-
1839 ing four (4) sections per mile of all that part of said branch railroad extending from St. Cloud to the Southern Minnesota Railroad, so called, upon the terms and conditions hereinafter specified in sections two (2) and three (3) of said chapter three (3) of said special laws of 1865, as amended by section two (2) of chapter sixty-five (65) of the special laws of 1881; and the said act is hereby further amended by inserting the words "its successors or assigns," after the word "company," wherever said word occurs in said sections.

SEC. 3. That whenever the St. Cloud, Mankato and Austin
1840 Railroad Company, its successors or assigns, shall, before December 25, A. D. 1887, to which time the swamp land grant of said company is hereby extended, construct and equip for the transportation of freight and passengers any one (1) or more sections of twenty (20) continuous miles of any part of that branch of the Minneapolis and St. Cloud Railroad, now

known as the St. Cloud, Mankato and Austin Railroad, substan- 1841
tially upon the survey made via the villages of Litchfield and Hutchinson by said company, then and in such case the governor shall certify and convey to said company, its successors or assigns, eighty (80) sections of the swamp lands heretofore granted for the construction of said road, and so on as often as any further continuous sections of ten (10) miles as extensions thereof shall be so completed and equipped, then the governor shall in like manner certify and convey to said company, its successors or assigns, a further quantity of forty (40) sections of the swamp lands granted as aforesaid, until the full completion 1842
of said road: Provided, That this act shall not operate to affect any lands not heretofore granted.

SEC. 4. This act shall take effect and be in force from and after its passage.

Approved March 10, 1885.

We, James J. Hill, president, and Edward Sawyer, secretary of the Minneapolis and St. Cloud Railroad Company, hereby certify that at a meeting of the board of directors of this company, duly held at the office of this company, in the city of St. Paul, on September 16, 1889, the following resolution was duly 1843
adopted by the said board:

"*Resolved*, That the name of this company be, and the same hereby is, changed to the 'Great Northern Railway Company.'

"*Resolved further*, That the president and secretary of this company file with the secretary of state of the State of Minnesota a copy of this resolution, certified under their hands and the seal of this company."

In testimony whereof we have hereunto set our hands and affixed the seal of the said company on this 16th day of September, A. D. 1889. 1844

[CORPORATE SEAL.] JAS. J. HILL, *President.*
E. SAWYER, *Secretary.*

Filed in this office for record Sept. 18th, A. D. 1889, at 4 o'clock p. m.

H. MATTSON,
Secretary of State.

1845 UNITED STATES OF AMERICA,

State of Minnesota, Department of State:

I, P. E. Hanson, secretary of state of the State of Minnesota, do hereby certify that I have compared the annexed copy with the original acts in my office of special laws, being chapter 160, laws of 1856; chapter 5, laws of 1864; chapters 3 and 4, laws of 1865; chapter 56, laws of 1869; chapter 53, laws of 1869; chapter 52, laws of 1870; chapter 325, laws of 1879; chapter 123, laws of 1881; chapter 81, laws of 1885, and resolution of the Minneapolis and St. Cloud Railroad Company, as
1846 filed September 18, 1889, and that said copy is a true and correct transcript of said original special acts and resolution, and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State at the capital in St. Paul, this 20th day of Sept., A. D. nineteen hundred and two.

[SEAL.] P. E. HANSON,

Secretary of State.

The following is a copy of the Twelfth Annual Report of the 1847
Great Northern Railway Company, offered in evidence by complainant:

COMPLAINANT'S EXHIBIT B.

TWELFTH ANNUAL REPORT OF THE GREAT NORTHERN RAILWAY COMPANY, FISCAL YEAR ENDED JUNE 30, 1901.

GREAT NORTHERN RAILWAY COMPANY.

DIRECTORS.

James N. Hill (term expires 1901)	St. Paul.
Jacob H. Schiff (term expires 1901)	New York.
Henry W. Cannon (term expires 1901)	New York. 1848
James J. Hill (term expires 1902)	St. Paul.
W. P. Clough (term expires 1902)	St. Paul.
Samuel Hill (term expires 1902)	Minneapolis.
R. I. Farrington (term expires 1903)	St. Paul.
Edward Sawyer (term expires 1903)	St. Paul.
M. D. Grover (term expires 1903)	St. Paul.

OFFICERS.

J. J. Hill, president	St. Paul.
W. P. Clough, vice-president	St. Paul.
D. Miller, second vice-president	St. Paul. 1849
J. N. Hill, third vice-president	St. Paul.
E. Sawyer, treasurer and assistant secretary	St. Paul.
E. T. Nichols, secretary and assistant treasurer	New York.
R. I. Farrington, comptroller	St. Paul.
M. D. Grover, general solicitor	St. Paul.
F. E. Ward, general superintendent	St. Paul.
F. B. Clarke, general traffic manager	St. Paul.
J. F. Stevens, chief engineer	St. Paul.
N. Terhune, transfer agent	New York.

TWELFTH ANNUAL REPORT OF THE GREAT NORTHERN RAILWAY COMPANY. 1850

To the stockholders:

The president and directors submit the following report for the year ended June 30th, 1901:

FINANCIAL.

CAPITAL STOCK.

The authorized share capital of the Great Northern Railway Company June 30th, 1900, as shown in last year's report, was	$99,000,000.00

1851 At an adjourned annual meeting, held October 16th, 1900, the stockholders approved the action taken by the board of directors April 20th, 1900, and authorized an increase of $1,000,000.00
in the share capital, the additional shares to be issued only to the Great Northern Employes' Investment Company, Limited, in accordance with the terms of contract with said company, and as explained on page 7 of last year's report.

At a meeting February 27th, 1901, the directors adopted resolutions authorizing an increase of the capital stock by..... 25,000,000.00

1852 "for the purpose of acquiring the several bonds or stocks, or both, to an aggregate amount of not less than $25,000,000.00 principal, of the following named companies:

1. St. Paul, Minneapolis & Manitoba Railway Company.
2. The Dakota and Great Northern Railway Company.
3. The Montana and Great Northern Railway Company.
4. The Kootenay Railway and Navigation Company, Limited.
5. The Washington and Great Northern Railway Company.
6. The Seattle and Northern Railway Company.

1853 7. The Great Northern Steamship Company."

On March 18th, 1901, the president issued a circular to the stockholders asking their assent to this proposed increase in share capital, and offering the additional shares for subscription by them at par, payments to be made as specified in the circular.

Assents having been received from the holders of more than seventy-five per cent of the stock outstanding, it was announced, on April 17th, 1901, that all subscriptions had become binding and effective, thus making the

Authorized share capital, June 30th, 1901 ..... $125,000,000.00

Of the capital authorized there had been issued prior to

1854 June 30th, 1900 (page 5, last year's report)..... $98,413,500.00

There have been issued during the year

182½ shares, amounting to..... 18,250.00
in exchange for 146 shares of the St. Paul, Minneapolis and Manitoba Railway Company, making the total number of shares of that company now held by the Great Northern Company 195,454 ($19,545,400).

2,800 shares, amounting to 280,000.00
have been transferred to the Great Northern Employes' Investment Company, Limited, under the contract mentioned.

Total outstanding June 30th, 1901 ..... $98,711,750.00

Shares of the Great Northern in number 5,682½ are held in 1855
the treasury of the company, not used in acquiring the outstanding 4,546 shares of Manitoba stock, and

Shares in number 7,200 are also held in the treasury to be issued only to the investment company as subscribed for.

The average date of payment for the 250,000 shares of stock referred to in circular of March 18th, 1901, having been August 1st, 1901, the stock has been issued as of that date, and the net cash payments received prior to July 1st, 1901, on account of same, $8,358,708.00, are taken up on the balance sheet (page 35) as "Net paid subscriptions to additional capital stock." 1856

As the bonds of the St. Paul, Minneapolis and Manitoba Railway Company to be acquired in accordance with the terms of the resolution above quoted are to be paid for by assignment of the equities of the stockholders therein, which assignment was not completed until final payment was made for the new stock, September 25th, 1901, they are not included on the balance sheet, page 35, in "Cost of properties and securities owned by the Great Northern Railway Company." For the same reason the cost of the improvements covered by these bonds has not been transferred from "Cost of additions, etc., to property 1857
leased from the St. Paul, Minneapolis and Manitoba Railway Company, etc.," to "Cost of railway, equipment, and lands owned by the St. Paul, Minneapolis and Manitoba Railway Company."

These adjustments will appear in the accounts for the year ending June 30th, 1902.

Of the securities of the Kootenay Railway and Navigation Company, Limited, there had been acquired June 30th, 1901, substantially all of the £500,000 common stock and £219,717 10s. of the £480,000 debenture stock issued. The cost of same 1858
is included in the item "Cost of properties and securities owned by the Great Northern Railway Company" on the balance sheet.

The properties owned by the Kootenay Company and by the Seattle and Northern Railway Company, as well as the several lines of railway now under construction, are described hereinafter under the head of "New lines."

BONDED DEBT.

There has been a net reduction of $594,000 during the year in the bonded debt of the St. Paul, Minneapolis and Manitoba

1859 Railway Company, as will be seen by reference to table on page 34, made up as follows:

Consolidated mortgage 4½ per cent bonds redeemed and canceled by the trustee through the operation of the sinking fund, as per detail on pages 40 and 41		$718,000
Less bonds issued:		
On account of construction of Spring Park Extension	$123,000	
On account of first-mortgage bond redeemed September 15th, 1899	1,000	
1860 In exchange for St. Paul, Minneapolis and Manitoba Railway Company's second-mortgage bonds surrendered and canceled	140,000	
In exchange for St. Paul, Minneapolis and Manitoba Railway Company's Dakota extension mortgage bonds surrendered and canceled	51,000	
Total issued		$315,000
Net reduction in consolidated mortgage 4½ per cent bonds		$403,000
Second-mortgage six per cent bonds, canceled as above		$140,000
Dakota extension mortgage six per cent bonds, canceled as 1861 above		51,000
Total reduction in St. Paul, Minneapolis and Manitoba Railway Company's bonded debt		$594,000

The Montana Central Railway Company issued during the year $700,000 of its first-mortgage five per cent bonds to pay for additional equipment and facilities for and improvements of its railway. The issue of $10,000,000 bonds authorized under this mortgage is now completed. The new bonds were turned over to the Great Northern Railway Company in part payment of advances made by that company for the purposes mentioned, 1862 and they are now held in its treasury.

PURCHASE OF BURLINGTON STOCK.

The Great Northern Railway Company and the Northern Pacific Railway Company have jointly purchased 1,075,772 shares ($107,577,200) of the capital stock of the Chicago, Burlington and Quincy Railroad Company (being 96.79 per cent of the total authorized issue), and in payment for same have issued their joint collateral trust bonds and scrip to the amount of $215,154,400. Further bonds of the same series, up to a total of $222,400,000, may be issued for acquiring the residue of the stock. The bonds are dated and draw interest from July 1st,

1901; they mature July 1st, 1921, but may be redeemed on the 1863
first day of any January or July after January 1st, 1906, at 105
per cent with accrued interest; and draw interest at the rate of
four (4) per cent per annum, payable January 1st and July 1st
in each year on coupon bonds, and January 1st, April 1st, July
1st, and October 1st, in each year on registered bonds.

The shares of Chicago, Burlington and Quincy Railroad stock
thus acquired have been deposited with the Standard Trust
Company of New York, as trustee, under a collateral trust
indenture securing the above bonds, and a contract has been
entered into between the Great Northern and the Northern 1864
Pacific companies defining the rights and responsibilities of the
companies growing out of the acquisition of the stock.

As this transaction was not completed until after the close of
the fiscal year, neither this company's interest in the Burlington
stock acquired, nor its liability on the joint collateral bonds
issued, are taken up in the accounts shown in this report.

The map published herewith shows the relation to each other
of the lines of the Great Northern, Northern Pacific, and Bur-
lington systems.

The Burlington system includes 7,992.60 miles of standard 1865
gauge railroad (on which are 423.15 miles of second track, mak-
ing 8,415.75 miles of standard gauge single track) and 178.77
miles of narrow gauge railroad. It is located in the States of
Illinois, Iowa, Missouri, Nebraska, Kansas, Colorado, Wyoming,
South Dakota, and Montana, a territory of great extent; rich in
all resources except timber; already well populated and devel-
oped and containing many large cities.

The Burlington is favorably located, with ample terminals in
the important traffic centers of this territory, including Chicago,
St. Louis, Peoria, Kansas City, St. Joseph, Omaha, Denver, St. 1866
Paul, Minneapolis, Burlington, and Des Moines. The territory
served by the Burlington produces most of the machinery
and implements used on the farms, in the forests, mines, and
mills of the tier of States reached by the Great Northern and
Northern Pacific. It also produces a large part of the iron and
steel products exported to Asia via the Pacific Ocean. Chicago,
Kansas City, St. Joseph, and Omaha are the largest provision
centers in the country. At St. Louis it connects with the chief
cotton carrying lines of the South and Southwest. On the other

1867 hand the Burlington territory takes for fattening the live stock raised on the Northern and Western farms and ranches. It consumes lumber in all shapes on a large scale.

The timber of Michigan, Wisconsin, and Minnesota will soon be gone. The forests of the State of Washington must hereafter, to an increasing extent, supply the demand for lumber in the prairie States of the Middle West. Those forests are now the most extensive and most available body of sawing timber standing in the United States. The Great Northern penetrates them in many places and should be in a position to reach a market
1868 and secure the haul of the vast tonnage they are capable of affording. The size and value of this traffic will constantly increase.

In addition to outstanding and authorized stock of the Burlington, averaging approximately $13,139 per mile of track, there are outstanding in the hands of the public, after deducting sinking funds in the treasury, bonds on the system amounting approximately to $15,829 per mile, making the capitalization of the system approximately $28,968 per mile of standard gauge track.

1869

GENERAL.

Expenditures were made during the year on the capital accounts of proprietary companies for work completed or under construction, as follows:

Eastern Railway Company of Minnesota	$2,266,706.87
Montana Central Railway Company	424,879.03
Willmar and Sioux Falls Railway Company	517,357.33
Duluth, Watertown and Pacific Railway Company	1,776.60
Seattle and Montana Railroad Company	181,344.38
Duluth Terminal Railway Company (Credit)	3,000.69
1870 Park Rapids and Leech Lake Railway Company	14,924.77
Minneapolis Union Railway Company (Credit)	2,331.12
Total	3,401,657.17

The entire balance of income account for the year, amounting, as per table on page 30, to $1,689,064.28, has been transferred to "Fund for permanent improvements and renewals;" and there has been charged against that fund $1,898,878.53, the cost of improvements (other than those charged to operation) made during the year to the property leased from the St. Paul, Minneapolis and Manitoba Railway Company.

NEW LINES. 1871

Of the new lines referred to in last year's report as being built by the St. Paul, Minneapolis and Manitoba Railway Company, the following were completed and opened for traffic:

August 1st, 1900: Extension of Lake Minnetonka line from Spring Park to St. Bonifacius, Minn., 8.22 miles.

October 7th, 1900: Line through Everett, Washington, 3.63 miles.

December 20, 1900: Line through Cascade Tunnel, including approaches, 3.52 miles.

June 14, 1901: Line through Spokane, Washington, 5.09 1872
miles of main track and 1.19 miles of second track.

The completion of these lines permitted the abandonment and removal of—

Line from Hopkins to St. Bonifacius, Minn., 19.66 miles, and Switchback over Cascade Mountains, 12.66 miles. Also the surrender of trackage rights over 4.80 miles of track in Spokane, Washington, and 5.25 miles between Lowell and Everett, Washington, belonging to other companies.

The line of the Eastern Railway Company of Minnesota from Stony Brook north, also mentioned last year, is 46.49 miles in 1873
length, and was opened for traffic August 1st, 1901.

The Dakota and Great Northern Railway Company is now building a line extending about thirty miles northerly from Lakota, North Dakota, and a line extending from Bottineau, North Dakota, about twelve miles northwest. It is expected that these two lines will be completed in time to move this year's crop.

The Montana and Great Northern Railway Company is building from Jennings, Montana, northerly along the Kootenay River, about fifty-one miles, to the international boundary, 1874
where it will connect with a line being built by the Crow's Nest Southern Railway Company to the coal fields of the Crow's Nest Pass Coal Company, at Fernie, B. C. The length of the lines from Jennings to Fernie, including spurs, will be about one hundred miles.

Crow's Nest Pass coal and coke are of a superior quality. The coal company's plant is being enlarged and the output increased. In addition to furnishing coal for company use and

1875 for commercial and domestic purposes in the Northwest, these mines are expected to supply the smelters at Great Falls, Butte, Anaconda, Northport, and Everett, and will furnish a heavy and profitable traffic.

Since the close of the fiscal year the Montana and Great Northern Railway Company has purchased the line of the Great Falls and Canada Railway, extending from Great Falls, Mont., to Sweet Grass on the international boundary, 134.37 miles. This line is now narrow gauge, and, until widened to standard gauge during the current fiscal year, it will be operated
1876 by the Great Falls and Canada Railway Company. The map published herewith shows the material reduction in length of haul on shipments between points west of Shelby Junction and south of Great Falls, resulting from the acquisition of this line.

As a portion of a projected extension, the Montana and Great Northern Railway Company has built 10.32 miles of line from Kalispell, Mont., south to Flathead Lake.

The Washington and Great Northern Railway Company in the State of Washington, and the Vancouver, Victoria and Eastern Railway and Navigation Company, Limited, in British
1877 Columbia, are now building lines of railway that will form a through line from Marcus, Washington, on the Spokane Falls and Northern Railway, to Republic, Washington, via Kettle River and Cascade, B. C., a total distance, including branches, of about 108 miles. This line will afford transportation to several large, rich, and already well-developed mining camps, and its opening for traffic will be followed by the development of many properties that have been waiting for rail transportation. It is expected that this line will add largely to the company's traffic and revenue.

1878 The line of the Seattle and Northern Railway Company extends from Anacortes to Rockport, Washington, 57.4 miles, crossing this company's existing lines at Burlington, Washington. This line runs through a heavily timbered country and will develop a large lumber and coal traffic.

The properties owned by the Kootenay Railway and Navigation Company, Limited, are:

The Kootenai Valley Railway, in the State of Idaho, and the Bedlington and Nelson Railway, in British Columbia, together

forming a line of standard-gauge railway from Bonners Ferry, 1879
Idaho, to Kuskonook, British Columbia, 41.25 miles, with trackage rights over 8.70 miles of track of another company;

The International Navigation and Trading Company, Limited, operating steamers on Kootenay and Duncan Lakes and the Duncan River; and

The Kaslo and Slocan Railway, owning and operating a line of narrow-gauge railway from Kaslo to Cody and Sandon, British Columbia, 31.80 miles.

All of the above lines are shown on the map published herewith. 1880

Good progress has been made during the year on the two steamships referred to on page 28 of last year's report, being built for the Great Northern Steamship Company by the Eastern Shipbuilding Company at New London, Conn.

REVISION OF LINES.

Reference was made on page 24 of last year's report to the revision of lines for the purpose of reducing grades and curvature.

Changes of this character completed during the year were:

Between the summit of the Rocky Mountains and Havre, Mont., 41.73 miles of new in place of 42.88 miles of old line, 1881
reducing maximum grade from one per cent to eight-tenths of one per cent, and materially reducing curvature. This mileage includes the 9.12 miles at Durham and Midvale mentioned last year as under construction.

Between Teton and Tunis, Montana, 16.65 miles of new in place of 13.04 miles of old line, reducing grades from two and two-tenths per cent to six-tenths of one per cent, besides reducing curvature.

At Sydney, Montana, 2.05 miles of new in place of an equal length of old line, reducing grades from one per cent to six- 1882
tenths of one per cent, and reducing curvature.

Between Wickes Tunnel and Boulder, Montana, on the Montana Central Railway, 9.04 miles of new in place of 9.29 miles of old line, reducing grade from two and two-tenths per cent to one per cent.

The work on these three lines was referred to last year, and has been very heavy.

In addition, the alignment has been changed along the Wenatchee River, 2.26 miles of new being built in place of 2.39 miles of old line. In connection with this work steel bridges have been erected over the three crossings of the Wenatchee River.

The grades between Galena and Espanola., Wash., on the Cascade Division have been reduced from one per cent to eight-tenths of one per cent.

The work of changing the line between Huntley Coulee and Great Falls, Mont., 22.62 miles, referred to last year, has been continued, and, it is expected, will be completed by November 1st, 1901. On this line steel bridges are being erected over the north fork of Portage Coulee and over the Missouri River near Great Falls.

Work is now in progress improving the alignment on the Cascade Division by building 2.89 miles of new line between Harrington and Moscow and 1.42 miles of new line between Moscow and Edwall, Wash.

A new line is being built from Belleville to Fairhaven, Wash., on the Seattle and Montana Railroad, 18.90 miles, reducing the maximum grade from two and one-half per cent to one-half of one per cent.

EQUIPMENT.

The following equipment has been sold or taken out of service during the year:

11 light Great Northern Railway locomotives.

2 light locomotives acquired by the Eastern Railway in 1898 in purchase of Duluth, Superior and Western Railway.

42 small flat cars taken over with the Sioux City and Western Railway, January 1st, 1900, and

1 small steam shovel acquired by the Eastern Railway in 1899 in purchase of Duluth, Mississippi River and Northern Railroad.

The report for last year stated that of the equipment previously ordered 26 locomotives, 1 official car, and 1,250 freight-service cars had not been received and taken into account at the end of the year.

During the present year orders were placed for 60 locomotives and 62 passenger-service cars, of which none had been received

and taken into account at the end of the year, and 2,300 freight- 1887
service cars.

Of the total new equipment undelivered at the close of last year and ordered this year, the following had been received and taken into account at the close of this year:

23 twelve-wheel freight engines, 19" x 32" cylinders, weighing 148,000 pounds on drivers.

2 six-wheel switch engines, 19" x 28" cylinders, weighing 137,000 pounds on drivers.

1 six-wheel switch engine, 19" x 26" cylinders, weighing 137,000 pounds on drivers. 1888

1 business car.

300 thirty-six feet 60,000 pounds capacity box cars, for the Willmar and Sioux Falls Railway.

200 forty-feet 100,000 pounds capacity gondola cars.

100 forty-feet 100,000 pounds capacity sand cars.

200 forty-feet 80,000 pounds capacity flat cars.

400 thirty-six feet 100,000 pounds capacity wooden ore cars.

250 twenty-two feet 100,000 pounds capacity hopper-bottom steel cars.

100 thirty-one feet 100,000 pounds capacity hopper-bottom 1889
steel ore cars.

The above freight-service equipment is all equipped with air brakes and automatic couplers.

The remaining 2,000 freight-service cars are now being delivered.

There were also purchased during the year:

2 sample box cars,

1 sample ore car, and

1 wrecking car.

There were built at the company's shop for additional equip- 1890
ment:

37 four-wheel caboose cars, and

8 cars for Lidgerwood unloaders.

There was expended during the year for equipment $1,720,570.55, of which amount $1,460,301.62 was charged to "equipment account."

As equipment is destroyed or taken out of service operating expense is charged and "fund for replacement of equipment"

1891 is credited with the cost of replacing same. When equipment for replacements is purchased the cost of same is charged to the account last mentioned.

ADDITIONS AND IMPROVEMENTS.

Interlocking plants have been put in at Manley, Minnesota, and Sioux Falls, South Dakota.

Pneumatic crossing gates have been placed at Monroe street and Twenty-fifth avenue S. E., Minneapolis.

The terminal of the Montana and Kalispell divisions has been changed from Blackfoot to Cut Bank, Montana, and there
1892 have been built at the latter point, in addition to an adequate yard, a 15-stall brick roundhouse with heating and steam plant, boiler house 30′ x 33′, machine shop 25′ x 44′, 66′ steel turntable, 70′ cinder pit, 20-pocket coaling station, permanent water supply plant, and a frame boarding house 35′ x 87′ to accommodate the company's employes.

The yard at Willmar, Minn., has been revised and enlarged and the following new buildings erected: 26-stall brick roundhouse with boiler house, heating and steam plant, machine shop, 66′ steel turntable, 70′ cinder pit, brick storehouse 30′ x 40′,
1893 brick oil house 24′ x 26′, 20-pocket coaling station and improved water-supply plant. A new ice house, 26′ x 150′ has been built to accommodate the increasing traffic.

The work of building a new yard at Havre, Montana, and of erecting standard shops and buildings for a division point, in place of the present buildings, which have been outgrown, is now in progress.

A new yard is being built at Everett, Washington; also a line between Lowell and a point of connection with the coast line above Everett, including steel overhead bridges and draw bridge
1894 over Snohomish River, brick roundhouse, boiler house, machine shop with full equipment, coaling station, etc., etc.

The yard at Sioux City, Iowa, has been increased by four tracks and by a connection with the Chicago, Milwaukee and St. Paul Railway.

Three additional tracks have been laid in the yard at East Spokane, Washington.

The double track on the Eastern Railway of Minnesota has

been extended 1.09 miles between Boylston, Minn., and State Line and 3.38 miles between Cloquet and Carlton, Minn. 1895

The change of line through Cloquet, Minn., including double track and yard, is practically completed.

The laying of additional passing tracks 3,000′ long and the extension of old tracks to that standard length, have been continued during the year, and in addition many house tracks and tracks for local industries have been laid. The net increase in side-track mileage during the year, including these tracks and such tracks in the new yards previously mentioned as were laid June 30th, is as follows: 1896

Line leased from St. Paul, Minneapolis and Manitoba Railway Co	49.44 miles
Line leased from Park Rapids and Leech Lake Railway Co	.30 "
Seattle and Montana Railroad	3.60 "
Eastern Railway of Minnesota	8.28 "
Duluth Terminal Railway	.01 "
Montana Central Railway	.86 "
Willmar & Sioux Falls Railway	2.53 "
Spokane Falls and Northern Railway system	1.38 "
Total	66.40 miles

1897

During the year 67.13 miles of main line tracks have been relaid with 80-pound rail and 68.35 miles with 68-pound in place of lighter rails taken out and used in the construction of passing, yard, and other tracks.

Between Williston and Glasgow, Montana, 150 miles of 77½-pound rail are being laid in place of 60-pound rail.

On all new tracks built and tracks relaid, tie plates are being used, they are also being regularly put in all main tracks. During the year 1,825,442 of them were placed, making the number now in track 4,479,442.

A permanent lining of the Wickes tunnel, on the Montana Central Railway, is being completed. 1898

A tie-treating plant has been built at Flathead Lake, about ten and one-half miles south of Kalispell, Montana, for the purpose of preserving ties by the Wellhouse modification of the ordinary burnettizing process. When fully in operation it is expected this plant will treat 4,000 ties per day. This process increases the life of ties and the use of treated ties will materially reduce the annual charges for tie renewals.

1899 A brick addition 75′ x 200′ has been made to the coach paint shop at St. Paul, Minnesota.

A brick freight house 50′ x 600′ has been built at Spokane, Washington, and is being used by both the Great Northern and Spokane Falls and Northern railways. A brick passenger station at this place is under construction, to be completed December 31st, 1901. A brick freight house has been built at Everett, Washington.

On account of change of line between Teton and Tunis, the station at Benton, Montana, has been relocated and a new depot, freight shed, wool warehouse, and two section houses have been
1900 built.

New depots have been built at the following stations:

New Germany, Minn.	Baker, Minn.	Maza, Nor. Dak.
Spring Park, Minn.	Wolverton, Minn.	Penn, Nor. Dak.
St. Bonifacius, Minn.	McLean, Nebr.	Chester, Mont.
Kandiyohi, Minn.	Rauville, So. Dak.	Browning, Mont.
Ihlen, Minn.	Cavalier, Nor. Dak.	Newport, Wash.
Donnelly, Minn.	Barton, Nor. Dak.	Odessa, Wash.
Halloway, Minn.	Edinburgh, Nor. Dak.	Old Mission, Wash.
Borup, Minn.	Granville, Nor. Dak.	

Numerous other depots have been altered and enlarged.

1901 Freight sheds were built at Nevis, Minn., and Wenatchee, Wash.

Section houses have been built at the following stations:

Spring Park, Minn.	Coram, Mont.	Mt. Vernon, Wash.
Cascade, Mont.	Kalispell, Mont.	Richmond Beach, Wash.
Craig, Mont.	Libby Creek, Mont.	Snohomish, Wash.
Dearborn, Mont.	Troy, Mont.	Sultan, Wash.
Hardy, Mont.	East Spokane, Wash.	Stanwood, Wash.
Mitchell, Mont.	Edmonds, Wash.	Silvana, Wash.
Silver, Mont.	Harrington, Wash.	Trinidad, Wash.
Ulm, Mont.	Mukilteo, Wash.	Wenatchee, Wash.
1902 Wolf Creek, Mont.	Leavenworth, Wash.	
Blackfoot, Mont.	Marysville, Wash.	

Stock yards have been built at:

Leaf River, Minn.	Cambridge, Minn.	Reynolds, No. Dak.
Morris, Minn.	Bancroft, So. Dak.	Cando, No. Dak.
Bethel, Minn.	Vienna, So. Dak.	Galata, Mont.

The stock yards at Doon, Iowa; Hinsdale, Mont.; Wenatchee, Wash., and Wilson Creek, Wash., have been enlarged by building additional pens. Six yards have been furnished with stock scales and four with water plants.

Two additions, 291′ x 300′ and 233′ x 300′, and a hay barn 1903
50′ x 80′ have been added to the feeding yards at Minot, Nor. Dak. Other stock yards have been remodeled and improved.

Additional coaling stations, equipped with lifting engines, and the necessary tracks have been built—one at Chester, Mont., ten pockets, and one at Trinidad, Wash., twelve pockets. At St. Cloud, Minn., a coaling station has been built in place of one burned.

Permanent improvements in the water supply are being continued, numerous plants, both additional and replacing others, having been built. 1904

Many loading platforms have been built during the year.

Right of way fence has been built during the year as follows:

Great Northern Railway	144.90 miles
Eastern Railway of Minnesota	1.39 "
Montana Central Railway	.34 "
Willmar and Sioux Falls Railway	7.26 "
Total	153.89 miles

and 4.69 miles of permanent snow fence between Havre, Mont., and Cut Bank, Mont.

Banks have been widened and raised on 235.30 miles of track, 1905
banks widened and tracks ballasted with gravel on 41.22 miles, and track ballasted with gravel on 378.85 miles. Widening and raising embankments is now in progress between Swan River and Deer River, Minn., on the Eastern Railway, and ballasting on the Breckenridge, Northern and Dakota divisions, and on the Montana and Kalispell divisions, east and west of Cut Bank, Mont.

The replacement of bridges and trestles with steel, or filling them so as to make solid embankments, has been actively followed during the year, the record being: 1906

Length of bridges built:	
Great Northern Railway (on old lines)	5,030 feet
Montana Central Railway	106 "
In addition, steel railway bridges were built on new line through Spokane, in approaches to Cascade Tunnel, and on new line between Teton and Tunis	3,885 feet
And steel street bridges in Spokane	823 "
Total length of steel bridges built	9,844 feet

1907 Lineal feet of bridges filled:

Great Northern Railway	11,980 feet
Seattle and Montana Railroad	1,587 "
Eastern Railway of Minnesota	700 "
Montana Central Railway	450 "
Willmar and Sioux Falls Railway	5,406 "
Duluth, Watertown and Pacific Railway	178 "
Total	20,301 feet

To provide the necessary waterways in place of bridges filled as above, 71 stone culverts, 7 brick arch culverts, 47 pipe culverts, and 8 box culverts were put in.

1908 The wooden bridging on the line was still further reduced during the year by removal or relocation of lines as follows:

Great Northern Railway:	
Changes of line at Durham, Midvale, and between Teton and Tunis	1,336 feet
Removal of switchback over Cascade Mountains	5,672 "
Eastern Railway of Minnesota:	
Removal of additional track between Brace Junction and Cloquet	3,351 "
1909 Total	10,359 feet

The following is a close approximation of the quantities of material moved during the year in changes of line, reduction of grades, widening and raising banks, bridge filling, and ballasting:

In change of line and reduction of grades	1,588,550 cu. yds.
In widening and raising embankments, and generally restoring banks	759,762 " "
For filling bridges	1,082,192 " "
For ballasting (gravel)	1,051,994 " "
For new lines through Cloquet, Spokane, Cascade Tunnel, and Everett	836,820 " "
1910 Total	5,319,318 cu. yds.

There were also placed:

Masonry	25,531 cu. yds.
Concrete	21,595 " "
Riprap	66,305 " "
Total	113,431 cu. yds.

Following the plan of previous years, only such amounts as represented cost of actual additions to the property have been charged to "Additions and improvements," and the entire amount charged to that account during the year on account of

the line leased from the St. Paul, Minneapolis and Manitoba 1911
Railway Company, or $1,898,878.53, has been transferred to "Fund for permanent improvements and renewals," so that the Great Northern Railway Company is not carrying on its books, as an asset, the cost of any additions and improvements.

All replacements, renewals, etc., have been charged to operating expenses. The amount included in "Maintenance of road and structures" this year, for extraordinary improvements, etc., is $1,236,204.75.

The permanent improvement of the property has been continued to a greater extent than ever before, and the track is 1912
constantly being made better. The equipment and facilities for handling the company's traffic have been largely improved and increased.

VOLUME OF TRAFFIC AND RATES.

On account of the crop failure last fall, the company hauled during the year 31,863,372 bushels less wheat and flax than during the previous year, and its earnings from these two commodities were reduced by $2,897,747.25. As the farmers received less money from their crops, their purchases were reduced and there was a falling off in receipts from westbound 1913
merchandise, etc., on the eastern section of the line; how much can not be accurately measured.

The earnings from the iron-ore traffic of the Eastern Railway of Minnesota increased $136,651.75. The freight earnings of the system decreased but $909,365.98. There was, therefore, an increase in earnings from traffic other than wheat, flax, and iron ore of $1,851,729.52. By far the larger part of this increase came from business to and from the Pacific coast. The revenue ton mileage of that portion of the system east of Minot, N. D., decreased 142,233,003 ton miles, while that of the sys- 1914
tem west of Minot increased by 119,191,316 ton miles.

The average receipts per ton per mile were reduced $\frac{28}{1000}$ of a cent, or 3.1146 per cent. On the ton mileage hauled during the year this reduction amounted to about $695,000.

While the ton mileage of revenue freight was reduced less than one per cent, the mileage of loaded freight cars was reduced 1.1065 per cent; of empty freight cars, 12.1430 per cent, and mileage of freight trains 7.2899 per cent, resulting in

1915 an increase of 24.514 tons (6.8709 per cent) in the average number of revenue tons per freight train mile, making the average train load of revenue freight 381.294 tons.

The earnings of passenger trains increased $304,434.96, or over five per cent, of which $257,241.58 came from passenger fares, $21,925.24 from sleeping cars, $15,647.71 from transportation of mails, $6,561.78 from transportation of express, and the balance from miscellaneous sources. The average earnings per passenger per mile decreased 3.7 per cent and are now 2.29 cents. Effective July 1st, 1900, the local rates in Washington
1916 and Idaho were reduced to three cents per mile.

It is gratifying to note that the immigration referred to in the last report has continued with increasing volume. Never in the history of the company has there been so great a movement of settlers upon its lines as during the past year. The settlement has not been confined to any particular locality, but has been general. The larger part of the immigration comes from the Middle West and is of a character which will rapidly develop the new country in which it has located.

The company's policy of making low rates to its western ter-
1917 ritory has enabled settlers to avail themselves of the cheap lands of the West. This increase in the settlement of the lands lying along its line is evidenced by the increased volume of the company's general traffic. If the United States Government would undertake an intelligent and comprehensive plan of irrigation for the purpose of reclaiming the semiarid lands of the West, their immediate settlement would follow. The public domain is in charge of the Government, whose duty it is to put it in condition for use. It belongs to the people.

The board respectfully call the attention of the shareholders
1918 to the report of the comptroller, with the customary balance sheet and statistical tables, and to the report of the land commissioner.

JAMES J. HILL, *President.*

COMPTROLLER'S REPORT.

Mr. JAMES J. HILL, *President.*

DEAR SIR: Herewith I beg to submit statements showing results of operation of the Great Northern Railway Company

and its proprietary companies for the fiscal year ended June 30th, 1919
1901.

These statements are made in the same form and on the same basis as those submitted with last year's report.

The statements on the pages next following, 26 and 27, show the earnings, operating expenses, taxes, etc., of the railway system exclusive of the Spokane Falls and Northern Railway system, which is operated separately. The statement on page 28 shows the division of those amounts between the several railways, and includes as a separate item the same information for the Spokane Falls and Northern Railway system. On pages 29 and 30 are 1920
given the revenue and income accounts of the Great Northern Railway Company.

The change in "1900" figures for "Tons of freight carried" and "Passengers carried," as shown on pages 32 and 33, is fully explained in note at foot of page 33.

The balance sheet on page 35, like the one published last year, presents a complete statement of the property, capitalization, and finances of what is known as the Great Northern Railway Line. The finances, etc., of the Spokane Falls and Northern system and of the Northern Steamship Company are not included, those 1921
properties being operated and their finances kept separate and distinct from those of the balance of the system.

R. I. FARRINGTON,
Comptroller.

Gross earnings, operating expenses, taxes, and net earnings of the railway system, and per mile of road operated, for the fiscal year ended June 30th, 1901, compared with the previous fiscal year.

NOTE.—These figures do not include the Spokane Falls and Northern Railway system

GROSS EARNINGS.

Per cent.	1901.	Class.	1900.	Per cent. 1922
76.2721	$21,623,653.95	Freight	$22,533,019.93	77.9398
17.3164	4,909,332.74	Passenger	4,652,091.16	16.0912
2.7906	791,144.86	Mail	775,497.15	2.6824
1.0912	309,369.60	Express	302,807.82	1.0474
2.5297	717,188.60	Miscellaneous	647,373.20	2.2392
	28,350,689.75	Total	28,910,789.26	

1923 *Gross earnings, operating expenses, taxes, etc.*—Continued.

OPERATING EXPENSES.

Per cent.	1901.	General accounts.	1900.	Per cent.
48.9246	$7,751,339.13	Conducting transportation	$7,122,817.04	47.8762
14.8599	2,354,311.46	Maintenance of equipment	2,114,408.41	14.2120
27.7854	4,402,157.25	Maintenance of road and structures	4,330,359.09	29.1066
8.4301	1,335,613.22	General expenses	1,309,993.38	8.8052
	15,843,421.06	Total	14,877,577.92	

SUMMARY OF EARNINGS AND EXPENSES.

1901.		1900.
1924 $28,350,689.75	Gross earnings	$28,910,789.26
15,843,421.06	Operating expenses	14,877,577.92
$12,507,268.69	Net earnings	$14,033,211.34
969,642.31	Taxes	990,798.26
$11,537,626.38	Income from operation	$13,042,413.08
55.88	Operating expenses, per cent of gross earnings	51.46
59.30	Operating expenses and taxes, per cent of gross earnings	54.89
$5,449.64	Gross traffic earnings per mile of road	$5,695.74
3,045.46	Operating expenses per mile of road	2,931.04
$2,404.18	Net earnings per mile of road	$2,764.70
5,202.31	Average miles of road under operation	5,075.86

Statement showing the revenues for the year ended June 30th, 1901, of the Great Northern Railway and all proprietary companies.

Companies.	Gross earnings.	Operating expenses.	Taxes.	Income from operation.	Miscellaneous income received.	Total.
Great Northern Railway	$20,881,051.48	$12,108,956.68	$745,224.19	$8,026,870.61	$1,155,591.13	$9,182,461.74
RAILWAYS.						
Eastern Ry. of Minnesota	3,735,019.68	1,571,470.08	122,787.37	2,040,762.23	390,457.63	2,431,219.86
Montana Central Ry	2,196,550.32	1,180,211.41	33,937.45	982,401.46	28,279.77	1,010,681.23
Wilmar and Sioux Falls Ry	1,481,586.97	938,542.39	62,132.82	480,911.76	8,490.30	489,402.06
Duluth, Watertown and Pacific Ry	56,481.30	44,240.50	5,560.48	6,680.32	208.50	6,888.82
Total railway system proper	$28,350,689.75	$15,843,421.06	$969,642.31	$11,537,626.38	$1,583,027.33	$13,120,653.71
OTHER COMPANIES.						
Spokane Falls and Northern Ry. System	855,900.26	547,107.62	26,060.86	282,731.78	27,061.90	309,793.68
Minneapolis Union Ry	227,001.70	54,308.10	937.17	171,756.43	9,673.38	181,429.81
Minneapolis Western Ry	57,214.00	32,044.57	1,158.63	24,010.80	12.75	24,023.55
Duluth Terminal Ry	39,470.75	25,970.75	.....	13,500.00	.....	13,500.00
Northern Steamship Co. [a]	1,034,110.50	795,831.29	.....	238,279.21	.....	238,279.21
Total for system	$30,564,386.96	$17,298,683.39	$997,798.97	$12,267,904.60	$1,619,775.36	$13,887,679.96

[a] For year ended December 31st, 1900.

EXPLANATORY NOTE.

DIVIDENDS.—Out of the net income of the companies named the following dividends have been declared:

Eastern Railway Company of Minnesota	$1,920,000.00
Montana Central Railway Company	500,000.00
Wilmar and Sioux Falls Railway Company	350,000.00
Spokane Falls and Northern Railway System:	
Columbia and Red Mountain Railway Co	18,508.00
Red Mountain Railway Co.	38,120.00
Minneapolis Union Railway Company	25,000.00
Northern Steamship Company	240,000.00
Total	$3,091,628.00

which amount is not included in the "Miscellaneous income" of the Great Northern Railway as given by the above table, but is added to the "Miscellaneous income" in the income account on page 30.

DULUTH TERMINAL RY. CO.—This company is the owner of the railway used by the Eastern Railway of Minnesota to secure entrance into Duluth and of extensive yards in Duluth. Its stock and bonds are all owned by the Eastern Railway. Under the franchise of the Duluth Terminal Railway its earnings derived from trackage are limited to 6 per cent on its stock and bonds. The interest and dividend paid, amounting to $13,500, are not included in the "Miscellaneous income" of the Eastern Railway as above shown.

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1926 REVENUE ACCOUNT.—GREAT NORTHERN RAILWAY COMPANY.

Earnings from operation of St. P., M. and M. Ry.'s leased lines and line of Seattle and Montana Railroad Company, year ended June 30, 1901.

Earnings:		
Freight	$15,367,999.28	
Passenger	3,943,926.90	
Mail	694,658.50	
Express	261,088.69	
Miscellaneous	613,378.11	
Gross earnings		$20,881,051.48
1927 Operating expenses:		
Conducting transportation	$5,820,792.72	
Maintenance of equipment	1,800,215.26	
Maintenance of road and structures	3,457,416.18	
General expenses	1,030,532.52	
Total operating expenses	12,108,956.68	
Taxes	745,224.19	
		12,854,180.87
Income from operation		8,026,870.61
From which have been paid:		
Rentals:		
1928 To St. P., M. and M. Ry. Co.—		
Guaranteed interest on St. P., M. and M. Ry. Co.'s bonds, paid and accrued	$3,456,805.68	
(For details see page 34.)		
Guaranteed dividends of 6 per cent on capital stock of St. P., M. and M. Ry. Co	1,200,000.00	
Maintenance of organization of St. P., M. and M. Ry. Co	6,798.12	
1929 Other rentals	196,309.09	
Total rentals	4,859,912.89	
From which deduct amount received by Great Northern Ry. Co., as dividends paid and accrued on stock of St. P., M. and M. Ry. Co., obtained by it in exchange for stock of Great Northern Ry. Co	1,172,256.50	
Net charges		3,687,656.39
Balance transferred to income account		4,339,214.22

COMPLAINANT'S EXHIBIT B. 487

INCOME ACCOUNT.—GREAT NORTHERN RAILWAY COMPANY. 1930

Year ended June 30, 1901.

Balance transferred from revenue account		$4,339,214.22	
Other income:			
Interest on bonds owned	$395,548.37		
Dividends on stocks owned	3,126,503.75		
Rental of lines leased	172,752.38		
Bills receivable (land notes)	2,014.57		
Rental of equipment and car service	100,741.01		
Profit on securities sold during year	337,554.33		
Income from other sources—ground rents, miscellaneous items, etc.	112,104.72	4,247,219.13	1931
Total income		8,586,433.35	
From which have been paid dividends as follows:			
August 1, 1900, 1¾ per cent on $98,413,500	$1,722,236.25		
November 1, 1900, 1¾ per cent on $98,417,250	1,722,301.88		
February 1, 1901, 1¾ per cent on $98,621,750	1,725,880.63		
May 1, 1901, 1¾ per cent on $98,682,875	1,726,950.31	6,897,369.07	1932
Balance		1,689,064.28	

DETAILS OF OTHER INCOME.

Interest of bonds owned:			
Town of Wadena bonds	$300.00		
Town of Sandness bonds	120.00		
Town of Leaf River bonds	120.00		
Town of Hutchinson bonds	330.00		
Town of Minnesota Falls bonds	120.00		
Montana Central Ry. Co. bonds	80,000.00		
Willmar and Sioux Falls Ry. Co. bonds	1,050.00		
Minnesota Transfer Ry. Co. bonds	235.87		1933
Butte, Anaconda and Pacific Ry. Co. bonds	50,000.00		
Spokane Falls and Northern Ry. Co. bonds	154,800.00		
Nelson and Ft. Sheppard Ry. Co. bonds	77,992.50		
Columbia and Red Mountain Ry. Co. bonds	17,460.00		
Red Mountain Ry. Co. bonds	13,020.00		
Total		$395,548.37	

1934	Dividends on stocks owned:	
	Northern Steamship Co. stock	$240,000.00
	Great Northern Ry. Co. stock	2,850.75
	St. Paul Union Depot Co. stock	2,625.00
	Montana Central Ry. Co. stock	500,000.00
	Minneapolis Union Ry. Co. stock	25,000.00
	Eastern Ry. Co. of Minnesota stock	1,920,000.00
	Willmar and Sioux Falls Ry. Co. stock	350,000.00
	Red Mountain Ry. Co. stock	38,120.00
	Columbia and Red Mountain Ry. Co. stock	18,508.00
1935	Butte, Anaconda and Pacific Ry. Co. stock	29,400.00
	Total	$3,126,503.75

Statistics of freight and passenger traffic on system (but not including Spokane Falls and Northern Railway system) for the year ended June 30th, 1901, compared with the previous year.

	Description.	1901.	1900.	Decrease.	
				Amount.	Per cent.
	FREIGHT TRAFFIC.				
	Mileage of freight trains	5,627,697	6,092,623	464,926	7.6310
	Mileage of mixed trains	881,061	927,924	46,863	5.0503
	Total	6,508,758	7,020,547	511,789	7.2899
1936	Mileage of locomotives employed in "helping" freight and mixed trains	304,331	268,452	*Increase.* 35,879	*Increase.* 13.3651
	Percentage of "helping" to revenue train mileage	4.6757	3.8238	7.0105	
	Mileage of loaded freight cars	154,527,689	156,256,650	*Decrease.* 1,728,961	*Decrease.* 1.1065
	Mileage of empty freight cars	44,468,558	50,614,698	6,146,140	12.1430
	Total car mileage	198,996,247	206,871,348	7,875,101	3.8068
	Tons of freight carried, revenue	9,925,811	a 9,676,771	*Increase.* 249,040	*Increase.* 2.5735
	company	1,592,440	1,511,268	81,172	5.3711
	Total	11,518,251	a 11,188,039	330,212	2.9515
1937	Tons of revenue freight carried one mile	2,481,751,195	2,504,792,882	*Decrease.* 23,041,687	*Decrease.* 0.9199
	Earnings from freight traffic	$21,998,491.43	$22,860,725.26	$862,233.83	3.7717
	AVERAGES.				
	All cars hauled per freight train mile	30.57	29.46	*Increase.* 1.11	*Increase.* 3.7678
	Tons revenue freight hauled per train	381.294	356.780	24.514	6.8709
	Total revenue freight hauled per loaded car	16.060	16.030	.030	.1871
	Earnings per freight train mile	$3.38	$3.26	$0.12	3.6810
	Earnings per ton per mile	*Cents.* .871	*Cents.* .899	*Decrease. Cents.* .028	*Decrease.* 3.1146

Statistics of freight and passenger traffic on system (but not including Spokane Falls and Northern Railway system) for the year ended June 30th 1901, compared with the previous year—Continued. 1938

Description.	1901.	1900.	Decrease. Amount.	Decrease. Per cent.
PASSENGER TRAFFIC.				
			Increase.	*Increase.*
Mileage of passenger trains	4,284,900	4,010,799	274,101	6.8341
Mileage of locomotives employed in "helping" passenger trains	52,862	25,417	27,445	107.9789
Percentage of "helping" to revenue train mileage	1.2337	.6337	10.0127	.....
Passengers carried	2,717,851	a2,407,311	310,540	12.8999
Passengers carried one mile	214,392,859	195,585,382	18,807,477	9.6160
Earnings of passenger trains	$6,325,873.69	$6,021,438.73	$304,434.96	5.0559 1939
AVERAGES.				
Earnings per passenger train mile	$1.2245	$1.2192	$0.0053	0.4347
			Decrease.	*Decrease.*
Earnings per passenger per mile.	*Cents.* 2.290	*Cents.* 2.378	*Cents.* 0.088	3.7006
TOTAL TRAINS.				
Mileage of freight and passenger trains	10,793,658	11,031,346	237,688	2.1547
Earnings from freight and passenger trains	$28,324,365.12	$28,882,163.99	$557,798.87	1.9313
			Increase.	*Increase.*
Earnings per train per mile	2.63	2.62	.01	0.3817
Expenses per train per mile	1.47	1.35	.12	8.8889
Net traffic earnings per train per mile	1.16	1.27	*Decrease.* .11	*Decrease.* 8.6614 1940

NOTE.—The train, locomotive, and car mileage figures given above have been compiled and all computations based upon them made in accordance with the rules of the Interstate Commerce Commission.

a Separate statistics are prepared for each of the railways forming the system. The "Tons of freight carried" and "Passengers carried," as shown in previous reports, have been arrived at by adding together those figures for each of the roads in the system, thus causing a duplication when a shipment or passenger traveled over two or more of the roads. To avoid this duplication, system statistics have been prepared this year, and last year's figures revised, the corrected figures being given above.

Statement of bonds and stock outstanding in the hands of the public for which the Great Northern Railway Company is responsible directly or under guarantee.

Outstanding July 1, 1900.	Bonds.	Outstanding July 1, 1901.	Annual charges paid 1900–1901.
	St. P., M. & M. Ry.:		1941
$8,000,000.00	Second mortgage, 6 per cent	$7,860,000.00	$477,900.00
5,676,000.00	Dakota extension, 6 per cent	5,625,000.00	340,050.00
13,344,000.00	Consolidated mortgage, 6 per cent	13,344,000.00	800,640.00
21,159,000.00	Consolidated mortgage, 4½ per cent	20,756,000.00	940,117.50
7,907,000.00	Montana extension, 4 per cent	7,907,000.00	316,280.00
14,545,454.54	Pacific extension, 4 per cent	a14,545,454.54	581,818.18
	Total shown on page 29		3,456,805.68
	Eastern Ry. of Minnesota:		
4,700,000.00	First Division, first mt'ge, 5 per cent.	4,700,000.00	235,000.00
5,000,000.00	Northern Div., first mt'ge, 4 per cent.	5,000,000.00	200,000.00

1942 *Statement of bonds and stock outstanding in the hands of the public for which the Great Northern Railway Company is responsible directly or under guarantee*—Continued.

Outstanding July 1, 1900.	Bonds.	Outstanding July 1, 1901.	Annual charges paid 1900–1901.
	Montana Central Ry.:		
$6,000,000.00	First mortgage, 6 per cent	$6,000,000.00	$360,000.00
3,300,000.00	First mortgage, 5 per cent	4,000,000.00	200,000.00
	Willmar & Sioux Falls Ry.:		
3,646,000.00	First mortgage, 5 per cent	3,646,000.00	182,300.00
	Minneapolis Union Ry.:		
2,150,000.00	First mortgage, 6 per cent	2,150,000.00	129,000.00
650,000.00	First mortgage, 5 per cent	650,000.00	32,500.00
	Minneapolis Western Ry.:		
1943 500,000.00	First mortgage, 5 per cent	500,000.00	25,000.00
96,577,454.54	Total bonds	96,683,454.54	4,820,605.68
	STOCK.		
469,200.00	St. P., M. & M Ry.—6 per cent guaranteed, unexchanged	454,600.00	[b]Net 27,743.50
97,046,654.54	Total	97,138,054.54	4,848,349.18
98,413,500.00	Great Northern Railway Company, outstanding	98,711,750.00	6,897,369.07

Bond outstanding, as above	$96,683,454.54
Outstanding capital stock of Great Northern and St. P., M. & M. Ry. companies	99,166,350.00
1944 Total capitalization of system	$195,849,804.54
Mileage of track in system, including second, third, fourth, fifth, and sixth tracks, covered by above capitalization, as shown on page 38	5,529.02
Stocks and bonds per mile of main track	$35,422.15
Mileage of main tracks covered by bonds in hands of public	4,740.40
Bonded debt outstanding per mile of main track covered thereby	$20,395.63

[a] Not including £3,000,000 St. P., M. & M. Ry. Co.'s Pacific extension bonds in treasury of Great Northern Railway Company.

[b] Difference between amount of rental accrued under lease and dividends received or accrued on St. P., M. & M. Ry. stock owned by Great Northern Railway Company.

Of the bonds above listed, there are held as free assets in the Great Northern Ry. Co.'s treasury:

$1,300,000 Montana Central Ry. Co.'s first mortgage bonds, and
21,000 Willmar & Sioux Falls Ry. Co.'s first mortgage bonds.

1945 *Condensed general balance*

Being a consolidation of the general balance sheets of that date of the St. Ry. Co. of Minnesota, Montana Central Ry. Co., Willmar and Sioux Falls R. R. Co., Park Rapids and Leech Lake Ry. Co., Minneapolis Union Ry.

DR.

RAILWAY PROPERTY.

	To Cost of railway, equipment, and lands owned by the St. Paul, Minneapolis and Manitoba Ry. Co	$116,497,251.53	
1946	Cost of additions and improvements made by the Great Northern Ry. Co. to property leased from the St. P., M. and M. Ry. Co. and paid for from "Fund for permanent improvements and renewals"	7,593,321.06	
	Total cost to June 30th, 1901, of property leased from St. P., M. and M. Ry. Co		$124,090,572.59
	Cost of the following properties controlled by the Great Northern Ry. Co. through ownership of their entire share capital:		
	Eastern Railway of Minnesota—railway, equipment, elevators, etc	$25,377,884.89	
1947	Montana Central Ry.—railway and equipment	15,344,999.01	
	Willmar and Sioux Falls Ry.—railway, equipment, and real estate	9,016,935.61	
	Duluth, Watertown and Pacific Ry	2,209,598.02	
	Seattle and Montana R. R.—railway and equipment	12,983,817.72	
	Minneapolis Union Ry.—union depot, railway, etc	3,154,722.27	
	Minneapolis Western Ry.—railway and equipment	743,497.26	
		68,831,454.78	
1948	Cost of the following properties, the bonds and capital stock of which are owned by the Eastern Ry. Co. of Minnesota:		
	Park Rapids and Leech Lake Ry.—railway and equip't	1,015,060.19	
	Duluth Terminal Ry	389,965.83	
			70,236,480.80
	Total cost of property operated by "The Great Northern Ry. Line"		194,327,053.39

sheet, June 30th, 1901. 1949

Paul, Minneapolis and Manitoba Ry. Co., Great Northern Ry. Co., Eastern Ry. Co., Duluth, Watertown and Pacific Ry. Co., Seattle and Montana Co., Minneapolis Western Ry. Co., and Duluth Terminal Ry. Co.

		Cr.	
CAPITAL STOCK.			
By authorized capital stock of the Great Northern Ry. Co., issuable June 30th, 1901	$100,000,000.00		
Less amount held in treasury of company, as explained on page 7	1,288,250.00		1950
Capital stock of Great Northern Ry. Co., issued and outstanding	98,711,750.00		
Capital stock of the St. Paul, Minneapolis and Manitoba Ry. Co. $20,000,000.00			
Less owned by the Great Northern and Ry. Co. (see contra) 19,545,400.00			
Outstanding	454,600.00		
Total capital stock outstanding in hands of public		$99,166,350.00	1951
Net paid subscriptions to additional capital stock		8,358,708.00	
FUNDED DEBT IN HANDS OF PUBLIC.			
St. Paul, Minneapolis and Manitoba Ry. Co.'s bonds, the principal and interest of which are guaranteed by the Great Northern Ry. Co	$70,037,454.54		
Bonds of proprietary companies, principal and interest guaranteed by Great Northern Ry. Co	26,646,000.00		1952
Total (for details see table on page 34)		96,683,454.54	
CAR TRUST OBLIGATIONS.			
Car trust notes assumed by Eastern Ry. Co. of Minnesota, upon purchase of Duluth, Superior and Western Ry., due in February and August of each year until February 1, 1906		146,868.70	
Total capital liabilities		204,355,381.24	

1953 *Condensed general balance sheet,*

DR.

OTHER PROPERTIES, SECURITIES, AND INVESTMENTS.

	To Cost of stocks and bonds owned by the Eastern Ry. Co. of Minnesota in addition to those of the Park Rapids and Leech Lake Ry. and the Duluth Terminal Ry. companies		$1,649,700.00
	Cost of stock of Sioux City and Western Ry. Co. owned by W. and S. F. Ry. Co		2,500,000.00
1954	Wisconsin Central Ry. Co.'s Minneapolis Terminal bonds owned by Minneapolis Union Ry. Co		247,500.00
	Cost of properties and securities owned by the Great Northern Railway Company		106,885,667.21
	Total		111,282,867.21
	Less par value of the following securities owned by the Great Northern Ry. Co. and not shown contra:		
	The entire capital stock of the—		
1955	Eastern Ry. Co. of Minnesota	$16,000,000.00	
	Montana Central Ry. Co	5,000,000.00	
	Willmar and Sioux Falls Ry. Co	7,000,000.00	
	Seattle and Montana R. R. Co	12,500,000.00	
	Minneapolis Union Ry. Co	500,000 00	
	Minneapolis Western Ry. Co	250,000.00	
1956	Duluth, Watertown and Pacific Ry. Co.	730,000.00	
	And the entire issue of bonds of the Duluth, Watertown and Pacific Ry. Co	1,375,000.00	
	Total	43,355,000.00	
	195,454 shares of capital stock of the St. Paul, Minneapolis and Manitoba Ry. Co.	19,545,400.00	

June 30th, 1901—Continued. 1957

		Cr.
ST. P., M. AND M. RY. CO.'S BONDS REDEEMED THROUGH OPERATIONS OF SINKING FUNDS.		
First mortgage land-grant bonds	$5,928,400.00	
Consolidated mortgage bonds	2,389,000.00	
		$8,317,400.00
CURRENT LIABILITIES		
Of land department, St. Paul, Minneapolis and Manitoba Ry. Co.:		
Audited vouchers unpaid	$8,077.43	
Unpaid pay rolls	1,361.65	1958
Due to other companies and individuals	3,908.33	
		13,347.41
Sinking fund applicable to the redemption of bonds		15,672.99
Of Great Northern Ry. Co. and proprietary co.'s above named:		
Audited vouchers unpaid	$1,387,877.94	
Unpaid pay rolls	1,341,847.48	
Unpaid coupons, including those due July 1, 1901	1,545,423.91	1959
Unpaid dividends on Gt. Northern Ry. Co.'s stock	17.34	
Unpaid dividends on St. P., M. and M. Ry. Co.'s stock	30.00	
		4,275,196.67
DEFERRED LIABILITIES.		
Accrued taxes, not due	$493,431.50	
Bond interest accrued, not due	125,691.66	
Rental of St. P., M. and M. Ry. Co., accrued, not due, *less* accrued dividends on St. P., M. and M. Ry. stock owned by Great Northern Ry. Co.	205,052.67	1960
		824,175.83
Bills payable		6,000,000.00
CONTINGENT LIABILITIES.		
Cost of additions and improvements made by the Great Northern Ry. Co. to property leased from the St. P., M. and M. Ry. Co. and paid for from "Fund for permanent improvements and renewals"	$7,593,321.06	

1961

DR. *Condensed general balance sheet,*

OTHER PROPERTIES, SECURITIES, AND INVESTMENTS—cont'd.

	Less par value of the following securities owned by the Great Northern Ry. Co. and not shown contra—Continued.		
	£3,000,000 St. P., M. and M. Ry. Co.'s Pa-		
1962	cific extension mort- gage bonds	$14,545,454.55	
			$77,445,854.55
	Cost of properties, securities and investments after deducting par value of stocks and bonds not shown contra		$33,837,012.68
	Total capital assets		228,164,066.05

CURRENT ASSETS

	Of land department, St. Paul, Minneapolis and Manitoba Ry. Co.:		
1963	Cash	$28,366.75	
	Due from other companies and individuals	653.65	
			29,020.40
	Of Great Northern Ry. Co. and proprietary co.'s above named:		
	Cash in St. Paul office	$477,345.35	
	Cash in New York office	4,955,390.35	
	Cash in London office	286,373.89	
	Due from agents	749,332.10	
1964	Due from U. S. Post-Office Department	197,437.14	
	Due from U. S. transportation	32,686.68	
	Due from Canadian post-office department	148.80	
	Advanced charges	34,957.03	
	Bills receivable	2,194,107.11	
	Due from other companies and individuals	1,205,397.72	
			10,133,176.17
	Value of material and fuel on hand		1,979,925.76
			240,306,188.38

June 30th, 1901—Continued. 1965

CR.

CONTINGENT LIABILITIES—continued.

Of Great Northern Ry. Co. and proprietary co.'s above named—Continued.

Unexpended balance of fund for permanent improvements and renewals	$1,005,749.88	
Total amount deducted from income to provide for future improvements and renewals	$8,599,070.94	1966
Fund for replacement of equipment	332,972.07	
Insurance fund	322,436.77	
Surplus funds of proprietary companies deposited with Great Northern Ry. Co	249,947.53	
		$9,504,427.31

PROFIT AND LOSS.

Balance, St. Paul, Minneapolis and Manitoba Railway Co	$1,974,039.91	1967
Great Northern Ry. Co. and above-named proprietary companies	5,026,547.02	
		7,000,586.93

1968

240,306,188.38

1969 *Equipment of Great Northern Railway and proprietary lines for year ended June 30th, 1901, as compared with year ended June 30th, 1900.*

Class.	1901.	1900.
Locomotives	563	550
Passenger equipment:		
Sleeping cars	50	50
Parlor cars	5	5
Dining cars	12	12
Buffet smokers	8	8
Coaches	163	164
Tourist cars	24	24
Passenger and baggage	35	37
Baggage, mail, and express	110	110
Business cars	18	17
Total passenger equipment	425	427
1970 Freight equipment:		
Box cars	14,582	14,291
Combination box and stock cars	750	750
Transfer freight cars	50	50
Furniture cars	1,152	1,152
Hay cars	6	6
Refrigerator cars	209	209
Stock cars	627	627
Flat and coal cars	3,312	2,949
Sand cars	600	500
Ore cars (wood)	1,101	700
Ore cars (steel)	600	250
Ballast cars	764	764
Caboose cars	340	302
1971 Cinder cars	53	53
Boarding cars	51	51
Derrick and tool cars	47	45
Steam shovels	19	20
Lidgerwood unloaders	12	10
Ditching cars	1	1
Pile drivers	10	10
Rotary snow plows	6	6
Snow dozers	15	14
Flangers	1	1
Logging trucks	100	100
Other work equipment	85	73
Total freight and work equipment	24,493	22,934

Track statement. Great Northern Railway and proprietary lines.

Lines leased from St. P. M. and M. Ry. Co.:	Main track, miles.	Total miles.
Terminals division	84.55	
1972 Fergus Falls division (not including line leased from Park Rapids and Leech Lake Railway Co.)	530.13	
Willmar division	77.94	
Breckenridge division	701.72	
Northern division	561.94	
Dakota division (not including line leased from Eastern Ry. Co. of Minn.)	461.18	
Montana division	692.06	
Kalispell division	388.97	
Cascade division (not including line of Seattle and Montana R. R. Co.)	304.49	
Total first main track	3,802.98	3,802.98

	Miles.	Main track, miles.	Total miles.	
Lines leased from St. P. M. and M. Ry. Co.—C't'd.				1973
Second track	30.61			
Third track	9.28			
Fourth, fifth, and sixth tracks	13.05		52.94	
Total main tracks covered by lease			3,855.92	
Side tracks			669.33	
Total tracks covered by the bonded debt of the St. P. M. and M. Ry. Co., as shown on page 34			4,525.25	
Other tracks leaseed by Great Northern Ry. Co.:	Side track, miles.			
Eastern Ry. of Minnesota—Fosston to Cass Lake	15.62	59.77	75.39	1974
Park Rapids and Leech Lake Ry.—Park Rapids to Cass Lake	6.96	49.04	56.00	
Tracks operated by the Great Northern Ry. Co.:				
Seattle and Montana R. R. Co.—Seattle, Wash., to South Westminster, B. C.	28.15	143.10	171.25	
Spur to Flathead Lake, at Kalispell			10.32	
Main line operated by Great Northern Ry. Co		4,054.89		
Proprietary companies:	Side track.	Main track.		
Eastern Ry. of Minnesota	146.87	457.31		1975
Less leased to Great Northern Ry Co	15.62	59.77		
	131.25	397.54	131.25	397.54
Second track			25.49	
Line Barclay Junction to Virginia			6.12	18.78
Duluth Terminal Ry			3.63	1.82
Montana Central Ry			52.42	260.51
Willmar and Sioux Falls Ry			47.86	433.41
Leased tracks between Sioux City, Ia., and South Sioux City, Neb.				3.32
Duluth, Watertown and Pacific Ry			4.08	69.84
Minneapolis Union Ry			4.73	2.63
Second track			2.63	
Minneapolis Western Ry			5.04	1.69
Total first main track proprietary lines		1,189.54		
Total second main track proprietary lines			1,189.54	
Total side track proprietary lines	28.12			
	255.13		283.25	
Total miles of road in system as operated June 30, 1901		5,244.43		
Total miles of track, all kinds, in system as operated			6,311.00	

		Side track, miles.	Main track, miles.	Total miles.
1977	Add—Mileage of Spokane Falls and Northern Ry. system	21.51	203.03	224.54
	Mileage owned by Seattle and Montana R. R. Co., but leased to Seattle and Northern Ry. Co	2.09	3.82	5.91
	Total miles of road in system, including lines operated separately		5,451.28	
	Total miles of track, all kinds, in system, including lines operated separately			6,541.45
1978	Total main tracks St. P., M. and M. Ry		3,855.92	
	First main track Seattle and Montana R. R. (owned)		146.92	
	First main line track proprietary companies (including S. F. and N. Ry. system)		1,498.06	
	Second main track proprietary companies		28.12	
	Total main tracks covered by capitalization			5,529.02
	NOTE.—Total mileage of road in system as operated June 30th, 1901, as shown on page 37		5,244.43	
	Total mileage of road in system June 30, 1900, as per report for that year		5,202.17	
	Increase in mileage			42.26
1979	This increase is made up as follows:			
	Eastern Ry. of Minnesota:			
	Stony Brook line (constructed)	46.49		
	Barclay Junction to Virginia (operated)	18.78		
	Duluth Terminal Ry., extension in Duluth	.04		
			65.31	
	Less decrease—track at Brace Junction removed		.13	
	Net increase			65.18
	Decreases:			
	St. P., M. & M. Ry.:			
1980	Switchback over Cascade mountains removed	12.66		
	Track between Hopkins and St. Bonifacius, Minn., removed (account extension Spring Park line)	19.66		
	Portion of line between Halsted, Minn., and Alton, N. D., taken up	.55		
	Changes in line at Willmar and on the Montana and Kalispell divisions	1.95		
	Sundry corrections	.06		
			34.88	

Decreases—Continued.		Main track, miles.	Total miles.	1981
St. P., M. & M. Ry.—Continued.				
Less increases in mileage for—				
Change of line between Teton and Tunis.	3.61			
New line through Spokane, constructed.	4.74			
New line through Cascade Tunnel and approaches	3.52			
New line through Everett, constructed.	3.63			
Extension of Spring Park line to St. Bonifacius, constructed	7.95			
		23.45		1982
Net decrease		11.43		
Montana Central Ry.:				
Fair Grounds and Red Mt. branches at Helena, removed	1.19			
Distance shortened by change of line, Boulder Hill	.25			
		1.44		
Great Northern Ry.:				
Trackage rights over other roads in Spokane and between Lowell and Everett, Wash., surrendered.		10.05		1983
Total deduction			22.92	
Net increase in mileage			42.26	

LAND COMMISSIONER'S REPORT.

Mr. JAMES J. HILL, *President.*

DEAR SIR: I respectfully submit the following report regarding the Minneapolis & St. Cloud land grant for the fiscal year ending June 30th, 1901:

Amount of Minneapolis & St. Cloud R. R. land grant—	Acres.	
Earned between St. Cloud and Hinckley	425,664.00	
Earned between St. Cloud and Roscoe	51,200.00	1984
Total	476,864.00	

	Acres.	
Total acreage selected to date	169,501.38	
Total acreage deeded to company	154,672.82	
Total acreage sold prior to June 30th, 1901, less sales canceled	[a]121,483.84	
Value of same	[a]$794,873.88	
Average price per acre	[a]6.54	
Remaining unsold June 30th, 1901	355,380.16	

[a] Includes adjustments account previous years.

1985 OPERATIONS DURING THE YEAR.

Sales, acres	36,021,775
Amount sold for	$366,207.24
Average price per acre	10.17
Receipts of land department	116,551.19
Disbursements of land department	23,721.51
Amount of deferred payments due company which are bearing interest at six and seven per cent	487,372.69

CHARLES H. BABCOCK,
Asst. Land Commissioner.

St. Paul, Minneapolis and Manitoba Railway Company's sinking fund account consolidated mortgage bonds.

1986 June 30th, 1901. By credits during the year:

From land department, as per land commissioner's report on page 43	$852,112.63
Revenue Todd County lands	3,451.46
Total credits	855,564.09

Debits:

To bonds purchased by trustee and canceled:

	Date.	Amount.	Price.	Cost.
	August 13, 1900	$5,000.00	114⅜	$5,718.75
	August 13, 1900	30,000.00	114	34,200.00
	September 11, 1900	22,000.00	114¼	25,135.00
	October 4, 1900	21,000.00	114½	24,045.00
1987	October 10, 1900	22,000.00	114¼	25,135.00
	October 19, 1900	18,000.00	114¼	20,565.00
	November 1, 1900	22,000.00	114⅜	25,162.50
	November 12, 1900	21,000.00	114⅜	24,097.50
	November 22, 1900	95,000.00	116⅛	110,318.75
	January 2, 1901	3,000.00	115¼	3,457.50
	January 4, 1901	1,000.00	115¼	1,152.50
	January 18, 1901	5,000.00	115½	5,775.00
	January 21, 1901	15,000.00	115½	17,325.00
	January 22, 1901	8,000.00	115½	9,240.00
	January 31, 1901	2,000.00	115½	2,310.00
1988	February 14, 1901	3,000.00	115¾	3,472.50
	February 16, 1901	1,000.00	116	1,160.00
	February 19, 1901	14,000.00	116⅛	16,257.50
	February 20, 1901	1,000.00	116⅛	1,161.25
	February 21, 1901	2,000.00	116¼	2,322.50
	April 2, 1901	16,000.00	116⅜	18,660.00
	April 2, 1901	50,000.00	117	58,500.00
	April 4, 1901	100,000.00	117	117,000.00
	April 11, 1901	15,000.00	117	17,550.00
	April 12, 1901	6,000.00	117	7,020.00
	April 15, 1901	1,000.00	116½	1,165.00

COMPLAINANT'S EXHIBIT B. 503

Date.		Amount.	Price.	Cost.	
April	17, 1901	$30,000.00	116⅜	$34,912.50	1989
April	24, 1901	6,000.00	116⅜	7,005.00	
April	26, 1901	4,000.00	116⅝	4,665.00	
April	26, 1901	5,000.00	117	5,850.00	
April	30, 1901	2,000.00	116⅞	2,337.50	
May	17, 1901	14,000.00	116¼	16,275.00	
May	17, 1901	3,000.00	116⅜	3,502.50	
May	21, 1901	10,000.00	116¼	11,625.00	
May	24, 1901	1,000.00	116	1,160.00	
May	28, 1901	1,000.00	116⅛	1,161.25	1990
June	7, 1901	5,000.00	116½	5,825.00	
June	7, 1901	13,000.00	116¾	15,177.50	
June	8, 1901	50,000.00	117	58,500.00	
June	11, 1901	7,000.00	116	8,120.00	
June	12, 1901	7,007.00	116¾	8,172.50	
June	13, 1901	5,000.00	116¾	5,837.50	
June	14, 1901	13,000.00	115⅞	15,063.75	
June	17, 1901	12,000.00	115⅞	13,905.00	
June	21, 1901	4,000.00	116⅞	4,675.00	
June	24, 1901	8,000.00	116⅞	9,350.00	
June	25, 1901	5,000.00	116¼	5,812.50	1991
June	26, 1901	12,000.00	117	14,040.00	
June	29, 1901	2,000.00	116⅞	2,337.50	
	Total.....	718,000.00	Costing	833,216.25	
Repayment of amount advanced to sinking fund during year ended June 30th, 1900, as per page 45, last report.....				6,674.85	
Total debits					839,891.10
June 30th, 1901, balance, being funds applicable to further redemption of bonds.....					15,672.99

REPORT OF LAND COMMISSIONER, ST. PAUL, MINNEAPOLIS AND MANITOBA RY. CO. 1992

To Mr. SAMUEL HILL,

President St. Paul, Minneapolis and Manitoba Ry. Co.

DEAR SIR: I respectfully submit the following report of operation of the land department for the year ended June 30th, 1901:

	Acres.	Acres.
Total acreage of land grant computed at ten sections for each mile of road, as formerly construed by the State of Minnesota.....		3,848,000.00
Total acreage of land grant, as construed by United States General Land Office.....		3,479,611.36

	Acres.	Acres
Total acreage deeded to company prior to June 30th, 1901	3,220,760.30	
Less decreed to Northern Pacific R. R. Co. by Supreme Court United States, March 2d, 1891	365,860.92	
Decreed to Northern Pacific R. R. Co. in accordance with terms of settlement of November 1st, 1897	48,916.08	
Redeeded to United States	3,330.02	
	418,107.02	
Net acreage deeded	2,802,653.28	
Total acreage sold prior to June 30th, 1901	2,843,081.18	
Less sales canceled	302,074.98	
		2,541,006.20
Remaining unsold June 30th, 1901		938,605.16

Owing to sales and other disposals of land within the limits of the grant by the United States prior to the time at which this company's right attached, a final adjustment of the grant by the Government, which is approaching completion, will reduce the above area by about 600,000 acres.

During the year ended June 30th, 1901, 221,532.52 acres of land were sold for $1,978,214.87, an average of $8.93 per acre. There were also sold 341 town lots for $10,013.50, an average price per lot of $29.36.

The number of land sales during the year was 2,140, with an average of about 103.52 acres to each purchase.

Cash receipts of land department for year ended June 30th, 1901.

Cash sales and installments of principal on new land contracts	$235,859.60
Amount of principal received on old contracts	516,210.78
Amount received for trespass, stumpage, grass sales, etc	6,844.15
Amount received for interest on old and new contracts	180,077.56
Amount received for principal and interest on town-lot contracts	16,526.50
	955,518.59
Less expense of land department and trustee	103,405.96
Net receipts	852,112.63
Amount of deferred payments due this company on land contracts, bearing interest at 7 and 6 per cent	3,178,435.57
Amount of deferred payments due this company on town lots, bearing interest at 7 and 6 per cent	16,285.56
	3,194,701.13

MAP(S) IS/ARE TOO LARGE TO BE FILMED

Referring to that portion of report for the year ending June 1997
30th, 1893, relating to lands lying within the limits of the grant on the Dakota side of the Red River, the company has reconveyed to the United States a total of 63,477.92 acres, for which the company is authorized to locate an equivalent amount elsewhere. The company has selected, to June 30th, 1901, 47,325.95 acres in lieu of a part of the above amount.

The following are the sales during the year covered by the Dakota grant, viz:

1,365.91 acres for $13,461.64, an average per acre of	$9.85	
1 lot for $500.00, an average per lot of.....	500.00	1998
Receipts during the year.....		$26,850.44
Taxes paid, expenses of examination and selection of land and other disbursements made during the year in connection with grant.....		1,496.16

The remaining lands are in process of adjustment with the Government.

CHARLES H. BABCOCK,
Ass't Land Commissioner.

The following is a copy of trust indenture securing Northern Pacific-Great Northern, C., B. & Q. collateral, 4 per cent joint 1999
bonds, offered in evidence by complainant.

COMPLAINANT'S EXHIBIT C.

TRUST INDENTURE SECURING NORTHERN PACIFIC-GREAT NORTHERN, C. B. AND Q. COLLATERAL, 4 PER CENT JOINT BONDS. JULY 1, 1901.

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An indenture, made this first day of July, A. D. 1901, by and between

Northern Pacific Railway Company, a corporation of the State of Wisconsin, hereinafter termed the "Northern Pacific Company," and the Great Northern Railway Company, a corporation of the State of Minnesota, hereinafter termed the "Great Northern Company" (said companies together being hereinafter termed "the Railway Companies"), parties of the first part; and 2007

The Standard Trust Company of New York, a corporation organized and existing under the laws of the State of New York, hereinafter termed the "Trustee," party of the second part.

Whereas the Northern Pacific Company operates a railroad extending from St. Paul, in the State of Minnesota, and also from a point on Lake Superior, in the State of Wisconsin, to Puget Sound on the Pacific coast, together with various branch lines and extensions; and

Whereas the Great Northern Company operates a railroad extending from St. Paul, in the State of Minnesota, and from 2008 Duluth, in the State of Minnesota, to Puget Sound on the Pacific coast, together with various branch lines and extensions; and

Whereas the Chicago, Burlington and Quincy Railroad Company, hereinafter termed the "Burlington Company," operates a railroad extending from Chicago, Illinois, to St. Paul, in the State of Minnesota, and from Chicago, Illinois, to Billings, in

the State of Montana, together with various other lines, branches, and extensions; and

Whereas said railroad of the Northern Pacific Company and said railroad of the Burlington Company are connected at St. Paul, in the State of Minnesota, and also at Billings, in the State of Montana, and can be operated together so as to constitute one continuous main line with branches; and said railroad of the Great Northern Company and said railroad of the Burlington Company are connected at St. Paul, in the State of Minnesota, and can be operated together as one continuous main line with branches; and

Whereas the shares of the capital stock of the Burlington Company now issued or to be issued under existing contracts do not in the aggregate exceed 1,112,000 shares of the par value of $100 each; and

Whereas the Northern Pacific Company and the Great Northern Company each has corporate power to purchase the shares of the capital stock of the Burlington Company and each has corporate power to issue its obligations in payment for the shares so purchased; and

Whereas the Northern Pacific Company and the Great Northern Company each desired to acquire an interest in the capital stock of the Burlington Company, but it was found impracticable to acquire a substantial amount of such stock except by the purchase thereof jointly and by the issue in payment therefor of the joint bonds of the Northern Pacific Company and of the Great Northern Company, as hereinafter provided; and, therefore, said companies agreed with each other:

(*a*) That they would purchase all, or not less than two-thirds, of the entire capital stock of the Burlington Company, on terms agreed upon between them; and that in payment for such stock they would issue their joint bonds, at the rate of one thousand dollars, par value, of such joint bonds for each five hundred dollars, par value, of the stock so purchased;

(*b*) That all the stock so purchased should be assigned and transferred to the Trustee under an indenture of the tenor of these presents, as security for the payment of the principal and interest of such joint bonds;

(*c*) That each of the Railway Companies should pay, or should cause to be paid, one-half of the entire principal and one-half of

the entire interest of such bonds; that each should bear one-half 2013
of all other obligations imposed upon said companies by the terms of such indenture; and that if either of said Railway Companies should default in its obligations to the other in respect of such bonds by reason of bankruptcy, insolvency, or other cause disabling it from performing the same, the purchased stock belonging to such company so in default thereafter should become and be the property of the company not in default, which thenceforth should be liable in severalty upon all covenants in the said bonds contained; and

(*d*) That the respective rights, interests, and obligations of 2014
the Railway Companies, as between each other, in respect of all the shares of stock so acquired, and in respect of such joint bonds, should be defined in and by an agreement between said Railway Companies, subject in all respects to the prior lien and obligation of such trust indenture; and

Whereas at a meeting of the board of directors of the Northern Pacific Company, held on the 21st day of June, 1901, this indenture was submitted and read, and it was duly resolved that the same be executed and acknowledged by the president or a vice-president and the secretary or an assistant secretary in 2015
behalf of said company, and that the same be delivered to the Standard Trust Company, of New York, the trustee therein named; and

Whereas at a meeting of the board of directors of the Great Northern Company, held on the 29th day of June, 1901, this indenture was submitted and read, and it was duly resolved that the same be executed and acknowledged by the president or a vice-president and the secretary or an assistant secretary in behalf of said company, and that the same be delivered to the Standard Trust Company, of New York, the trustee therein 2016
named; and

Whereas the bonds to be secured by this indenture are to be coupon bonds of the denomination of one thousand dollars each, numbered consecutively from 1 upwards, and registered bonds of the denomination of one thousand dollars, of five thousand dollars, and also of any multiple of five thousand dollars that the Railway Companies from time to time may prescribe, every such bond to bear a distinctive number or designation; and all such bonds from time to time are to be executed in the name

and on behalf of each of the Railway Companies, and under its corporate seal, by its president or any vice-president and by its secretary or any assistant secretary, and are to be issued, certified, and delivered as in this indenture provided, and are to be substantially of the following tenor, to wit:

[Form of coupon bond.]

No. .... $1,000.

UNITED STATES OF AMERICA.

NORTHERN PACIFIC—GREAT NORTHERN

Four per cent joint bond.

C., B. and Q. collateral.

The Northern Pacific Railway Company, a corporation of the State of Wisconsin, hereinafter termed the Northern Pacific Company, and the Great Northern Railway Company, a corporation of the State of Minnesota, hereinafter termed the Great Northern Company, for value received, jointly promise to pay to bearer, or, if registered, to the registered holder of this bond, on the first day of July, 1921, in the city of New York or in the city of Boston, Mass., at the office of J. P. Morgan & Co., or of such other fiscal agent or agents as shall be appointed by said Railway Companies, one thousand dollars gold coin of the United States of America of the present standard of weight and fineness, and to pay interest thereon from the first day of July, 1901, at the rate of four per cent per annum, such interest to be payable at such office in New York or in Boston in like gold coin semiannually on the first day of January and the first day of July in each year, but only upon presentation and surrender of the annexed coupons therefor as they severally mature.

The principal and interest of this bond are payable without deduction for any tax or taxes which said railway companies may be required to pay or to retain therefrom under any present or future law of the United States, or of any State, county, or municipality therein.

This bond is one of a duly authorized series of coupon bonds and registered bonds issued and to be issued by said Railway Companies jointly in payment of the purchase price of certain shares of the capital stock of the Chicago, Burlington & Quincy

Railroad Company, of which shares one-half shall belong to the 2021
Northern Pacific Company and one-half to the Great Northern Company; all such shares having been acquired under an agreement between the Northern Pacific Company and the Great Northern Company, that if either of said Railway Companies shall default in its obligations to the other in respect of the bonds of this issue, by reason of bankruptcy, insolvency, or other cause, disabling it from performing the same, the pledged shares belonging to such company so in default thereafter shall become and be the property of the company not in default, which thenceforth shall be liable in severalty upon all covenants 2022
herein contained.

All such bonds have been issued, or are to be issued, under and in pursuance of, and are to be secured ratably by and are subject to, an indenture dated July 1, 1901, duly executed by the Northern Pacific Company and by the Great Northern Company, jointly, to the Standard Trust Company of New York, as Trustee, under which indenture all such shares of stock of the Chicago, Burlington & Quincy Railroad Company so purchased by said Railway Companies shall be deposited with said Trustee; and hereby reference is made to said indenture with the same 2023
effect as if herein fully set forth.

The aggregate amount of bonds of this issue is limited, so that never at any one time shall there be outstanding such bonds for an aggregate principal sum in excess of $222,400,000, nor in excess of twice the par value of all shares of the capital stock of the Chicago, Burlington & Quincy Railroad Company that shall have been assigned and transferred to the trustee under said indenture in exchange for bonds certified thereunder.

This bond is subject to redemption, as stated in said indenture, on the first day of any January or July after January 1, 2024
1906, by payment of the principal of the bond, together with a premium of five per cent thereof and the interest then accrued.

As provided in said indenture, this bond may be registered as to principal in the name of the owner on the books of the trustee at its office in the city of New York, or on the books of an agent to be maintained in the city of Boston, Mass., such registration being noted by the registrar on the bond, and thereafter

no transfer shall be valid unless made on such books and similarly noted on the bond; but the bond may be discharged from registration by similar transfer to bearer, and from time to time it may be registered or transferred to bearer in like manner. Such registration, however, shall not affect the transferability of the coupons by delivery merely, and payment to the bearer thereof shall discharge the railway companies in respect of the interest therein mentioned, whether or not the bond shall have been registered.

This bond also, as provided in said indenture, may be exchanged for a registered bond without coupons, bearing interest payable quarterly on each first day of January, April, July, and October.

Neither this bond, nor any coupon for interest thereon, shall become or be valid until the bond shall have been authenticated by the certificate, endorsed hereon, duly signed by the trustee under said indenture.

In witness whereof the Northern Pacific Railway Company and the Great Northern Railway Company each has caused these presents to be signed by its president or one of its vice-presidents, and its corporate seal to be hereunto affixed and to be attested by its secretary or one of its assistant secretaries, and coupons for said interest, authenticated by the engraved facsimile signature of its treasurer, to be attached hereto, this first day of July, 1901.

NORTHERN PACIFIC RAILWAY COMPANY,

[L. S.] By ——— ———,
Vice-President.

Attest:

———— ————,
Assistant Secretary.

GREAT NORTHERN RAILWAY COMPANY,

[L. S.] By ——— ———,
Vice-President.

Attest:

———— ————,
Assistant Secretary.

No. ——. [Form of registered bond without coupons.] $——. 2029

UNITED STATES OF AMERICA.

NORTHERN PACIFIC—GREAT NORTHERN

Registered four per cent joint bond.

C., B. AND Q. COLLATERAL.

The Northern Pacific Railway Company, a corporation of the State of Wisonsin, hereinafter termed the Northern Pacific Company, and the Great Northern Railway Company, a corporation of the State of Minnesota, hereinafter termed the Great Northern Company, for value received, jointly promise to pay to ——— or registered assigns, on the first day of July, 1921, 2030 in the city of New York, or in the city of Boston, Mass., at the office of J. P. Morgan & Co., or of such other fiscal agent or agents as shall be appointed by said Railway Companies, ——— dollars gold coin of the United States of America of the present standard of weight and fineness, and to pay interest thereon from the first day of January, April, July, or October next preceding the date hereof, at the rate of four per cent per annum, such interest to be payable at such office in New York or in Boston in like gold coin quarterly on each first day of January, April, July, and October. 2031

The principal and interest of this bond are payable without deduction for any tax or taxes which said Railway Companies may be required to pay or to retain therefrom under any present or future law of the United States, or of any State, county, or municipality therein.

This bond is one of a duly authorized series of coupon bonds and registered bonds issued and to be issued by said Railway Companies jointly in payment of the purchase price of certain shares of the capital stock of the Chicago, Burlington and Quincy Railroad Company, of which shares one-half shall belong 2032 to the Northern Pacific Company, and one-half to the Great Northern Company; all such shares having been acquired under an agreement between the Northern Pacific Company and the Great Northern Company, that if either of said Railway Companies shall default in its obligations to the other in respect of the bonds of this issue, by reason of bankruptcy, insolvency, or other cause, disabling it from performing the same, the pledged shares belonging to such company so in default there-

after shall become and be the property of the company not in default, which thenceforth shall be liable in severalty upon all covenants herein contained.

All such bonds have been issued, or are to be issued, under and in pursuance of, and are to be secured ratably by and are subject to an indenture dated July 1, 1901, duly executed by the Northern Pacific Railway Company and by the Great Northern Railway Company, jointly, to the Standard Trust Company, of New York, as Trustee, under which indenture all such shares of stock of the Chicago, Burlington and Quincy Railroad Company so purchased by said Railway Companies shall be deposited with said Trustee; and hereby reference is made to said indenture with the same effect as if herein fully set forth.

The aggregate amount of bonds of this issue is limited, so that never at any one time shall there be outstanding such bonds for an aggregate principal sum in excess of $222,400,000, nor in excess of twice the par value of all shares of the capital stock of the Chicago, Burlington and Quincy Railroad Company that shall have been assigned and transferred to the Trustee under said indenture in exchange for bonds certified thereunder.

This bond is subject to redemption, as stated in said indenture, on the first day of any January or July after January 1, 1906, by payment of the principal of the bond, together with a premium of five per cent thereof and the interest then accrued.

This bond is transferable only in the manner prescribed in said indenture on the Trustee's books provided for that purpose at its office in the city of New York, or on the books of an agent to be maintained in the city of Boston, Mass., upon surrender and cancellation of this bond; and thereupon a new registered bond will be issued to the transferee in exchange therefor on payment of the charge provided for in said indenture. This bond also, in the manner prescribed in said indenture, and upon payment of the charge therein provided, is exchangeable for coupon bonds of the same aggregate principal sum.

This bond shall not become obligatory for any purpose until it shall have been authenticated by the certificate, hereon endorsed, of the Trustee under said indenture.

In witness whereof, the Northern Pacific Railway Company 2037
and the Great Northern Railway Company each has caused these presents to be signed by its president or one of its vice-presidents, and its corporate seal to be hereunto affixed and to be attested by its secretary, or one of its assistant secretaries, the ———

NORTHERN PACIFIC RAILWAY COMPANY,

[L. S.] By ——— ———,

Vice-President.

Attest:

——— ———, 2038

Assistant Secretary.

GREAT NORTHERN RAILWAY COMPANY,

[L. S.] By ——— ———,

Vice-President.

Attest:

——— ———,

Assistant Secretary.

And whereas, there are to be attached to said coupon bonds at the time of the issue thereof coupons representing the semi-annual installments of interest which shall become due thereon, 2039
each of which coupons is to be substantially of the following tenor, viz:

[Form of interest coupon.]

$20. No. ....

On the first day of ——— the Northern Pacific Railway Company and the Great Northern Railway Company, jointly promise to pay to bearer, in the city of New York, or in the city of Boston, Mass., at the office of J. P. Morgan & Co., or of such other fiscal agent or agents as said Railway Companies may appoint, twenty dollars gold coin, without any deduction 2040
for taxes, being six months' interest, then due on their four per cent. joint bond No. ——, subject to the terms of said bond and of the indenture therein mentioned.

——— ———,

Treasurer.

——— ———,

Treasurer.

And whereas, each of the coupons to be attached to such coupon bonds is to be authenticated by the engraved fac-simile signature of the present treasurer or of any future treasurer of the Northern Pacific Company and of the present treasurer or of any future treasurer of the Great Northern Company, and each of said companies may adopt and use for that purpose the engraved fac-simile signature of any person who shall have been its treasurer, notwithstanding the fact that he may have ceased to be such treasurer at the time when such bonds shall be actually certified and delivered, and such coupons shall be attached to the bonds; and

Whereas, on each of said coupon bonds and on each of said registered bonds without coupons there is to be endorsed a certificate of the Trustee under this indenture that it is one of the bonds issued hereunder, and no bond shall be secured by this indenture or be obligatory for any purpose unless such certificate shall have been executed by such trustee, such certificate to be substantially of the following tenor, viz:

[Form of trustee's certificate.]

This bond is one of the series of bonds described in the within-mentioned indenture executed by the Northern Pacific Railway Company and the Great Northern Railway Company to the undersigned as Trustee.

THE STANDARD TRUST COMPANY OF NEW YORK,
Trustee,

By ——— ———.

Now, therefore, this indenture witnesseth:

That, in order to secure the payment of the principal and interest of all such bonds at any time issued and outstanding under this indenture, and the performance of all the covenants and conditions herein contained, and in consideration of the premises and of the purchase and acceptance of such bonds by the holders thereof, and of the sum of one dollar to each of them duly paid by the Trustee at the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged,

The Railway Companies, parties of the first part, have assigned and transferred, and by these presents do assign and transfer unto the Trustee, party of the second part, its succes-

sors and assigns, one million and sixty-six thousand and six 2045
hundred (1,066,600) shares of the capital stock of the Chicago, Burlington & Quincy Railroad Company, the certificates for which have been delivered to the Trustee, and all additional shares of the capital stock of said company in exchange for which bonds hereby secured shall be certified and delivered hereunder.

To have and to hold the said shares of capital stock and all additional property that hereafter shall become subject to this indenture unto the Trustee and its successors and assigns, in trust for the equal and proportionate security of all present and 2046
future holders of bonds and interest obligations issued, and to be issued, under and secured by this indenture, and for the enforcement of the payment of said bonds and interest obligations when payable, and the performance of and compliance with the covenants and conditions of this indenture, without preference, priority, or distinction as to lien or otherwise of any one bond over any other bond by reason of priority in the issue or negotiation thereof; so that each and every bond issued and to be issued, as aforesaid, shall have the same right, lien, and privilege under this indenture and so that the principal and inter- 2047
est of every such bond shall, subject to the terms hereof, be equally and proportionately secured hereby as if all had been made, executed, delivered, and negotiated simultaneously with the execution and delivery of this indenture, it being intended that the lien and security of this trust deed shall take effect from the day of the execution hereof without regard to the day of actual issue, sale, or disposition of said bonds, as though upon such day all of said bonds were actually issued, sold, and delivered to the purchasers for value.

And hereby it is covenanted and declared that all such bonds 2048
with the coupons for interest thereon are to be issued, certified, and delivered and that said stock is to be held by the Trustee subject to the further covenants, conditions, uses, and trusts hereinafter set forth; and it is covenanted between the parties hereto as follows, viz:

ARTICLE ONE.

SECTION 1. From time to time the bonds to be secured hereby shall be executed by the Railway Companies and by

them shall be delivered for certification to the Trustee; and thereupon, as provided in this article and not otherwise, the Trustee shall certify and shall deliver the same. At the option of the Railway Companies, from time to time any of such bonds may be executed, certified, and delivered originally either as coupon bonds or as registered bonds.

The amount of bonds hereby secured which may be executed by the Railway Companies and which may be certified by the Trustee is limited so that never at any time shall there be outstanding bonds hereby secured for an aggregate principal sum exceeding $222,400,000, nor in excess of twice the par value of all shares of the capital stock of the Burlington Company that shall have been assigned and transferred to the Trustee under this indenture in exchange for bonds certified and delivered hereunder.

Before certifying or delivering any coupon bond hereby secured, the Trustee shall detach and shall cancel all coupons thereof then matured, and every registered bond shall be dated on the day of the actual certification thereof.

Only such of said bonds as shall bear thereon a certificate substantially in the form hereinbefore recited, duly executed by the Trustee, shall be secured by this indenture or shall be entitled to any lien or benefit hereunder. Every such certificate of the Trustee upon any bond executed by the Railway Companies shall be the conclusive and the only evidence that the bond so certified was duly issued hereunder and is entitled to the benefit of the trust hereby created.

SEC. 2. Upon the execution of this indenture and upon delivery to the Trustee of the certificates for said 1,066,600 shares of the capital stock of the Burlington Company, accompanied by duly executed instruments of assignment and transfer thereof, the Trustee, without any further action on the part of the Railway Companies, shall certify and shall deliver to the Metropolitan Trust Company of the city of New York, or to its agent, the Old Colony Trust Company (of Boston, Mass.), as may be ordered in writing by Francis W. Hunnewell, Charles J. Paine, and J. Malcolm Forbes, or any two of them, bonds hereby secured for the aggregate principal sum of $213,320,000.

SEC. 3. The remaining $9,080,000, par value, of bonds authorized to be issued under and secured by this indenture shall be

reserved, to be executed, certified, and delivered as follows and 2053
not otherwise:

Whenever, after delivery to the Trustee of the certificates for said 1,066,600 shares of the capital stock of the Burlington Company under section 2 of this article, the Railway Companies shall tender or shall cause to be tendered to the Trustee the certificates accompanied by duly executed instruments of assignment and transfer for any of the remaining shares of the capital stock of the Burlington Company issued and outstanding at the date hereof, or for any shares of said company which under existing obligations it is to issue and deliver (the aggregate 2054
par value of all such shares already issued and to be issued under existing obligations being not more than $111,200,000), the Trustee shall receive the same and in exchange therefor shall certify and shall deliver, upon the order in writing of the president or a vice-president of the Northern Pacific Company and of the president or a vice-president of the Great Northern Company, $1,000 par value of the bonds reserved under this section for each $500 par value of such shares of the Burlington Company so received by the Trustee under this section.

The Trustee may receive a certificate signed by the president 2055
or a vice-president of the Northern Pacific Company or of the Great Northern Company as sufficient evidence that any certificates for shares of the capital stock of the Burlington Company tendered to the Trustee hereunder are such certificates for shares of the capital stock of the Burlington Company in exchange for which bonds may be certified and delivered by the Trustee hereunder.

SEC. 4. Whenever any coupon bond or bonds, issued under and secured by this indenture, together with all unmatured coupons thereto belonging, shall be surrendered for exchange for 2056
registered bonds without coupons, the Railway Companies shall execute and the Trustee shall certify, and in exchange for such coupon bond or bonds shall deliver, a registered bond or registered bonds, without coupons, for the like aggregate principal sum. If such exchange shall be made more than three months after the date of maturity of the last matured coupon of such surrendered coupon bonds the Railway Companies at the time of such exchange, in adjustment of the interest on such bonds,

shall pay a sum equal to one quarterly installment of interest on such registered bond or bonds without coupons.

Whenever any registered bond without coupons issued under and secured by this indenture shall be surrendered for exchange for a coupon bond or bonds, the Railway Companies, upon payment of the charges therefor, shall issue and the Trustee shall certify, and in exchange for such registered bond shall deliver, a coupon bond or coupon bonds for the like aggregate principal sum, with the coupons maturing on and after the first day of January or the first day of July next after the date of such exchange; but if such exchange shall be made less than three months prior to any first day of January or first day of July the holder of such surrendered registered bond at the time of such exhange, in adjustment of the interest on such bonds, shall pay to the Trustee to the credit of the Railway Companies a sum equal to the quarterly installment which shall have matured on such registered bond in respect of the interest represented by the coupon next maturing upon such coupon bond or bonds.

In every case of such exchange the Trustee forthwith shall cancel the surrendered bond or bonds and coupons and shall deliver the same to the Railway Companies.

Whenever any registered bond or bonds without coupons shall be surrendered, transferred, and canceled, the Railway Companies, upon request therefor, shall issue to the transferee, and the Trustee shall certify and shall deliver registered bonds, or one registered bond, without coupons, for a like aggregate principal sum.

Nevertheless, no coupon bond shall be exchangeable for a registered bond without coupons after such coupon bond shall have been drawn for redemption or after notice of redemption thereof shall have been advertised as provided in article four hereof; and no registered bond without coupons shall be transferable, or shall be exchangeable for a coupon bond after such registered bond without coupons shall have been drawn for redemption or after notice of redemption thereof shall have been advertised as provided in said article.

Except as hereinafter provided in section 6 of this article, the Railway Companies, for any exchange of coupon bonds for registered bonds, and (2) for any transfer of registered bonds

without coupons, and (3) for any exchange of registered bonds 2061
without coupons for coupon bonds, at their option, may require the payment of a sum sufficient to reimburse them for any stamp tax or governmental charge, and in addition thereto such further sum as may be necessary to meet other expense connected therewith, such further sum, however, not to exceed one dollar for each new coupon bond or registered bond without coupons issued upon such exchange or transfer.

SEC. 5. In case any coupon bond issued hereunder with the coupons thereto appertaining, or any registered bond without coupons, shall become mutilated or be destroyed, the Railway 2062
Companies, in their discretion, may execute, and thereupon the Trustee shall certify and deliver, a new bond of like tenor and date (including coupons in case of a coupon bond) bearing the same serial number, in exchange and substitution for, and upon cancellation of, the mutilated coupon bond and its coupons, or the mutilated registered bond, or in lieu of and substitution for the coupon bond and its coupons or the registered bond so destroyed, upon receipt of evidence satisfactory to the Railway Companies and to the Trustee of the destruction of such coupon bond and its coupons, or of such registered bond, and upon 2063
receipt also of indemnity satisfactory to the Railway Companies and to the Trustee.

SEC. 6. Until the bonds to be issued under and secured by this indenture can be engraved, the Railway Companies may execute, and upon their request the Trustee shall certify and deliver, pursuant to sections 2 and 3 of this article, in lieu of such engraved bonds, printed registered bonds of any denomination, substantially of the tenor of the registered bonds to be issued as hereinbefore provided. Upon surrender of such printed bonds for exchange, the Railway Companies, at their 2064
own expense and without making any charge therefor, shall issue, and upon cancellation of such surrendered bonds the Trustee shall certify and deliver, in exchange therefor, engraved coupon bonds or registered bonds without coupons of any denomination or denominations hereinbefore provided for the same aggregate principal sum as the printed bonds surrendered; and until so exchanged each of such printed bonds shall be entitled to the same security as an engraved bond issued hereunder.

SEC. 7. Nothing in this article contained, or in any other article of this indenture, or in the bonds issued hereunder, expressed or implied, is intended, or shall be construed, to give to any stockholder of the Burlington Company or to any other person or corporation, except the parties hereto and the holders of bonds issued under and secured by this indenture, any legal or equitable right, remedy, or claim under or in respect of this indenture, or under any covenant, condition, or provision herein contained, all its covenants, conditions, and provisions being intended to be and being for the sole and exclusive benefit of the parties hereto and of the holders of the bonds hereby secured.

ARTICLE TWO.

SECTION 1. The Railway Companies covenant that duly and punctually they will pay the principal and interest of every bond issued and secured hereunder, at the dates and the place and in the manner mentioned in such bonds or in the coupons thereto belonging, according to the true intent and meaning thereof, without deduction from either principal or interest for any tax or taxes imposed by the United States or any State or county or municipality thereof which the Railway Companies may be required to pay or to retain therefrom under or by reason of any present or future law. The interest on the coupon bonds shall be payable only upon presentation and surrender of the several coupons for such interest as they respectively mature, and when paid such coupons shall forthwith be canceled.

The interest on the registered bonds without coupons shall be payable only to the registered holders thereof, and the Railway Companies shall cause cheques for such interest to be remitted by mail to all holders of registered bonds without coupons, who shall file suitable written orders therefor with the fiscal agent of the Railway Companies in New York or in Boston at whose office such interest is payable.

The principal and interest of such bonds shall be payable in the city of New York or in the city of Boston, Mass., at the office of J. P. Morgan & Co., or of such other fiscal agent or agents as shall be appointed by the Railway Companies for that purpose. At all times, until the payment of the principal of the bonds hereby secured, the Railway Companies will maintain a fiscal

agency in the city of New York and in the city of Boston where 2069
bonds and coupons may be presented for payment and where notices or demands in respect of said bonds and coupons may be served, and from time to time the Railway Companies will give written notice to the Trustee of any change of any such agency. In case the Railway Companies should fail to maintain such agency or should fail to give such notice of any change thereof, presentation and demand may be made and notices may be served at the office of the Trustee in the city of New York.

SEC. 2. The Railway Companies hereby appoint the Trustee registrar in the city of New York, and at all times they will 2070
maintain an agency in the city of Boston for the registration and transfer of bonds issued hereunder. At each of such places of registration the Railway Companies will cause to be registered, subject to reasonable regulations, in books to be kept for that purpose, any bonds without coupons, and, upon presentation thereof for such purpose, any coupon bonds issued hereunder; and the Railway Companies, by instrument in writing, from time to time may appoint a new registrar in the city of New York or in the city of Boston in place of any registrar previously appointed.

Upon presentation at the office of either bond registrar at its 2071
office in the city of New York or in the city of Boston of any such coupon bond registered at the same office, accompanied by delivery of a written instrument of transfer executed by the registered holder, such bond shall be transferred upon such bond register and such transfer shall be noted by such registrar upon the bond. The registered holder of any such registered coupon bond also shall have the right to cause the same to be registered as payable to bearer, in which case transferability by delivery shall be restored, and thereafter the principal of such bond when due shall be payable to the person presenting the bond; but any 2072
such coupon bond registered as payable to bearer may be registered again in the name of the holder with the same effect as a first registration thereof. Successive registrations and transfers as aforesaid may be made from time to time as desired; and each registration of a coupon bond shall be noted by the bond registrar on the bond.

Registration of any coupon bond, however, shall not restrain the negotiability of any coupon thereto belonging, but every

such coupon shall continue to pass by delivery merely, and shall remain payable to bearer.

Any registered bond or bonds without coupons may be transferred upon such register by surrender of such bond or bonds for cancellation accompanied by delivery of a written instrument of transfer duly executed by the registered holder of the bond or bonds; and thereupon a new registered bond, or new registered bonds, for an equivalent principal sum shall be issued to the transferee or transferees, as provided in section 4 of article one hereof.

SEC. 3. The Railway Companies covenant:

(*a*) That in case hereafter there shall be issued any shares of the capital stock of the Burlington Company, in addition to the shares that now are outstanding or that may be issued in exchange for the convertible debentures of said company now outstanding, or that may be issued to the holders (other than the Burlington Company) of the shares of other corporations whose franchises and property have been purchased by the Burlington Company or that may be issued to any other party or parties now entitled to demand stock of the Burlington Company, then the Railway Companies will assign and transfer, or will cause to be assigned and transferred, to the Trustee, by it to be held subject to the trusts of this indenture, such part of such additional capital stock as shall bear a like proportion to the part of the entire capital stock of the Burlington Company previously assigned and transferred to the Trustee hereunder;

(*b*) That they will not by affirmative vote or by abstaining from voting sanction or permit the issue of any bonds by the Burlington Company, except for the refunding of its existing obligations, or for the acquisition of additional properties, or for betterments or improvements, or for other lawful purposes of the Burlington Company;

(*c*) That no proceeds of any bonds that may be issued by the Burlington Company (except such proceeds to an amount not exceeding any undivided surplus that shall have been accumulated by the Burlington Company after July 1, 1901) shall be used to pay any part of the bonds secured by this indenture unless all the bonds hereby secured shall then be paid;

(*d*) That no part of the surplus of the Burlington Company existing on July 1, 1901, in which surplus are included the

shares of other corporations now in the treasury of the Burlington Company whose franchises and property have been purchased by the Burlington Company, as also any shares of said Burlington Company that might be issued in exchange for such shares of such other corporations, shall be distributed as a dividend among the stockholders unless all the bonds secured by this indenture shall then be paid; 2077

(*e*) That they will cause all repairs, renewals, and replacements necessary to maintain the railroads, structures, locomotives, cars and other equipment, tools and other property of the Burlington Company in their present good order and condition 2078 to be made out of the earnings of said railroads and other property, and will consent and do hereby consent that the said railroads and other property and the books of account of the Burlington Company may be from time to time inspected personally by any member of the present executive and finance committee of the Burlington Company with any necessary clerical assistance, and such members, upon their request, shall be furnished with free transportation over all the lines of the Burlington system;

(*f*) That the following provision in the bonds secured by this 2079 indenture, to wit:

"all such shares having been acquired under an agreement between the Northern Pacific Company and the Great Northern Company, that if either of said Railway Companies shall default in its obligations to the other in respect of the bonds of this issue by reason of bankruptcy, insolvency, or other cause, disabling it from performing the same, the pledged shares belonging to such company so in default thereafter shall become and be the property of the company not in default, which thenceforth shall be liable in severalty upon all covenants herein contained," 2080 may be enforced against either or both of said Railway Companies by the Trustee in the interest and for the benefit of bondholders by any such action and by any such legal proceedings as may be deemed necessary and appropriate;

(*g*) That neither of said Railway Companies will additionally encumber its existing lines of railway by any new mortgage thereon, except by way of further security for bonds issued under existing mortgages of said railways, or to secure bonds

issued to refund bonds secured by existing mortgage of said railways, unless by the terms of such new mortgage it shall be provided that any balance that the mortgagor shall be bound to pay on account of the bonds secured by this indenture after the application of the stock pledged hereunder shall be included in the debt secured by said new mortgage;

(*h*) That they will not sanction or permit the execution by the Burlington Company of any lease of the railways in its system unless such lease be made subject to termination by the Burlington Company in case the shares of the capital stock of the Burlington Company held by the Trustee hereunder shall be sold because of any default by the Railway Companies hereunder, or shall be retaken by the holders of the bonds hereby secured in exchange for their bonds pursuant to section 5 of article five hereof; and

(*i*) That they will not sanction or permit the sale by the Burlington Company of the railways in its system or of any essential part thereof, or of the securities representing the same, unless provision be made that so much of the consideration for such sale as is or may be receivable by the holders of the shares of the capital stock of the Burlington Company pledged hereunder, upon the *pro rata* distribution thereof among all the stockholders of the Burlington Company, shall be delivered to the Trustee hereunder by it to be held as further security for the bonds hereby secured.

ARTICLE THREE.

SECTION 1. The Trustee shall cause to be transferred into its name as Trustee under this indenture all shares of the capital stock of the Burlington Company the certificates for which shall be delivered to the Trustee hereunder.

SEC. 2. Until and unless there shall be some default in the payment upon demand of the interest or of some part of the interest on any bond hereby secured and such default shall have continued for a period of three months, or in the payment of the principal or of some part of the principal of any bond hereby secured, (1) the Trustee from time to time, upon the written demand of the Railway Companies, authorized by resolution of the board of directors of each of the Railway Com-

panies, shall execute and deliver its powers of attorney appoint- 2085
ing such person or persons as the Railway Companies from time to time jointly shall so designate in writing as attorney and proxy to vote at meetings of the stockholders of the Burlington Company upon all said shares of stock for the election of directors and for all purposes not in violation of the provisions of section 3 of article two hereof; and (2) in case the Railway Companies shall fail jointly so to designate in writing such person or persons the Trustee, by one of its officers or by an attorney or proxy by it selected, shall vote upon all such stock at elections of directors of the Burlington Company for the election of five persons 2086
to be nominated in writing by the Northern Pacific Company, for the election of five persons to be nominated in writing by the Great Northern Company, and for the election of an eleventh person so to be nominated in writing by both of said Railway Companies; but if the Railway Companies shall not, at least five days prior to the date of such election, jointly so nominate a person to be such eleventh director, then the Trustee shall vote upon all such stock for the election of such person as eleventh director as shall be nominated in writing by the firm of J. P. Morgan & Co., who shall act as umpire for that purpose. Upon 2087
all questions other than the election of directors, if the Railway Companies shall have failed to designate an attorney or proxy, the Trustee shall vote upon such stock in accordance with any written directions that may so be given to it by both of said Railway Companies, or, in the absence of written direction so given by both of said Railway Companies, then in accordance with any written directions that may be so given by either one of the Railway Companies and by said firm of J. P. Morgan & Co., who shall act as umpire for that purpose. By written agreement, of which a copy (authenticated by resolution of the 2088
board of directors of each of the Railway Companies) shall be delivered to the Trustee, the Railway Companies may appoint any other person or persons to act as umpire in place of J. P. Morgan & Co. under the foregoing provisions; and also may make any provision in lieu of the foregoing provisions in respect of the voting upon any of the stock pledged hereunder, until and unless there shall be some default in the payment upon demand

of the interest, or of some part of the interest, on any bond hereby secured, and such default shall have continued for a period of three months, or in the payment of the principal, or of some part of the principal, of any bond hereby secured—notice of any such substituted provision to be given to the Trustee; but in no event shall any vote be cast upon any of said shares in violation of the provisions of section 3 of article two hereof.

SEC. 3. Until and unless there shall be some default in the payment upon demand of the interest or principal, or of some part of the interest or principal, of any bond hereby secured, each of the Railway Companies and its assigns shall be entitled to receive and to collect the dividends on one-half of the stock held by the Trustee hereunder, and the Trustee, upon demand of either of the Railway Companies, from time to time, shall execute and deliver such assignments, orders, or other instruments as may be required to enable each of the Railway Companies and its assigns to collect and receive one-half of all dividends that may be declared or may become payable upon all of such stock held by the Trustee hereunder, and the Trustee shall pay over to each of the Railway Companies and its assigns one-half of all sums that may be received or collected by the Trustee as dividends upon such stock.

ARTICLE FOUR.

From time to time, upon previous advertisement of notice of call, as hereinafter provided, the Railway Companies shall have the right, on the first day of any January or July after January, 1906, to redeem and to pay off the bonds hereby secured at 105 per cent of their par value and the interest accrued to the date of redemption specified in such notice; but not less than $1,000,000, par value, of such bonds shall be called for redemption at any one time, and no registered bonds without coupons issued and outstanding under this indenture shall be called for redemption until after all coupon bonds then outstanding shall have been called for redemption. If at any time the Railway Companies shall desire to redeem less than all of the outstanding coupon bonds or less than all of the outstanding registered bonds without coupons, they shall

request the Trustee to draw by lot bonds for a specified aggre- 2093
gate principal sum, and thereupon the Trustee shall draw by lot the distinctive numbers of the coupon bonds or of the registered bonds without coupons for such aggregate principal sum. Before any such bonds shall become redeemable, the Railway Companies in each case shall advertise at least once in each calendar month for three successive calendar months in two newspapers published in the city of New York and in two newspapers published in the city of Boston a notice addressed to the holders of bonds secured by this indenture, stating that the Railway Companies have called for redemption bonds specified in such 2094
notice, and that upon a date therein designated (which date shall be on the first day of January or July next after such notice shall have been advertised for the period aforesaid) there will become and be due and payable upon each of the bonds specified in such notice the principal thereof with a premium of five per cent of such principal, and the accrued interest to the date of redemption so designated. If less than all the outstanding coupon bonds, or less than all the outstanding registered bonds without coupons, shall be called for redemption, the distinctive numbers of the bonds drawn by the Trustee for redemption 2095
shall be specified in such notice, but if all the bonds of either class shall be called, it shall be sufficient to indicate that fact in the notice.

Upon such advertisement of such notice the bonds therein specified shall become and be due and payable in the city of New York, or in the city of Boston, Mass., on the date designated in such notice at the office of J. P. Morgan & Co., or of such other fiscal agent or agents as shall be appointed by the Railway Companies, at par, with a premium of five per cent of their par value and the interest accrued from the last matured 2096
interest installment. The sum payable for principal and premium of each coupon bond shall be payable to the bearer of such coupon bond unless it shall have been registered, and if it shall be registered, then to the registered holder of such coupon bond, but in no case except upon surrender of such bond and of all coupons for interest thereon not due at the date of redemption designated in such notice. All interest installments upon coupon bonds which shall have matured on or prior to the date

of redemption designated in such notice shall continue to be payable to the bearers severally and respectively of the coupons for such installments. The sums so due upon the registered bonds without coupons for principal, premium, and for such accrued interest from the maturity of the last interest installment prior to such date of redemption shall be paid to the registered holders of such bonds, but only upon surrender thereof.

All bonds that shall be redeemed and paid hereunder shall be canceled and no new bond shall be issued in substitution therefor.

From and after the date of redemption designated in any notice so advertised (unless the Railway Companies shall make default in paying the same upon demand as herein provided), no further interest shall accrue upon any of the bonds so called for redemption; and anything in such bonds or in such coupons or in this indenture to the contrary notwithstanding, any coupons for interest maturing after such date shall become and be null and void.

ARTICLE FIVE.

SECTION 1. Neither any coupon belonging to any bond hereby secured, nor any claim for interest on any registered bond, which in any way, at or after maturity, shall have been transferred or pledged separate and apart from the bond to which it relates, shall, unless accompanied by such bond, be entitled, in case of a default hereunder, to any benefit of, or from, this indenture, except after the prior payment in full of the principal of the bonds issued hereunder, and of all coupons and interest obligations not so transferred or pledged.

SEC. 2. In case (1) default shall be made in the payment upon demand of any interest on any bond secured by this indenture, and such default shall continue for a period of three months, or in case (2) default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by the Railway Companies, and any such last-mentioned default shall continue for a period of six months after written notice thereof shall have been given to the Railway Companies by the Trustee, then, during the continuance of

any such default, upon the written request of the holders of a 2101
majority in amount of the bonds hereby secured then outstanding, the Trustee, by notice in writing delivered to the Railway Companies, shall declare the principal of the bonds hereby secured and then outstanding to be due and payable immediately, and upon such declaration the same shall become and be immediately due and payable, anything in this indenture or in said bonds contained to the contrary notwithstanding. This provision, however, is subject to the condition that if, at any time after the principal of said bonds shall have been so declared due and payable, all arrears of interest upon all such bonds, with interest 2102
at the rate of four per cent per annum on overdue installments of interest, shall either be paid by the Railway Companies or be collected out of the pledged stock, or be paid before any sale of the pledged stock shall have been made, or if any default in the observance or performance of any covenant or condition of this indenture not relating to the payment of interest on any bond shall be cured or satisfaction deemed by the Trustee to be adequate shall be made therefor, then and in every such case the holders of a majority in amount of the bonds hereby secured then outstanding, by written notice to the Railway Companies 2103
and to the Trustee, may waive such default and its consequences; but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

In case the Trustee shall have proceeded to enforce any right under this indenture, by foreclosure or otherwise, and such proceeding shall have been discontinued or abandoned because of such waiver, or for any other reason, or shall have been determined adversely to the Trustee, then and in every such case the Railway Companies and the Trustee shall be restored to their former position and rights hereunder in respect of the 2104
shares of stock pledged hereunder, and all rights, remedies, and powers of the Trustee shall continue as though no such proceeding had been taken.

SEC. 3. In case (1) default shall be made in the payment upon demand of any interest on any bond hereby secured, or in case (2) default shall be made in the due and punctual payment of the principal of any bond hereby secured, or in case (3) default shall be made in the due observance or performance of any

other covenant or condition herein required to be kept or performed by the Railway Companies and any such last-mentioned default shall continue for a period of six months after written notice thereof shall have been given to the Railway Companies by the Trustee, then and in every such case, during the continuance of such default, the Trustee may revoke all assignments, orders, or other instruments by it executed enabling the Railway Companies to collect and to receive dividends on such stock of the Burlington Company held hereunder, and the Trustee, for the benefit of the holders of the bonds hereby secured, shall be entitled to receive and collect all dividends that shall become payable upon said stock.

All sums so received or collected by the Trustee as dividends upon such stock, after deducting therefrom all proper charges, costs, and expenses payable to the Trustee by the Railway Companies hereunder, shall by the Trustee be applied as follows:

In case the principal of the bonds hereby secured shall not have become due, to the payment of the interest in default, in the order of the maturity of the installments of such interest, with interest thereon at the rate of four per cent per annum, such payments to be made ratably to the persons entitled thereto, without discrimination or preference.

In case the principal of the bonds hereby secured shall have become due, by declaration or otherwise, first to the payment of the accrued interest (with interest on the overdue installments thereof at the rate of four per cent per annum) in the order of the maturity of the installments, and next to the payment of the principal of all bonds hereby secured; in every instance such payment to be made ratably to the persons entitled to such payment, without any discrimination or preference.

These provisions, however, are not intended in any wise to modify the provisions of section 1 of this article five, but are subject thereto.

SEC. 4. In case (1) default shall be made in the payment upon demand of any interest on any bond hereby secured, and such default shall continue for a period of three months; or in case (2) default shall be made in the due and punctual payment of the principal of any bond hereby secured; or in case (3) default shall be made in the due observance or performance of any other

covenant or condition herein required to be kept or performed 2109
by the Railway Companies and any such last-mentioned default shall continue for a period of six months after written notice thereof shall have been given to the Railway Companies by the Trustee, then and in every such case during the continuance of such default the Trustee may vote upon all such shares of stock and may revoke any powers of attorney or proxies which it may have executed at the request of the Railway Companies.

SEC. 5. In case (1) default shall be made in the payment upon demand of any interest on any bond hereby secured, and any such default shall continue for a period of six months; or 2110
in case (2) default shall be made in the due and punctual payment of the principal of any bond hereby secured; or in case (3) default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by the Railway Companies, and any such last-mentioned default shall continue for a period of six months after written notice thereof shall have been given to the Railway Companies by the Trustee, then, and in each and every such case of default, the Trustee, in its discretion, either

(*a*) may sell or cause to be sold to the highest and best bidder 2111
in one lot and as an entirety all and singular the shares of the capital stock of the Burlington Company then held by the Trustee hereunder, which sale shall be made at public auction at such place in the city of New York, and at such date and at such time and upon such terms as the Trustee may determine, and as shall be specified in a notice of such sale, which shall be published in a newspaper in the city of New York and also in a newspaper in the city of Boston, Mass., at least twice in each calendar week for four successive calendar weeks prior to the date of such sale; or

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(*b*) may proceed to protect and enforce its rights and the rights of the bondholders under this indenture by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement contained herein or in aid of the execution of any power herein granted, or for the foreclosure of this indenture, or for the enforcement of any other appropriate legal or equitable remedy as the Trustee, being advised by counsel learned in the law, shall deem most effectual to protect and enforce any of its rights hereunder.

Nevertheless, if thereunto requested by the holders of three-fourths in amount of the bonds hereby secured then outstanding, the Trustee, in lieu of selling such stock or of enforcing any of its rights or remedies hereunder by reason of such default, shall cause to be transferred to the respective holders of such bonds, in exchange for such bonds, with all unmatured coupons for interest thereon and upon surrender thereof to the Trustee for cancellation, $500, par value, of such stock of the Burlington Company for each $1,000, par value, of the bonds so surrendered in exchange. Such written request executed during the continuance of any such default by the holders of three-fourths in amount of the bonds hereby secured at the time outstanding shall bind all the holders of bonds and coupons hereby secured, whether or not such holders shall have executed any such written request, and after the delivery to the Trustee of such written request, executed by the holders of three-fourths in amount of the bonds hereby secured, no holder of any such bond or of any coupon not then matured shall have any right or claim by reason of such bond or coupon, except to receive in exchange for and upon cancellation of each bond with its unmatured coupons $500, par value, of said shares of capital stock of the Burlington Company for each $1,000, par value, of the bonds so surrendered. All the bonds and coupons so surrendered shall by the Trustee be canceled and be delivered to the Railway Companies.

SEC. 6. Upon the written request of the holders of twenty-five per cent in amount of the bonds hereby secured, in case of any such continuing default, it shall be the duty of the Trustee, upon being indemnified, as hereinafter provided, to take all steps needful for the protection and enforcement of its rights and the rights of the holders of the bonds hereby secured, and to exercise the powers herein conferred, or to take appropriate judicial proceedings by action, suit, or otherwise, as the Trustee, being advised by counsel learned in the law, shall deem most expedient in the interest of the holders of the bonds hereby secured; but, anything in this indenture to the contrary notwithstanding, the holders of seventy-five per cent in amount of the bonds hereby secured and then outstanding, from time to time, shall have the right to direct and control the action of the

Trustee and the method and place of conducting any and all 2117
proceedings for any sale of the pledged stock, or for the foreclosure of this indenture, or for the appointment of a receiver, or of any other proceedings hereunder.

SEC. 7. From time to time the Trustee may adjourn any sale to be made by it under the provisions of this indenture, by announcement at the time and place appointed for such sale, or for such adjourned sale or sales; and without further notice or publication it may make such sale at the time and place to which the same shall be so adjourned.

SEC. 8. Upon the completion of any such sale under this 2118
indenture the Trustee shall transfer to the accepted purchaser all such shares of the capital stock of the Burlington Company and shall deliver to such purchaser the certificates therefor, and the Trustee hereby is appointed the true and lawful attorney irrevocable of the Railway Companies, and of each of them, in their name and stead to make all necessary assignments and transfers of the shares of capital stock thus sold, and may substitute any one or more persons with like power, the Railway Companies hereby ratifying and confirming all that their said attorneys or such substitute or substitutes shall lawfully do by 2119
virtue hereof.

Any such sale made under or by virtue of this indenture, whether under the power of sale hereby granted and conferred or under or by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim, and demand whatsoever, either at law or in equity, of the Railway Companies, and of each of them, of, in, and to the shares of capital stock sold, and shall be a perpetual bar, both at law and in equity, against the Railway Companies, and each of them, and their successors and assigns, and against any and all persons claiming or to claim the 2120
shares of the capital stock sold, or any part thereof, from, through, or under the Railway Companies, or either of them, or their successors or assigns.

SEC. 9. The receipt of the Trustee shall be a sufficient discharge to any purchaser of the property or any part thereof sold as aforesaid for the purchase money; and no such purchaser or his representatives, grantees, or assigns, after paying such purchase money and receiving such receipt, shall be bound

to see to the application of such purchase money upon or for any trust or purpose of this indenture, or in any manner whatsoever be answerable for any loss, misapplication, or non-application of any such purchase money or any part thereof, or be bound to inquire as to the authorization, necessity, expediency, or regularity of any such sale.

SEC. 10. In case of such sale, whether made under the power of sale hereby granted or pursuant to judicial proceedings, the whole of the principal sums of the bonds hereby secured, if not previously due, shall at once become due and payable, anything in said bonds or in this indenture to the contrary notwithstanding.

SEC. 11. The purchase money, proceeds or avails of any such sale, whether under the power of sale hereby granted or pursuant to judicial proceedings, together with any other sums which then may be held by the Trustee under any of the provisions of this indenture as part of the trust estate or the proceeds thereof, shall be applied as follows:

First. To the payment of the costs and expenses of such sale, including a reasonable compensation to the Trustee, its agents, attorneys, and counsel, and of all expenses, liabilities, and advances made or incurred by the Trustee hereunder and of all charges upon said shares of stock superior to the lien of these presents.

Second. To the payment of the whole amount then owing or unpaid upon the bonds hereby secured for principal and interest, with interest at the rate of four per cent per annum on the overdue installments of interest; and in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid upon the said bonds, then ratably to the payment of such principal and interest, without preference or priority of principal over interest, or of interest over principal, or of any installment of interest over any other installment of interest, subject, however, to the provisions of section 1 of this article.

Third. One-half of any surplus remaining shall be paid over to each of the Railway Companies, its successors or assigns, or to whosoever may be lawfully entitled to receive the same.

SEC. 12. Upon any such sale by the Trustee or pursuant to judicial proceedings, any purchaser, for or in settlement or pay-

ment of the purchase price of the property purchased, shall be 2125
entitled to use and apply any bonds, and any matured and unpaid coupons hereby secured, by presenting such bonds and coupons in order that there may be credited thereon the sums applicable to the payment thereof out of the net proceeds of such sale after making any deductions which may be made from the proceeds of sale for costs, expenses, compensations and other charges; and such purchaser thereupon shall be credited, on account of such purchase price payable by him, with the sums applicable out of such net proceeds to the payment of, and credited on, the bonds and coupons so presented; and at any such 2126
sale any bondholders may bid for and purchase such property, and may make payment therefor as aforesaid, and upon compliance with the terms of sale, may hold, retain, and dispose of such property without further accountability.

SEC. 13. No holder of any bond or coupon hereby secured shall have any right to institute any suit, action, or proceeding in equity or at law for the foreclosure of this indenture, or for the execution of any trust thereof, or for the appointment of a receiver, or for any other remedy hereunder, unless the holders of twenty-five per cent in amount of the bonds hereby secured, 2127
then outstanding, shall have made written request upon the Trustee to take action in respect of the matter complained of and shall have afforded to it a reasonable opportunity, either to proceed to exercise the powers hereinbefore granted or to institute such action, suit, or proceeding in its own name; or unless also they shall have offered to the Trustee adequate security and indemnity against the costs, expenses, and liabilities to be incurred therein or thereby; and such notification, request, and offer of indemnity are hereby declared, in every such case, at the option of the Trustee, to be conditions precedent to the 2128
execution of the powers and trusts of this indenture and to any action or cause of action, for foreclosure or for the appointment of a receiver, or for any other remedy hereunder; it being understood and intended that no one or more holders of bonds and coupons shall have any right in any manner whatever to affect, disturb, or prejudice the lien of this indenture by his or their action, or to enforce any right hereunder, except in the manner herein provided, and that all proceedings at law or in

equity shall be instituted, had, and maintained in the manner herein provided, and for the equal benefit of all holders of such outstanding bonds and coupons.

SEC. 14. No delay or omission of the Trustee, or of any holder of bonds hereby secured, to exercise any right or power accruing upon any default, continuing as aforesaid, shall impair any such right or power, or shall be construed to be a waiver of any such default, or of any subsequent default, or an acquiescence therein; and every power and remedy given by this article to the Trustee, or to the bondholders, may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the bondholders.

ARTICLE SIX.

No recourse under or upon any obligation, covenant, or agreement contained in this indenture, or in any bond or coupon hereby secured, or because of the creation of any indebtedness hereby secured, shall be had against any stockholder, officer, or director of either of the Railway Companies, or of any successor corporation, either directly or through either of the Railway Companies, by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any statute or otherwise; it being expressly agreed and understood that this indenture, and the obligations hereby secured, are solely corporate obligations, and that no personal liability whatever shall attach to, or be incurred by, the stockholders, officers, or directors of either of the Railway Companies because of the incurring of the indebtedness hereby authorized, or under or by reason of any of the obligations, covenants, or agreements contained in this indenture, or in any of the bonds or coupons hereby secured, or implied therefrom; and that any and all personal liability of every name and nature, and any and all rights and claims against, every such stockholder, officer, or director, whether arising at common law or in equity, or created by statute or constitution, are hereby expressly released and waived as a condition of, and as part of the consideration for, the execution of this indenture and the issue of the bonds and interest obligations secured hereby.

ARTICLE SEVEN. 2133

SECTION 1. Any request or other instrument, required by this indenture to be signed and executed by bondholders, may be in any number of concurrent instruments of similar tenor, and may be signed or executed by such bondholders in person or by agent appointed in writing. Proof of the execution of any such request or other instrument, or of a writing appointing any such agent, and of the holding by any person of coupon bonds transferable by delivery, shall be sufficient for any purpose of this indenture, and shall be conclusive in favor of the Trustee with regard to 2134
due action taken by it under such request or other instrument if made in the following manner:

The fact and date of the execution by any person of any such request or other instrument or writing may be proved by an affidavit of a witness to such execution, or by the certificate of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in New York, that the person signing such request or other instrument acknowledged to him the execution thereof.

The amount of coupon bonds transferable by delivery held 2135
by any person executing any such request or other instrument as a bondholder, and the amounts and issue numbers of the bonds held by such person and the date of his holding the same, may be proved by a certificate executed by any trust company, bank, bankers, or other depositary (wherever situated), if such certificate shall be deemed by the Trustee to be satisfactory, showing therein that at the date therein mentioned such person had on deposit with such depositary the bonds described in such certificate. The ownership of registered coupon bonds or of registered bonds without coupons shall be proved by the registers of such 2136
bonds.

SEC. 2. The Railway Companies and the Trustee may deem and treat the bearer of any coupon bond hereby secured which shall not at the time be registered as hereinbefore authorized, and the bearer of any coupon for interest on any such bond, whether such bond shall be registered or not, as the absolute owner of such bond or coupon as the case may be, for the purpose of receiving payment thereof and for all other purposes;

and neither the Railway Companies nor the Trustee shall be affected by any notice to the contrary.

The Railway Companies and the Trustee may deem and treat the person in whose name any registered bond without coupons issued hereunder shall be registered upon the books of the Railway Companies, as hereinbefore provided, as the absolute owner of such bond for the purpose of receiving payment of or on account of the principal and interest of such bond and for all other purposes, and may deem and treat the person in whose name any coupon bond shall be so registered as the absolute owner thereof for the purpose of receiving payment of or on account of the principal thereof, and for all other purposes, except to receive payment of interest represented by outstanding coupons; and all such payments so made to any such registered holder for the time being, or upon his order, shall be valid and effectual to satisfy and discharge the liability upon such bond to the extent of the sum or sums so paid.

Article Eight.

Section 1. The Trustee shall not be answerable for the default or the misconduct of any agent or attorney appointed in pursuance hereof, if such agent or attorney shall have been selected with reasonable care; nor shall the Trustee be responsible for anything whatever in connection with this trust, except willful misconduct or gross negligence. The Trustee shall not be under any obligation to take any action towards the execution or enforcement of the trusts hereby created, which, in the opinion of the Trustee, shall be likely to involve expense or liability, unless one or more of the holders of the bonds hereby secured shall, as often as required by the Trustee, furnish reasonable indemnity against such expense or liability; nor shall the Trustee be required to take notice of any default hereunder, unless notified in writing of such default by the holders of at least five per cent in amount of the bonds hereby secured then outstanding, or to take any action in respect of any default unless requested to take action in respect thereof by a writing signed by the holders of not less than twenty-five per cent in amount of the bonds hereby secured, then outstanding, and tendered reasonable indemnity as aforesaid, anything herein

contained to the contrary notwithstanding; but the foregoing 2141
provisions of this section are intended only for the protection of the Trustee, and shall not be construed to affect any discretion or power by any provision of this indenture given to the Trustee to determine whether or not it shall take action in respect of any default without such notice or request from bondholders, or to affect any other discretion or power given to the Trustee.

The Trustee shall be reimbursed for, and be indemnified against, any liability or damages which may be sustained by it in the premises, and shall have a lien secured hereby upon the 2142
property covered by this indenture, for its compensation and expenses, and also for any such liability or damages.

The Trustee shall not be responsible in any manner whatsoever for the validity hereof, or for the security afforded by the property covered hereby, or for the recitals herein or in said bonds contained; nor shall the Trustee be accountable for the use of any bonds certified and delivered by the Trustee hereunder or for the application of the proceeds of such bonds.

The Trustee shall be entitled to reasonable compensation for all services rendered by it in the execution of the trusts hereby 2143
created, and the Railway Companies agree to pay such compensation as well as all expenses necessarily incurred or disbursed by the Trustee hereunder.

SEC. 2. The Trustee may resign, and be discharged from the trusts created by this indenture, by giving to the Railway Companies and to the bondholders notice by publication of such resignation, specifying a date when such resignation shall take effect, which notice shall be published at least once on a day not less than thirty days nor more than sixty days prior to the date so specified, in a newspaper at that time published in New York, 2144
N. Y., and in a newspaper published in Boston, Mass. Such resignation shall take effect on the day specified in such notice, unless previously a successor trustee shall be appointed as hereinafter provided, in which event such resignation shall take effect immediately upon the appointment of such successor trustee.

Any trustee hereunder may be removed at any time by an instrument in writing filed with the Trustee and executed by the holders of two-thirds in amount of the bonds hereby secured and then outstanding.

SEC. 3. In case at any time the Trustee shall resign or shall be removed or otherwise shall become incapable of acting, a successor may be appointed by the holders of a majority in amount of the bonds hereby secured then outstanding, by an instrument or concurrent instruments signed by such bondholders or their attorneys in fact duly authorized; but until a new trustee shall be appointed by the bondholders as herein authorized, the Railway Companies, by an instrument executed by order of their respective boards of directors, may appoint a trustee to fill such vacancy: *Provided, however,* That every such successor trustee shall always be a trust company having a capital and surplus aggregating at least $2,000,000, if there be such a trust company willing and able to accept the trust upon reasonable or customary terms. After any such appointment by the Railway Companies, they shall cause notice of such appointment to be published once in each of four successive weeks in a newspaper published in New York, N. Y., and in a newspaper published in Boston, Mass.; but any new trustee so appointed by the Railway Companies shall immediately and without further act be superseded by a trustee appointed in the manner above provided by the holders of a majority in amount of the bonds hereby secured.

Any successor trustee appointed hereunder shall execute, acknowledge, and deliver to the Railway Companies an instrument accepting such appointment hereunder, and thereupon such successor trustee, without any further act, deed, or conveyance, shall become vested with the title to the pledged shares of the capital stock of the Burlington Company, and with all the rights, powers, trusts, duties, and obligations of its predecessor in the trust hereunder with like effect as if originally named as trustee herein; and the trustee ceasing to act shall assign and transfer to the successor trustee all said pledged shares of the capital stock of the Burlington Company and shall deliver to such successor trustee the certificates therefor. Upon request of such successor trustee the Railway Companies shall execute and deliver such instruments of assignment and further assurance that may reasonably be required for more fully and certainly vesting and confirming to such successor trustee all the right, title, and interest of the Trustee in and to such shares and such rights, powers, trusts, duties, and obligations.

ARTICLE NINE. 2149

If, when the bonds hereby secured shall have become due and payable, the Railway Companies shall well and truly pay, or cause to be paid, the whole amount of the principal moneys and interest due upon all of the bonds and coupons for interest thereon hereby secured, then outstanding, or shall provide for such payment by depositing with the Trustee hereunder, for the payment of such bonds and coupons, the entire amount due thereon for principal and interest, and also shall pay, or cause to be paid, all other sums payable hereunder by the Railway Companies, and shall well and truly keep and perform all the things 2150 herein required to be kept and performed by them according to the true intent and meaning of this indenture, then and in that case all said shares of stock and all property then held hereunder shall revert to the Railway Companies and the estate, rights, title, and interest of the Trustee shall thereupon cease, determine, and become void, and the Trustee in such case shall transfer and deliver to each of the Railway Companies, its assigns or nominees, at its or their cost and expense one-half of all said shares of stock and other property.

ARTICLE TEN. 2151

Any written demand, request, notice, designation, direction, or nomination to be made by the Railway Companies or by either one of them, under any of the provisions hereof, shall be deemed sufficiently made and executed if signed by the president, or by a vice-president, of the Railway Companies, or of the railway company in whose behalf the same shall purport to be made. The Trustee may receive a certificate signed by the secretary, or by an assistant secretary, of either railway company as sufficient evidence of the passage of any resolution by the board of directors or by the executive com- 2152 mittee of such railway company.

The terms "Northern Pacific Company," "Great Northern Company," and "Railway Companies," wherever used in this indenture, shall be held to include such company or companies and its or their respective successors and assigns; and all the covenants hereof binding upon or for the benefit of the Railway

Companies shall bind and shall enure to the benefit of their respective successors and assigns. The term "the firm of J. P. Morgan & Co.," when herein used, shall include and mean not only said firm as now constituted, but also any successor firm, however constituted.

Subject in all respects to the prior and paramount lien of this indenture and to all rights and provisions thereof for the benefit of the holders of the bonds hereby secured, each railway company may assign and transfer its interest in said pledged stock, including its rights under sections 2 and 3 of article three hereof, to collect dividends and to vote upon said pledged shares, and the Railway Companies from time to time, by agreements between themselves, may adjust and readjust or modify their respective rights and interests in respect of such pledged shares.

The term "Trustee," when herein used, shall be held and construed to mean the trustee for the time being, whether original or successor; and the words "Trustee," "bond," "bondholder," and "holder" shall include the plural as well as the singular number.

In witness whereof, on the day and year first above written, the Northern Pacific Company, the Great Northern Company, and the Trustee, each respectively has caused this indenture to be signed by its president or by one of its vice-presidents, and its corporate seal to be hereunto affixed, and the same to be attested by the signature of its secretary or one of its assistant secretaries.

NORTHERN PACIFIC RAILWAY COMPANY,

[SEAL.] By DANIEL S. LAMONT, *Vice-President.*

Attest:

GEO. H. EARL, *Secretary.*

GREAT NORTHERN RAILWAY COMPANY,

[SEAL.] By W. P. CLOUGH, *Vice-President.*

Attest:

EDWD. T. NICHOLS, *Secretary.*

THE STANDARD TRUST COMPANY OF NEW YORK, *Trustee,*

By L. L. STANTON, *Vice-President.*

Attest:

WM. C. COX, *Secretary.*

STATE OF NEW YORK, 2157
City and County of New York, ss:

Be it remembered that on this twelfth day of July, A. D. 1901, before me, the subscriber, personally came Daniel S. Lamont, the vice-president, and George H. Earl, the secretary, of the Northern Pacific Railway Company, each of whom is to me well known, who, being by me severally duly sworn, each of them for himself did depose and say that the said Daniel S. Lamont resides in the city of New York, in the State of New York, and is vice-president of the Northern Pacific Railway Company, one of the corporations described in and which executed the forego- 2158
ing instrument, and that the said George H. Earl resides in Jersey City, in the State of New Jersey, and is secretary of said corporation; that the seal affixed to the foregoing instrument as the seal of said corporation is the corporate seal thereof, and that it was affixed by authority of the board of directors of said corporation; that the said Daniel S. Lamont signed his name thereto as vice-president and the said George H. Earl signed his name thereto as secretary by like authority; and they severally acknowledged to me that the same was so done as the free and voluntary act and deed of said corporation. 2159

In witness whereof I have hereunto set my hand and notarial seal this twelfth day of July, 1901.

[SEAL.] WM. H. BRUDER,
Notary Public, County of New York, N. Y.

STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that on this twelfth day of July, A. D. 1901, before me, the subscriber, personally came William P. Clough, the vice-president, and Edward T. Nichols, the secretary, of the Great Northern Railway Company, each of whom 2160
is to me well known, who, being by me severally duly sworn, each of them for himself did depose and say that the said William P. Clough resides in the city of St. Paul, in the State of Minnesota, and is vice-president of the Great Northern Railway Company, one of the corporations described in and which executed the foregoing instrument, and that the said Edward T. Nichols resides in Morristown, New Jersey, and is secretary of

said corporation; that the seal affixed to the foregoing instrument as the seal of said corporation is the corporate seal thereof, and that it was affixed by authority of the board of directors of said corporation; that the said William P. Clough signed his name thereto as vice-president and the said Edward T. Nichols signed his name thereto as secretary by like authority; and they severally acknowledged to me that the same was so done as the free and voluntary act and deed of said corporation.

In witness whereof I have hereunto set my hand and notarial seal this twelfth day of July, 1901.

[SEAL.] WM. H. BRUDER,
Notary Public, County of New York, N. Y.

STATE OF NEW YORK,
City and County of New York, ss.:

Be it remembered that on this twelfth day of July, A. D. 1901, before me, the subscriber, personally came Louis L. Stanton, the vice-president, and William C. Cox, the secretary of the Standard Trust Company, of New York, each of whom is to me well known, who, being by me severally duly sworn, each of them for himself did depose and say that the said Louis L. Stanton resides in the city of New York, in the State of New York, and is vice-president of the Standard Trust Company, of New York, one of the corporations described in and which executed the foregoing instrument, and that the said William C. Cox resides in the city of New York, and is secretary of said corporation; that the seal affixed to the foregoing instrument as the seal of said corporation is the corporate seal thereof, and that it was affixed by authority of the board of directors of said corporation; that the said Louis L. Stanton signed his name as vice-president and the said William C. Cox signed his name thereto as secretary by like authority, and they severally acknowledged to me that the same was so done as the free and voluntary act and deed of said corporation.

In witness whereof I have hereunto set my hand and notarial seal this twelfth day of July, 1901.

[SEAL.] WM. H. BRUDER,
Notary Public, County of New York, N. Y.

The following is a copy of lease of Chicago, Burlington and 2165
Quincy Railroad Company to Chicago, Burlington and Quincy Railway Company, offered in evidence by complainant:

COMPLAINANT'S EXHIBIT D.

CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY TO CHICAGO, BURLINGTON AND QUINCY RAILWAY COMPANY. LEASE. NOVEMBER 20, 1901.

Indenture made on November 20, A. D. 1901, between the Chicago, Burlington and Quincy Railroad Company, a corporation under the laws of the State of Illinois, hereinafter called the lessor, and the Chicago, Burlington & Quincy 2166
Railway Company, a corporation under the laws of the State of Iowa, hereinafter called the lessee.

ARTICLE I.

(*a*) The lessor owns certain lines of railway, hereinafter called the "owned lines," situated in the States of Illinois, Iowa, Missouri, Wisconsin, Minnesota, Nebraska, Wyoming, South Dakota, and Montana, having an aggregate length of about 5,443.92 miles, together with stations, yards, side tracks, shops, and other usual appurtenances of railways, and an equipment of engines, cars, machinery, tools, and furniture for the maintenance and operation of said railways. A list of said lines, which is intended to 2167
include all lines of railway owned by the lessor, will be hereto annexed.

(*b*) The lessor also holds leases for terms of long future duration of certain other lines of railway, owned by other companies and hereinafter called the "lease-hold lines," situated in the States of Nebraska, Iowa, Missouri, Kansas, Colorado, and Wyoming, having an aggregate length of about 2,265 miles, together with stations, yards, side tracks, shops, and other usual appurtenances of railways, and an equipment of engines, cars, machinery, tools, and furniture for the maintenance and operation of the 2168
same. A list of said lines, which is intended to include all lines of railway for which the lessor holds leases, will be hereto annexed.

(*c*) By means of ownership of stocks or bonds, or both, the

2169 lessor controls certain other railways, hereinafter called the "controlled lines," situated in the States of Illinois, Iowa, Nebraska, South Dakota, and Colorado, having an aggregate length of about 229.35 miles, standard gauge, and about 228.87 miles, narrow gauge. A list of said lines, which is intended to include all lines of railway controlled by the lessor, through ownership by it of stocks, or bonds, or both, will be hereto annexed.

(*d*) The lessor also owns or otherwise controls stocks and bonds of certain bridge, depot, and terminal companies. A list
2170 of the said stocks and bonds will be hereto annexed.

(*e*) The lessor holds and uses rights to run its trains over the tracks and bridges of other companies, said rights being hereinafter called "trackage rights." A list of the contracts and other instruments conferring such rights will be hereto annexed.

(*f*) The lessor also holds and exercises rights to the use of stations, yards, and other terminal facilities belonging to other companies and hereinafter called "station rights." A list of the contracts and other instruments conferring such rights will be hereto annexed.

2171 (*g*) The lessor also owns, jointly or in common with other companies, certain other railways, tracks, structures, and other facilities, hereinafter called "joint properties." A list of said "joint properties" will be hereto annexed.

(*h*) The lessor holds certain unexpired contracts with sundry parties relating to telegraphs, express service, sleeping-car service, and other matters connected with the operation of its railways and the transportation business thereon. A list of said contracts will be hereto annexed.

(*i*) There have been issued, and are outstanding at this date,
2172 several series of interest-bearing bonds, some of which are secured by mortgages, or deeds of trust, forming liens upon portions of the railways hereinbefore mentioned. A list of said several series of bonds will be hereto annexed.

(*j*) There are outstanding, in sundry parties, rights to the use of portions of the tracks, and other plant, of the railways hereby leased, created by the grants and contracts of the lessor and its predecessors in interest. A list of the said grants and contracts will be hereto annexed.

ARTICLE II. 2173

SECTION 1. The lessor hereby leases to the lessee all and singular the said "owned lines" of railway, referred to in clause (*a*) of Article I, together with all the rights, privileges, immunities, and franchises appertaining thereto, and all right of way, yard grounds and yards, station grounds and stations, grounds acquired and held for use in connection with the said lines, or any of them, whether acquired or held in the name of the lessor or in the name of some other person or corporation for its use; side tracks, spur tracks, machine shops and repair shops, and 2174 the machinery, tools and implements therein, or used in connection therewith; roundhouses, turntables, water-supply plant and equipment; warehouses, depots and the furniture and fixtures thereof; fuel sheds, and all tools, implements and tackle designed for use in connection therewith; stationary and portable engines, locomotive engines, cars of all descriptions; snow plows, steam shovels; electric plants, apparatus and equipment of all descriptions; track tools and engineering tools and instruments; also all buildings owned by the lessor and used for offices, storage or other purposes, with the furniture and fixtures thereof; also all 2175 other property, tools, implements, machinery, equipment, fixtures and appurtenances owned by the lessor, and acquired or held for use in connection with its railways, or any of the same, save as hereinafter excepted.

To have and to hold the same unto the lessee, its successors and assigns, for and during the full period of ninety-nine (99) years, from and after twelve o'clock, midnight, of September 30th, A. D. 1901; subject to the rentals, terms, conditions, exceptions, and limitations hereinafter set forth.

SECTION 2. The lessor hereby also sublets to the lessee all 2176 and singular the said "lease-hold lines" mentioned in clause (*b*) of Article I, and assigns to the lessee for the term hereinafter mentioned all the rights of the lessor therein, together with all the rights, immunities and franchises appertaining thereto, and all right of way, yard grounds and yards, station grounds and stations, grounds acquired and held for use in connection with the said lines, or any of them, whether acquired or held in the name of the lessor, or in the name of some other person or corporation for its use; side tracks, spur tracks, machine shops and

repair shops, and the machinery, tools and implements therein, or used in connection therewith; roundhouses, turntables, water-supply plant and equipment; warehouses, depots and the furniture and fixtures thereof; fuel sheds, and all tools, implements and tackle designed for use in connection therewith; stationary and portable engines, locomotive engines, cars of all descriptions; snow plows, steam shovels; electric plants, apparatus and equipment of all descriptions; track tools and engineering tools and instruments; also all buildings owned by any of the companies owning any of the said "lease-hold lines," and covered by the leases of said lines to the lessor, with the furniture and fixtures thereof; also all other property, tools, implements, machinery, equipment, fixtures and appurtenances owned by the lessor, or covered by any lease to the lessor, and acquired or held for use in connection with the said "lease-hold lines" of railway, or any of them, save as hereinafter excepted.

To have and to hold the same unto the lessee, its successors and assigns, for and during the full period of ninety-nine (99) years, from and after midnight of September 30th, A. D. 1901, unless any lease to the lessor herein of any of said "leasehold lines" should expire prior to the expiration of said term; in which event this lease as to such line shall expire simultaneously with that to the lessor herein.

The lessor herein is owner of a majority, or of the whole, of the capital stock of the several companies owning the said "lease-hold lines," and hereby agrees, in case of the expiration of the lease to it of any of the said lines, prior to the expiration of the said term fixed by this instrument, to cause the company owning the railroad covered by such expired lease to execute a new lease or new leases thereof to the lessee herein covering the unexpired portion of the term fixed by this instrument.

SECTION 3. Until otherwise agreed by the parties hereto, all rolling stock of all kinds hereby leased shall continue to be numbered in accordance with the system of numbers therefor now in use.

All other machinery, tools, implements, furniture, and apparatus coming under the operation of this lease, so far as may from time to time be required by the board of directors or executive committee of the lessor herein, shall have placed and

maintained thereon such distinctive marks, to indicate the own- 2181
ership thereof, as such board or committee shall designate; and all locomotive engines, cars, machinery, tools, implements, furniture, or apparatus furnished by the lessee herein for replacing similar articles so leased shall also be numbered or marked in like manner.

SECTION 4. During the term of the lease made by this instrument the lessee shall operate the railways hereby leased in a prudent, diligent, and faithful manner, and in such manner as to furnish reasonable accommodation to the public, giving due 2182
regard to the development of traffic, and shall maintain the leased railways and properties so that the same shall, at all times, be in a state of efficiency at least as high as at the present time, whenever, and as often as may be necessary, renewing and replacing the same, and the several parts thereof, with others at least as efficient for the uses for which the same are kept as those replaced thereby.

The title to each item of property procured or furnished by the lessee, in replacement of a similar item hereby leased, shall at once, and without further act, vest in the owner of the item 2183
replaced and become subject to all liens to which such replaced article was subject at the time of such replacement, if so provided in the instrument or instruments creating such liens.

SECTION 5. Should any item of portable property hereby leased become obsolete or unnecessary or undesirable for use in connection with the maintenance or operation of the leased railways, or some of them, the lessee may, with the assent of the board of directors or executive committee of the lessor, and with the assent of the trustee or trustees in any mortgage or mortgages covering the same, sell such items at a fair and reasonable price; 2184
and in the event of such sale the proceeds thereof shall belong to the company owning the sold item at the time of sale, and shall, at the request of the lessee herein, if made within a reasonable time, be reinvested in other articles of property necessary or desirable for use in connection with the leased railways; which articles shall, upon acquisition, belong to the lessor, free and clear of liens, other than such as may have been created by the lessor itself, and shall become subject to this lease.

If the lease shall fail, within a reasonable time, to request

reinvestment, as above stated, of the proceeds of any such sale, such proceeds shall be faithfully applied by the lessor as follows:

Firstly. To retirement, for cancellation, of outstanding bonds secured by mortgages forming liens upon the property sold, at the time of sale, and upon such proceeds after sale, in order of priority, by disposing of such proceeds in the manner provided by such mortgages; or in absence of such provisions by purchase of such bonds in the open market or by tender.

Secondly. To retirement, for cancellation, of any other outstanding interest-bearing bonds or forms of obligations for indebtedness of the company owning such item of property at the time of sale, in manner provided by such bonds, or other obligations, or by any instrument creating a lien securing the same; or in absence of such provisions by purchase in the open market or by tender.

All purchases of bonds or other obligations for retirement and cancellation shall be made under such rules and regulations and in such markets as shall seem most likely to insure the lowest prices and most favorable terms for the bonds, or other obligations, to be purchased; but the judgment of the board of directors or executive committee, as the case may be, of the lessor, shall be final upon all such matters.

SECTION 6. The lessee may make all betterments of and additions to the tracks, structures, and plant of the railways hereby leased that may lawfully be required by public authority, or that, in its own judgment, may be necessary or desirable for the prompt and efficient handling of the traffic of said railways. The title to such part of such betterments and additions as shall be located upon property belonging to an owner of the railways hereby leased shall vest in such owner; and the fair value of the same to the leased railways, not exceeding the cost of the same to the lessee, shall be repaid by the lessor to the lessee.

SECTION 7. The lease made by this instrument is subject to the liens created by the said trust deeds and mortgages mentioned in Article I, and also subject to any now existing rights of any person, partnership, or company, in, to, or upon the leased property, or any portion thereof, growing out of any lawful grant or contract made by the lessor or by any of its predecessors in the ownership of any part of the leased properties.

SECTION 8. While the lease made by this instrument remains 2189
in force, all the said stock and bonds of the companies owning the "controlled lines," mentioned in clause (*c*) of Article I, now held, or that may hereafter be acquired by the lessor, shall be held and managed by the lessor for the benefit of the lessee, and none of the said stocks or bonds shall be sold, pledged, or otherwise disposed of without the written consent of the lessee; and at all meetings of the stockholders of any of said companies the stock held by the lessor shall be voted for such persons and for such lawful measures as the lessee shall, in writing, request.

The lessee shall not, however, without the express consent of 2190
the board of directors of the lessor, to be given at a regular or a specially called meeting of such board, direct any vote to be cast for the alienation of the said "controlled lines," or any part thereof, or for the alienation of any other property belonging to any of the said lines necessary for the proper and efficient handling of the business thereof.

All net income and other benefits accruing to said stock and bonds, during said period, from the operation or other business of the said "controlled lines," shall belong and be paid over to the lessee. 2191

At any time, upon written request of the lessee, the lessor shall cause to be duly executed, by any company owning any part of said "controlled lines," such instrument or instruments as shall suffice to make the whole or any designated part of the lines of such company a portion of the properties covered by this lease.

The lessee shall cause to be applied to the maintenance of each of the said "controlled lines" so much of the revenue thereof as may be necessary for keeping such line, its equipment, and facilities in a state of efficiency for the proper 2192
handling of the traffic thereof.

SECTION 9. While the lease made by this instrument remains in force, all the said stocks and bonds of the said bridge, depot, and terminal companies, mentioned in clause (*d*) of Article I, now held, or that may hereafter be acquired, by the lessor, shall be held and managed by the lessor for the benefit of the lessee, and none of the said stocks or bonds shall be sold, pledged, or otherwise disposed of, without the written consent

of the lessee; and at all meetings of the stockholders of any of the said companies, held during said period, the stock in such company held by the lessor shall be voted for such persons for directors and officers, and for such lawful measures, consistent with the charter of such company, as the lessee shall, in writing, direct.

The lessee shall not, however, without the express consent of the board of directors of the lessor, to be given at a regular or a specially called meeting of said board, direct any vote to be cast for the alienation of any part of the properties of either of the said companies, necessary for the proper and efficient handling of the business thereof.

All net income and other benefits accruing from said stocks and bonds during said period shall belong and be paid to the lessee.

SECTION 10. The lessor also hereby assigns to the lessee all and singular the said "trackage rights" mentioned in clause (*e*) and all the said "station rights" mentioned in clause (*f*) of Article I, for the period of time that the lease of railways made by this instrument shall remain in force, if such "trackage rights" and "station rights" shall continue to exist for that length of time, and, if any of said rights should expire before the expiration of said lease, then for the full period of the existence of such right.

Said rights shall be held and enjoyed by the lessee, upon like terms and conditions as those under which the same are, by the instruments creating such rights, to be held and enjoyed by the lessor, or under such modified terms and conditions as may hereafter be lawfully agreed upon by the parties interested; which terms and conditions the lessee hereby accepts, and agrees to perform and abide by, and to relieve the lessor therefrom, while the lease of railways made by this instrument shall remain in force.

SECTION 11. The lessor also hereby leases to the lessee, for the period of time the lease made by this instrument shall remain in force, all the right, title, interest, and share of the lessor, in the said joint properties mentioned in clause (*g*) of Article I; the same to be held and enjoyed by the lessee as parcel of said leased railways, and on like conditions as are hereinbefore expressed in regard to said railways.

SECTION 12. The lessor also hereby assigns and transfers to 2197
the lessee all its right and interest in the said unexpired contracts mentioned in clause (*h*) of Article I, which assignment and transfer the lessee hereby accepts, and assumes all liabilities and obligations that may or can arise under said contracts, or under any of them, during the time the lease of railways made by this instrument shall remain in force, and shall save the lessor harmless on account thereof; and, so long as it continues to faithfully fulfill its obligations in this instrument contained, the lessee shall be entitled to realize and enjoy all rights, revenues, and other advantages accruing, or that might accrue, 2198
to the lessor, through or on account of the same, during the term of said lease.

SECTION 13. The lessor hereby sells and transfers to the lessee all the stocks of fuel and of materials of all kinds, acquired or intended for use or consumption in the maintenance or operation of the railways and property hereby leased, on hand at the date of this instrument, and also all contracts for the purchase of any such fuel or materials, with any and all persons and corporations, existing and unfulfilled at the date of this instrument; and the lessee hereby assumes all obligations 2199
of the lessor under said contracts, and shall hold the lessor harmless on account of the same.

Inventories of the said fuel, materials, and supplies, and a list of said contracts, shall be prepared in duplicate, as soon hereafter as may be, one copy thereof for the use of the lessor, and the other for the use of the lessee.

As further consideration of the said sale of fuel, materials, and supplies, the lessee hereby agrees that, upon the termination of the lease made by this instrument, whether by lapse of time or otherwise, the lessee will return, with the leased rail- 2200
ways, to the lessor or its assigns, stocks of fuel, materials, and supplies adapted for use in the maintenance and operation of the said railways, equal in value to the said stocks hereby sold and transferred to the lessee.

SECTION 14. The lessor hereby leases and assigns to the lessee any and all other real and personal property not hereinbefore mentioned, of whatever character and wherever situated, the same to be held and used by it pursuant to the terms of this

2201 instrument, and the lessee shall be entitled to all the rights, privileges, immunities, and franchises of the lessor, except its franchise to be a corporation.

ARTICLE III.

SECTION 1. As compensation for the leases hereby made to and the rights hereby conferred upon it, the lessee shall from time to time, during the term of the lease made by this instrument, well and faithfully make to or for the lessor the following-mentioned payments, that is to say:

First. All interest, as the same shall fall due within the said
2202 period, for which the lessor, or its property, or any other owner of any of the railways hereby leased, or its property, shall be liable, upon bonds or other obligations now outstanding, or upon bonds or other obligations that may hereafter be issued by the lessor, or by any of said other owners, for the purpose of refunding or paying off previously issued bonds to a like or a greater amount, or upon bonds or other obligations that may hereafter be issued by the lessor, or by any of said other owners, upon the written request of the lessee, for any purpose whatsoever; but such obligation of the lessee to pay interest shall not
2203 extend to any bond or other form of indebtedness held by the lessor itself, or by any other owner of any of the lines hereby leased. All such payments shall be made in the coin or currency wherein, and at the place or places whereat, such interest is made payable by the instrument providing for the payment of of the same. All such payments shall be made directly to the persons and corporations entitled to receive the same.

Second. All contributions, as the same shall become payable during said period, to sinking funds for the retirement of bonds of any of the several series mentioned in clause (*i*) of Article I,
2204 required to be paid by the terms of said bonds, or by the terms of any instrument securing payment of the same, to the extent of the deficiency remaining after the application thereto of the items mentioned in sections 1 and 2 of Article V of this instrument. All such contributions to the sinking funds shall be made by payment directly to the persons or corporations entitled to receive the same, and shall be made in the coin or other currency wherein the same are required to be made by the instrument requiring such payment.

Third. Quarterly, on the first days of January, April, July, 2205
and October, respectively, in each year during the said period, a sum in the lawful money of the United States, equal to one and three-fourths (1¾) per centum upon the par value of all the shares in the capital stock of the Chicago, Burlington and Quincy Railroad Company now outstanding, or that may hereafter be issued under lawful contracts now existing which require the issuance thereof, and upon such additional shares in said capital stock as may be hereafter issued in compliance with the written request of the lessee. The said sums, when and as received by 2206
the lessor, shall be faithfully used by it for the sole purpose of paying, on each of the days aforesaid, a quarter-yearly dividend of one and three-fourths (1¾) per centum upon the par value of the shares in its capital stock then outstanding, as above stated.

Fourth. All valid taxes and assessments, levied or assessed during said period, upon the railways and properties hereby leased, or upon the earnings or income thereof, or upon any other properties owned by the lessor, when and as such taxes and assessments shall become due and payable; all such payments 2207
to be made directly to the officers or persons lawfully entitled to receive such taxes or assessments, and in the coin or currency in which the same are by law required to be paid.

Fifth. On the first day of each month during the term of this lease, at the office of the lessor in the city of New York, or in the city of Boston, the sum of fifteen hundred dollars ($1,500), or such portion thereof as the board of directors or executive committee of the lessor shall require to be paid, to be used by the lessor for paying the expenses of maintaining its organization and of the transaction of its necessary business. 2208

ARTICLE IV.

SECTION 1. The lessor shall not, during the term of the lease made by this instrument, without an express request in writing from the lessee, make or issue any shares of its capital stock, additional to those now outstanding, or to those required to be issued, by lawful contracts now existing.

SECTION 2. The lessor shall not, during the term of the lease made by this instrument, without an express request in writing from the lessee, make or issue any bond, or other obligation for

the payment of money, in addition to those now lawfully outstanding, and to those authorized by the several mortgages mentioned in clause (*i*) of Article I, to be hereafter issued, except for the purpose of refunding or paying off previously issued bonds to a like or greater amount; and such additional issues of bonds so at present authorized shall be made and used solely for the purposes prescribed in the several mortgages securing the same.

SECTION 3. The lessor shall, at the request of the lessee, assent to extensions of time limited for the payment of the principal of any of its bonds, or other obligations, and to the renewal thereof, by the issue of the new bonds, or other obligations, not exceeding the principal of those to be retired thereby, secured by new mortgages or deeds of trust upon the railways and properties covered by this lease, or any part thereof, upon reasonable terms, and for any reasonable length of time, not exceeding the term of the lease made by this instrument.

The lessor shall, at the request and expense of the lessee, execute and cause to be executed, and issue and cause to be issued, all such new bonds, or other evidences of debt, and all such new mortgages or deeds of trust, upon the said railways and properties, as may reasonably be necessary for the economical and effectual accomplishment of such refunding operations, under such reasonable rules and regulations as it may see fit to adopt for the protection of its own rights and interests in the premises.

ARTICLE V.

SECTION 1. All lands granted by the United States, or by any State, to the lessor, or to any other owner of any of the railways hereby leased, and remaining unsold at the date of this instrument, and any other real estate owned by the lessor, not otherwise hereinbefore expressly mentioned and provided for, may be sold by the lessor in the customary way and converted into cash; and all moneys remaining unpaid on outstanding contracts for the sale of similar lands shall be collected by it.

The net proceeds of all such sales and collections remaining after payment of expenses of administration shall be applied, as the same shall accumulate, to the following-named purposes:

1. To the satisfaction of the liens, if any, upon the said lands or proceeds.

2. To payment into the sinking funds established by some of 2213
the mortgages mentioned in clause (*h*) of Article I, not forming liens upon said lands, or their proceeds, or to the retirement, in some other manner, of bonds of one or more of the classes secured by said mortgages.

3. To the payment of interest upon the bonds mentioned in said clause, or upon some of them.

SECTION 2. For purposes of adjustment of accounts between the parties to this instrument, and of providing for the disposition of current income and assets, and the discharge of current liabilities of the lessor, this instrument shall be deemed to have 2214
taken effect as at midnight of September 30th, A. D. 1901.

ARTICLE VI.

The lessee shall, from time to time, assign to the lessor, for use during the term of the lease made by this instrument, free from rent or other expense to the lessor, office room, properly heated and lighted, suitable for the transaction of its business, in the building used for offices for said railways in Burlington, Iowa, or in the building used for like purposes in Chicago, Illinois, or in both buildings, as the board of directors or executive committee of the lessor shall elect. 2215

The lessee shall also, at all times, during the said period, permit the officers of the lessor, and all its agents duly authorized for the purpose, to have free access to all parts of the railways, and all other property, hereby leased, including all stations, warehouses, machine shops, round houses, tool houses, and all other houses or buildings, wherein are kept any of the equipment, machinery, or tools hereby leased, or any equipment, machinery, or tools supplied by the lessee, for or in replacement of those hereby leased, for the purpose of examining into and ascertaining the condition of such leased property. The lessee 2216
shall also, during the said period, permit all officers, agents, and employees of the lessor traveling upon its business to ride in the passenger trains of the lessee, free of charge, between all points of the railways hereby leased, under such reasonable rules and regulations as the lessee may from time to time adopt with reference to such transportation.

2217 ARTICLE VII.

SECTION 1. If the lessee shall fail to make, in time and manner as in this instrument provided, any of the payments of money which by this instrument it has agreed to make, or shall fail to perform or fulfill, or to cause to be performed or fulfilled, any duty or obligation imposed by law upon the corporation owning or operating the lines of railway hereby leased, for failure to perform or fulfill which duty or obligation the said railways, or any portion thereof, or any of their appurtenances or equipment essential for the proper operation or maintenance
2218 thereof, or their franchises, would or might become liable to seizure or forfeiture; and, if such default shall continue for the period of six (6) months, or, in event of the lessee being or becoming in a state of declared insolvency, if such defaults shall exist for a period of sixty (60) days; or if, at any time during the term of the lease made by this instrument, the lessee shall fail or refuse to maintain and operate, or cause to be maintained and operated, either of the railways, with the equipment thereof, which it has agreed to maintain and operate in manner by this instrument provided, and such default shall continue
2219 after the expiration of a reasonable time for compliance with the valid final award of any board of arbitrators, constituted and acting in pursuance of the provisions hereof, or for compliance with the final order or judgment of any court of competent jurisdiction, requiring the doing by the lessee of the act or acts, the omission to do which shall have constituted such default; in every such case the lessor may, at its option, waive such default, or rescind this instrument, and reenter into and resume possession, control, and ownership of all railways and properties hereby leased. The remedies reserved to the lessor
2220 by this article shall be deemed cumulative only, and shall not deprive the lessor of the right to resort to any other remedy that shall be afforded by the laws, nor of the right to use such other remedies simultaneously and concurrently with the remedies afforded by this article.

The rescission by the lessor of this instrument shall not excuse the lessee from the obligation to pay any sum of money which has become payable by it before the date of such rescission.

SECTION 2. If there shall remain upon the grounds hereby 2221
leased, at the time of any rescission of this instrument, made as provided in the next preceding section, any permanent tracks, structures, or other improvements, placed there originally by the lessee, and not by way of replacement of tracks, structures, or plant existing thereon at the date hereof, for which the lessee shall not previously have been paid, the lessor shall pay the actual and fair value thereof, for use in connection with the leased railways, not in any event exceeding the actual, original cost thereof.

Such payment shall be made: 2222

First. To the holder or holders of any lien or liens upon the leased property, or the interest of the lessee therein, or upon such track, structure, or improvement, for labor or materials furnished to the lessee for constructing or maintaining the said track, structure, or improvement.

Secondly. To the lessee, to the extent of any residue remaining after payment of such liens.

Any dispute arising between the parties interested concerning the fair value of any such track, structure, or improvement shall be submitted to and be decided by arbitration, as provided by 2223
Article VIII of this instrument.

ARTICLE VIII.

Any and all questions that shall or may arise touching the construction of this instrument, or any part thereof, or the rights of the parties thereunder, or covering the business, or manner or mode of transacting the business, to be carried on under the provisions thereof, upon which the parties can not agree, shall be submitted to the arbitrament and award of a board of three (3) disinterested persons experienced in railway management, one to be selected by the lessor, its successors or assigns, and one by 2224
the lessee, its successors or assigns. If either party shall refuse or neglect to appoint an arbitrator within twenty (20) days after written notice from the other of its appointment of an arbitrator on its part, the arbitrator so appointed by the party so giving such notice may, and shall, select and appoint a disinterested person experienced in railway management to act as arbitrator for and on behalf of the party so notified and refusing or

neglecting to appoint. The two thus appointed shall select a third, and the board so appointed shall hear and determine the matter in controversy, upon reasonable notice to both parties of the time and place of hearing; and the decision and award of said board, or of any two of them, in the premises shall be binding and conclusive upon said parties, their successors and assigns, with respect to the matter submitted to and decided by them.

ARTICLE IX.

Any difference or controversy that may in good faith arise between the parties hereto as to the construction or carrying out of this instrument, or the rights of the parties thereunder, or the transaction of business under the provisions thereof, shall not interrupt the performance of the agreements therein contained or the continuance of business thereunder; but such business shall continue to be transacted and settlements and payments made thereunder in the same manner in which the same had been transacted and made prior to the arising of such difference or controversy; and thereupon such payments or restitutions shall be made by the respective parties as may be required by the decision of the arbitrators.

ARTICLE X.

The leases and other transfers made by this instrument shall be subject to determination by the lessor at will at any time after the shares in the capital stock of the lessor, held by the trustee in a certain indenture, bearing date July 1, A. D. 1901, made by the Northern Pacific Railway Company and the Great Northern Railway Company jointly to the Standard Trust Company of New York, as trustee, shall have been sold because of any default by the last-named companies in the requirements of said indenture, or at any time after said shares shall have been retaken by the holders of the said bonds secured thereby, pursuant to the provisions of said indenture.

ARTICLE XI.

The provisions of this instrument shall be binding upon and shall inure to the benefit of the successors and assigns of the lessor and lessee, respectively.

ARTICLE XII. 2229

The lessor agrees that it will from time to time, upon the request of the lessee, make and execute any additional assignment, supplemental lease or assurance, and perform any act that may be required to carry into effect this lease according to its true intent and meaning, and hereby authorizes the lessee, in the management and use of the demised property, or for any lawful purpose in connection therewith, to use the corporate name, seal, and franchises of the lessor.

In testimony whereof the parties hereto have caused this instrument to be subscribed by their respective presidents or 2230
vice-presidents, and to be sealed with their respective corporate seals, attested by the signatures of their respective secretaries, on the day and year last above written.

CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY,
[SEAL.] (Signed) By GEO. B. HARRIS, *President.*
Attest:
(Signed) T. S. HOWLAND, *Secretary.*

CHICAGO, BURLINGTON AND QUINCY RAILWAY COMPANY,
[SEAL.] (Signed) By W. W. BALDWIN, *President.*
Attest:
2231
(Signed) H. E. JARVIS, *Secretary.*

STATE OF NEW YORK, *County of New York, ss:*

Be it remembered, that on this 20th day of November, A. D. 1901, before me, a notary public in and for said county and State, personally appeared Geo. B. Harris, president of the Chicago, Burlington and Quincy Railroad Company, a corporation organized and existing under the laws of the State of Illinois, personally known to me, and to be the same person whose name is subscribed to, and who executed, the foregoing instrument as such president, who, being by me duly sworn, did say 2232
that he is president of the said Chicago, Burlington and Quincy Railroad Company; that he knows the corporate seal of said company; that the seal affixed to the foregoing instrument is the corporate seal of said company; that it was affixed by order of the board of directors of said company; that said instrument was signed and sealed in behalf of said corporation by like order as president of said company; and the said Geo. B.

Harris acknowledged said instrument, and that it was the free and voluntary act and deed of said corporation, and that he, as such president, signed, sealed, delivered, and executed said instrument as the free and voluntary act and deed of said company, and his own free and voluntary act and deed as such president, for the uses and purposes therein set forth.

My commission expires March 30th, 1903.

In witness whereof I have hereunto set my hand and official seal this 20th day of November, A. D. 1901.

[SEAL.] (Signed) GEO. H. COREY,
Notary Public in and for said County and State.

STATE OF NEW YORK, *County of New York, ss:*

Be it remembered, that on this 20th day of November, A. D. 1901, before me, a notary public in and for said county and State, personally appeared W. W. Baldwin, president of the Chicago, Burlington and Quincy Railway Company, a corporation organized and existing under the laws of the State of Iowa, personally known to me, and to be the same person whose name is subscribed to and who executed the foregoing instrument as such president, who, being by me duly sworn, did say that he is president of the said Chicago, Burlington and Quincy Railway Company; that he knows the corporate seal of said company; that the seal affixed to the foregoing instrument is the corporate seal of said company; that it was affixed by order of the board of directors of said company; that said instrument was signed and sealed in behalf of said corporation by like order as president of said company; and the said W. W. Baldwin acknowledged said instrument, and that it was the free and voluntary act and deed of said corporation, and that he, as such president, signed, sealed, delivered, and executed said instrument as the free and voluntary act and deed of said company, and his own free and voluntary act and deed as such president, for the uses and purposes therein set forth.

My commission expires March 30th, 1903.

In witness whereof I have hereunto set my hand and official seal this 20th day of November, A. D. 1901.

[SEAL.] (Signed) GEO. H. COREY,
Notary Public in and for said County and State.

The following is a copy of agreement of J. P. Morgan & Co. 2237
with the voting trustees of the Northern Pacific Railway Company, of December 1, 1896, offered in evidence by complainant:

COMPLAINANT'S EXHIBIT E.

NORTHERN PACIFIC RAILWAY COMPANY.—J. P. MORGAN & CO., REORGANIZATION MANAGERS, WITH THE VOTING TRUSTEES.—AGREEMENT.—DECEMBER 1ST, 1896.

This agreement, made in the city of New York this first day of December, eighteen hundred and ninety-six, by and between J. P. Morgan & Co. (hereinafter called the "Managers"), reorganization managers under a certain plan and agreement for the 2238
reorganization of the Northern Pacific Railroad system, dated the sixteenth day of March, eighteen hundred and ninety-six, parties of the first part, and J. Pierpont Morgan, Georg Siemens, August Belmont, Johnston Livingston, Charles Lanier (hereinafter called the "Voting Trustees"), parties of the second part, witnesseth as follows:

Whereas the managers have delivered to the Voting Trustees certificates for fully paid shares of one hundred dollars ($100) each of the capital stock of the Northern Pacific Railway Company (a corporation organized under the laws of the State of 2239
Wisconsin), as follows, viz, 750,000 shares of the preferred stock, 798,000 shares of the common stock, which certificates, together with such other similar certificates as hereafter from time to time may be delivered hereunder, are to be held and disposed of by the Voting Trustees under and pursuant to the terms and conditions hereof;

Now, therefore:

First. The Voting Trustees do hereby promise and agree with the Managers, and with each and every holder of any certificate issued as hereinafter provided, that from time to time 2240
upon request, they will cause to be issued to the Managers, or upon their order, in respect of all stock received from them, certificates in substantially the following form:

(In New York.)

NORTHERN PACIFIC RAILWAY COMPANY.

Preferred stock trust certificate.

This is to certify that on November 1st, 1901, ——— ——— will be entitled to receive a certificate or certificates for

2241 ——— fully paid shares of one hundred dollars each in the preferred capital stock of the Northern Pacific Railway Company, and in the meantime to receive payments equal to the dividends, if any, collected by the undersigned Voting Trustees upon a like number of such shares standing in their names; and, until after the actual delivery of such certificates, the Voting Trustees shall possess and shall be entitled to exercise all rights of every name and nature, including the right to vote, in respect of any and all such stock; it being expressly stipulated that no voting right passes by or under this certificate, or
2242 by or under any agreement expressed or implied.

Any dividends on the preferred stock are payable without deduction for any tax or taxes imposed by the United States, or by any State or municipality thereof, that the railway company may at any time be required to pay or to retain therefrom.

This certificate is issued under and pursuant to the terms and conditions of a certain agreement dated December 1, 1896, by and between J. P. Morgan & Co., as reorganization managers, and the undersigned Voting Trustees. No stock certificates shall be due or deliverable hereunder before the first day of
2243 November, 1901; but the Voting Trustees, in their discretion, may make earlier delivery.

This certificate is transferable only on the books of the Voting Trustees by the registered holder, either in person or by attorney duly authorized, according to rules established for that purpose by the Voting Trustees, and on surrender hereof, and until so transferred, the Voting Trustees may treat the registered holder as owner hereof for all purposes whatsoever, except that delivery of stock certificates hereunder shall not be made without the surrender hereof.

2244 This certificate is not valid unless duly signed by J. P. Morgan & Co., as agents, and also registered by the Central Trust Company of New York, as registrar.

This certificate may be exchanged, in such manner as the Voting Trustees may prescribe, for a similar certificate registered at the Deutsche Bank in Berlin, and any dividends applicable to certificates for preferred stock so registered in Berlin will be payable there at the rate of 4.20 marks per dollar.

In witness whereof the said Voting Trustees have caused

this certificate to be signed by J. P. Morgan & Co., their duly 2245
authorized agents, this —— day of ———, 189–.

J. PIERPONT MORGAN,
GEORG SIEMENS,
AUGUST BELMONT,
JOHNSTON LIVINGSTON,
CHARLES LANIER,
Voting Trustees.

By their agents hereunder.

——— ———.

Registered this —— day of ———, 189–. 2246

CENTRAL TRUST COMPANY OF NEW YORK,
Registrar.

By ——— ———.

Entered:

——— ———, *Transfer Clerk.*

(In New York.)

NORTHERN PACIFIC RAILWAY COMPANY.

Common stock trust certificate.

This is to certify that on November 1, 1901, ——— ——— will be entitled to receive a certificate or certificates for ——— 2247 fully-paid shares of one hundred dollars each in the common capital stock of the Northern Pacific Railway Company, and in the meantime to receive payments equal to the dividends, if any, collected by the undersigned Voting Trustees upon a like number of such shares standing in their names; and, until after the actual delivery of such certificates, the Voting Trustees shall possess, and shall be entitled to exercise, all rights of every name and nature, including the right to vote, in respect of any and all such stock; it being expressly stipulated that no voting right passes by or under this certificate, or by or under any 2248 agreement expressed or implied.

This certificate is issued under and pursuant to the terms and conditions of a certain agreement dated December 1, 1896, by and between J. P. Morgan & Co., as reorganization managers, and the undersigned Voting Trustees.

No stock certificates shall be due or deliverable hereunder before the first day of November, 1901, but the Voting Trustees, in their discretion, may make earlier delivery.

2249 This certificate is transferable only on the books of the Voting Trustees by the registered holder, either in person or by attorney duly authorized, according to rules established for that purpose by the Voting Trustees and on surrender hereof; and until so transferred the Voting Trustees may treat the registered owner as holder hereof for all purposes whatsoever, except that delivery of stock certificates hereunder shall not be made without the surrender hereof.

This certificate is not valid unless duly signed by J. P. Morgan & Co., as agents, and also registered by the Central Trust
2250 Company of New York, as registrar.

This certificate may be exchanged, in such manner as the Voting Trustees may prescribe, for a similar certificate registered at the Deutsche Bank in Berlin, and any dividends applicable to certificates for common stock registered in Berlin will be payable there.

In witness whereof the said Voting Trustees have caused this certificate to be signed by J. P. Morgan & Co., their duly authorized agents, this —— day of ———, 189—.

J. PIERPONT MORGAN,
2251 GEORG SIEMENS,
AUGUST BELMONT,
JOHNSTON LIVINGSTON,
CHARLES LANIER,
Voting Trustees.

By their agents hereunder,

———— ————.

Registered this —— day of ———, 189—.

CENTRAL TRUST COMPANY OF NEW YORK, *Registrar.*

By ———— ————.

2252 Entered:

———— ————, *Transfer Clerk.*

(In Berlin.)

NORTHERN PACIFIC RAILWAY COMPANY.

Preferred stock trust certificate.

This is to certify that on November 1, 1901, ———— ———— will be entitled to receive a certificate or certificates for ——— fully-paid shares of one hundred dollars each in the preferred capital stock of the Northern Pacific Railway Company, and in

the meantime to receive payments equal to the dividends, if any, 2253
collected by the undersigned Voting Trustees upon a like number of such shares standing in their names; and, until after the actual delivery of such certificates, the Voting Trustees shall possess and shall be entitled to exercise all rights of every name and nature, including the right to vote, in respect of any and all such stock; it being expressly stipulated that no voting right passes by or under this certificate, or by or under any agreement expressed or implied.

This certificate is issued under and pursuant to the terms and conditions of a certain agreement dated December 1, 1896, by 2254
and between J. P. Morgan & Co., as reorganization managers, and the undersigned Voting Trustees. No stock certificates shall be due or deliverable hereunder before the first day of November, 1901; but the Voting Trustees, in their discretion, may make earlier delivery.

This certificate is transferable only on the books of the Voting Trustees by the registered holder, either in person or by attorney duly authorized, according to rules established for that purpose by the Voting Trustees, and on surrender hereof, and until so transferred, the Voting Trustees may treat the regis- 2255
tered holder as owner hereof for all purposes whatsoever, except that delivery of stock certificates hereunder shall not be made without the surrender hereof.

Any dividends on the preferred stock are payable without deduction for any tax or taxes imposed by the United States, or any State or municipality thereof, that the railway company may at any time be required to pay or to retain therefrom.

This certificate is not valid unless duly signed by Deutsche Bank in Berlin, or at its London agency, as agents of the Voting Trustees, and also registered by said bank in Berlin, or at 2256
its London agency, as registrar.

Any dividends applicable to certificates for preferred stock registered in Berlin will be payable there at the rate of 4.20 marks per dollar.

This certificate may be exchanged, in such manner as the Voting Trustees may prescribe, for a similar certificate registered by the Central Trust Company of New York.

In witness whereof the said Voting Trustees have caused this

2257 certificate to be signed by Deutsche Bank, their duly authorized agents, this —— day of ———, 189—.

J. Pierpont Morgan,
Georg Siemens,
August Belmont,
Johnston Livingston,
Charles Lanier,
Voting Trustees.

By their agents hereunder,

Deutsche Bank,
2258 ——— ———.

Registered this —— day of ———, 189—.

Deutsche Bank, *Registrar.*

——— ———.

Entered:

——— ———, *Transfer Clerk.*

(In Berlin.)

Northern Pacific Railway Company.

Common stock trust certificate.

This is to certify that, on November 1, 1901, ——— ——— 2259 will be entitled to receive a certificate or certificates for ——— fully-paid shares of one hundred dollars each in the common capital stock of the Northern Pacific Railway Company, and in the meantime to receive payments equal to the dividends, if any, collected by the undersigned Voting Trustees upon a like number of such shares standing in their names; and, until after the actual delivery of such certificates, the Voting Trustees shall possess and shall be entitled to exercise all rights of every name and nature, including the right to vote, in respect of any and all such stock; it being expressly stipulated that no voting 2260 right passes by or under this certificate, or by or under any agreement expressed or implied.

This certificate is issued under and pursuant to the terms and conditions of a certain agreement dated December 1, 1896, by and between J. P. Morgan & Co., as reorganization managers, and the undersigned Voting Trustees. No stock certificates shall be due or deliverable hereunder before the first day of November, 1901; but the Voting Trustees, in their discretion, may make earlier delivery.

This certificate is transferable only on the books of the Voting Trustees by the registered holder, either in person or by attorney duly authorized, according to rules established for that purpose by the Voting Trustees, and on surrender hereof, and until so transferred, the Voting Trustees may treat the registered holder as owner hereof for all purposes whatsoever, except that delivery of stock certificates hereunder shall not be made without the surrender hereof. 2261

This certificate is not valid unless duly signed by Deutsche Bank in Berlin, or at its London agency, as agents of the Voting Trustees, and also registered by said bank in Berlin, or at its London agency, as registrar. 2262

Any dividends applicable to certificates for common stock registered in Berlin will be payable there.

This certificate may be exchanged, in such manner as the Voting Trustees may prescribe, for a similar certificate registered by the Central Trust Company of New York.

In witness whereof the said Voting Trustees have caused this certificate to be signed by Deutsche Bank, their duly authorized agents, this —— day of ———, 189—.

J. PIERPONT MORGAN, 2263
GEORG SIEMENS,
AUGUST BELMONT,
JOHNSTON LIVINGSTON,
CHARLES LANIER,
Voting Trustees.

By their agents hereunder.

DEUTSCHE BANK,
———— ————.

Registered this —— day of ———, 189—.

DEUTSCHE BANK, *Registrar.* 2264

———— ————.

Entered:

———— ————, *Transfer Clerk.*

SECOND. On the first day of November, 1901, and upon surrender of any stock trust certificate then outstanding, the Voting Trustees will, in accordance with the terms hereof, deliver proper certificates of stock of the Northern Pacific Railway Company. It is, however, distinctly understood and agreed

that at any date the Voting Trustees may call upon the holders of stock trust certificates to exchange them for certificates of capital stock, and at or after the date to be specified in any such call they shall deliver stock certificates in exchange therefor; and also that the preferred shares are subject to the right of the Northern Pacific Railway Company, at its option and in such manner as it shall determine, to retire its preferred stock, in whole or in part, at par (*i. e.*, $100 per share), from time to time, upon any first day of January prior to 1917.

THIRD. The term Northern Pacific Railway Company, for the purposes of this agreement and for all rights thereunder, including the issue and delivery of stock, shall be taken to mean either the Wisconsin corporation of that name, created by chapter 326 of the Private and Local Laws of Wisconsin, passed 1870, and the acts supplemental thereto, or any successor or consolidated or other railroad corporation which, with the unanimous approval of the Voting Trustees, shall be adopted to own or operate the railroad properties acquired under the said reorganization plan and agreement, dated March 16, 1896, and to carry said plan into fuller effect.

FOURTH. From time to time hereafter the Voting Trustees may receive any additional fully-paid shares, duly authorized, of the capital stock of the Northern Pacific Railway Company, either preferred or common, and in respect of all such shares so received will issue and deliver certificates similar to those above mentioned, entitling the holders to all rights above specified.

FIFTH. For all purposes of the payment of dividends the registration in Berlin of any stock trust certificate shall be considered and treated as the registration there of the stock therein stated, and dividends payable in respect of preferred stock for which trust stock certificates shall have been registered in Berlin shall be paid there to the holders of such stock trust certificates at the rate of 4.20 marks to the dollar, and the trustees are authorized to arrange accordingly with the railway company.

SIXTH. Any Voting Trustee may, at any time, resign by delivering to the other Voting Trustees, in writing, his resignation, to take effect ten days thereafter; and in every case of death or resignation, or of the inability of any Voting Trustee to act, the vacancy so occurring shall be filled by the appoint-

ment of a successor or successors to be made by the other Vot- 2269
ing Trustees by a written instrument, with the exception only in the case of Georg Siemens, whose successor from time to time shall be nominated by the Deutsche Bank of Berlin, and elected by the remaining Voting Trustees; and the term "Voting Trustees" as herein used shall apply to the parties of the second part and their successors hereunder.

SEVENTH. All questions arising between the Voting Trustees shall from time to time be determined by the decision of the greater number of those then acting as Voting Trustees, either at a meeting or by writing with or without meeting, and in like 2270
manner they may establish their rules of action; but they will not, nor will any of them, consent that any mortgage, additional to the prior lien mortgage and the general lien mortgage, be put upon the property formerly embraced in the system of the Northern Pacific Railroad Company, nor that the amount of the preferred stock of the Northern Pacific Railway Company be increased, except after they shall, in each instance, have obtained the consent of the holders of a majority of the whole amount of preferred stock trust certificates given at a meeting of such certificate holders called for that purpose; and also the consent of 2271
the holders of a majority of such part of the common stock trust certificates as shall be represented at such meeting, the holders of each class of stock trust certificates voting separately.

EIGHTH. In voting the stock held by them, the Voting Trustees will exercise their best judgment from time to time to select suitable directors, to the end that the affairs of the company shall be properly managed, and in voting on other matters which may come before them at any stockholders' meeting will exercise like judgment; but they assume no responsibility in respect to such management or in respect of any action taken pursuant 2272
to their votes so cast, it being understood that no Voting Trustee incurs any responsibility for the act or omission of any agent hereunder, nor by reason of any error of law or of any matter or thing done or omitted under this agreement, except for his own individual malfeasance.

NINTH. This agreement may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument.

2273 Any Voting Trustee hereunder may vote in person or by proxy to any other person, whether or not a Voting Trustee.

In witness whereof the several parties hereunto have set their hands and seals the day and year first above mentioned.

J. PIERPONT MORGAN, [SEAL.]
GEORG SIEMENS, [SEAL.]
AUGUST BELMONT, [SEAL.]
JOHNSTON LIVINGSTON, [SEAL.]
CHARLES LANIER, [SEAL.]
Voting Trustees.

2274 J. P. MORGAN & CO., [SEAL.]
Reorganization Managers.

The following is a copy of dissolution of the voting trust of the Northern Pacific Railway Company offered in evidence by complainant:

COMPLAINANT'S EXHIBIT F.

DISSOLUTION OF THE VOTING TRUST OF THE NORTHERN PACIFIC RAILWAY COMPANY, NOVEMBER 12, 1900.

NORTHERN PACIFIC RAILWAY COMPANY
VOTING TRUSTEES,

2275 *November 12, 1900.*

The undersigned, being all of the Voting Trustees named in and made parties to a certain agreement made in the city of New York, December 1, 1896, by and between J. P. Morgan & Co., reorganization managers, parties of the first part, and the undersigned Voting Trustees, parties of the second part, have resolved and determined, and hereby do resolve and determine, that delivery of stock certificates under the said agreement, in exchange for stock trust certificates issued in respect thereof, shall be made before the first day of November, 1901, to wit,
2276 whenever on or after the second day of January, 1901, any such stock trust certificates may be received by the Voting Trustees for such exchange. The undersigned further have resolved and determined, and hereby further do resolve and determine, that upon the receipt of any such stock trust certificate at any time on or after the second day of January, 1901, the Voting Trustees and their agents, Messrs. J. P. Morgan & Co. and the

Deutsche Bank, be, and hereby they are, authorized and directed 2277
from time to time to deliver certificates of stock of the Northern Pacific Railway Company to the amount and of the character specified in the stock trust certificate so received by them; and the Voting Trustees and their said agents are hereby authorized to do and to perform all acts reasonably necessary or proper to enable them to make such exchange and delivery; provided, that upon receipt thereof every surrendered stock trust certificate shall be canceled. Exchanges and deliveries may be made at the rate of one hundred schedules per diem.

All stock trust certificates held or received by the Voting 2278
Trustees or their agents, J. P. Morgan & Co. or the Deutsche Bank, after cancellation shall be delivered by them to the railway company as custodian to hold the same, for the protection of the Voting Trustees.

The undersigned further have resolved and determined, and hereby further do resolve and determine, that a notice and call, substantially in the form of that hereunto annexed, shall be published in one or more newspapers in each of the cities of New York, Berlin, and London, once in each week for ten weeks, beginning on or about the thirteenth day of November, 2279
1900, and that a circular stating the results of the management of the railway during the continuance of the Voting Trust be mailed to the holders of stock trust certificates.

J. PIERPONT MORGAN,
Dr. GEORG VON SIEMENS,
JOHNSTON LIVINGSTON,
AUGUST BELMONT,
CHARLES LANIER,
Voting Trustees.

NORTHERN PACIFIC RAILWAY COMPANY VOTING TRUSTEES— 2280
NOTICE AND CALL.

Holders of stock trust certificates issued by or in behalf of the Voting Trustees under the agreement made December 1, 1896, by and between J. P. Morgan & Co., reorganization managers under a certain plan and agreement for the reorganization of the Northern Pacific Railroad System, parties of the first part, and the Voting Trustees, parties of the second part thereto, are hereby notified that in the exercise of their discretionary

powers reserved and authorized by the said Voting Trust Agreement, the Voting Trustees have resolved and determined that certificates for the stock of the Northern Pacific Railway Company shall and may be delivered in exchange for and upon surrender of corresponding stock trust certificates before the first day of November, 1901, to wit, at any time on or after the second day of January, 1901.

All holders of stock trust certificates issued under said agreement are hereby called upon to exchange the same for corresponding certificates of capital stock of the Northern Pacific Railway Company at any time on or after the second day of January, 1901.

All stock trust certificates surrendered for exchange must be properly endorsed in blank by the registered holder thereof.

Stock trust certificates issued in New York must be presented for exchange to J. P. Morgan & Co., agents of the Voting Trustees in New York. Stock trust certificates issued in Berlin must be presented for exchange to the Deutsche Bank, agents of the Voting Trustees in Berlin. Such exchanges may be made on or after the second day of January, 1901; but not more than one hundred schedules per diem will be received by the agents in either city.

In exchange for all stock trust certificates so surrendered there will be delivered vouchers entitling the party therein named to receive stock certificates of the character and amount therein specified as soon as the same can be prepared for delivery.

J. PIERPONT MORGAN,
Dr. GEORG VON SIEMENS,
JOHNSTON LIVINGSTON,
AUGUST BELMONT,
CHARLES LANIER,
Voting Trustees.

23 WALL STREET,
New York, November 12, 1900.

To the holders of trust certificates for the common and preferred capital stock of the Northern Pacific Railway Company:

Pursuant to the plan for the reorganization of the Northern Pacific Railroad Company, dated March 16, 1896, and "in furtherance of the independent reorganization and administra-

tion of the property, and to promote and protect the value of 2285
the securities of the new company," Messrs. J. P. Morgan & Co., as reorganization managers, delivered to the undersigned, as Voting Trustees, under the terms of an agreement dated December 1, 1896, the common and preferred capital stocks of the Northern Pacific Railway Company, for which our trust certificates have been issued and are now outstanding.

By the receipt of these Northern Pacific shares, the Voting Trustees possessed and became "entitled to exercise all the rights of every name and nature, including the right to vote in respect of any and all such stock." 2286

As stockholders of record, the Voting Trustees have received all dividends paid upon these shares, and have caused the same to be distributed as received to the holders of the trust certificates.

In voting the stock held by them, the Voting Trustees have exercised their best judgment, from time to time, in the selection of suitable directors, to the end that the affairs of the company should be properly managed.

The annual reports issued and distributed by order of the directors during the past four years to the holders of the trust 2287
certificates and various securities of the company, have given prompt and full information to all parties in interest regarding the directors and officers selected, and the management thereby secured by the Voting Trustees in the exercise of their voting power and the administration of their trust.

Although the first day of November, 1901, was fixed as the date for the expiration of this trust, yet it was provided that at any time the Voting Trustees might call upon the holders of the stock trust certificates to exchange them for certificates of capital stock. 2288

By reason of the evidences of financial strength, conservative management, skillful and profitable operation, superior physical condition of the property, and the reasonable prospect of continued prosperity of the Northern Pacific Railway Company, the Voting Trustees, in the exercise of their discretion, have decided to now terminate their trust and to distribute on January 1, 1901, the shares of stock they hold in exchange for their outstanding trust certificates.

2289 The Northern Pacific Railway Company has already declared thirteen dividends upon its preferred stock and six dividends upon its common stock. Although its published statements of earnings and cash resources give evidence that the continuance of regular quarterly dividends, now established at the rate of 4% per annum, upon both its common and preferred stocks, may be reasonably expected under its present management, yet a brief summary of the position of the company may be of interest to its proprietors at the present time.

2290 MILEAGE.

On September 1, 1896, when the Northern Pacific Railway Company received possession of its property, the railroad system consisted of a main line and branches aggregating....	4,345.69 miles
On November 1, 1900, the total mileage owned and operated amounted to.....	5,666.52 miles
An increase of.....	1,320.83 miles

equivalent to an increase of 30.4 per cent in mileage owned and
2291 operated.

During the same period the miles of second track, spurs, and sidings have increased 575.39 miles, or 63.2 per cent, from 909.32 to 1,484.71 miles.

EQUIPMENT.

The increase in number of items constituting the equipment has been as follows:

Equipment.	Sept. 1, 1896.	Nov. 1, 1900.	Increase.	
			Number.	%
2292 Locomotives	574	688	114	19.9
Passenger-train cars	438	582	144	32.9
Freight-train cars	18,032	25,130	7,098	39.4
Miscellaneous equipment	465	652	187	40.2
Totals	19,509	27,052	7,543	38.7

While the increase in total number is 38.7 per cent, the increased horsepower of the road locomotives is 62.2 per cent, and the increased capacity of the freight trains is 70.6 per cent, by

reason of the purchase of heavier power and the reinforce- 2293
ment and purchase of cars of larger capacity.

The average train load of revenue freight increased in the same period 69.57 per cent, from 193.52 to 328.16 tons.

LAND GRANT.

Instead of holding the lands at prices that were high compared with the prices asked for adjoining Government lands, the policy of selling at much reduced rates has been vigorously carried out, with great success, thereby reducing the company's taxes, stopping the interest on "Land grant" bonds retired, and 2294
increasing the population and tonnage tributary to the railroad system.

The acreage of the lands granted by the United States to the Northern Pacific Railroad Company has been thus reduced over 34 per cent, from about 34,000,000 to about 22,000,000 of acres, as will be seen by the following details of unsold lands:

Locations.	December 1, 1896.	September 30, 1900.	Decrease in acres.
Minnesota	1,336,154	442,796	893,358
North Dakota	6,851,987	1,267,780	5,584,207
Montana	15,801,143	13,270,271	2,530,872
Idaho	1,832,493	1,633,272	199,221
Washington	8,670,333	6,129,934	2,540,399
Oregon	146,763	29,197	117,566
Total acres	34,638,873	22,773,250	11,865,623

2295

Under the terms of the mortgages issued by the Northern Pacific Railway Company, the net proceeds of the land grant are now applicable to the extent of one-half, but not exceeding $500,000 in any one year, to the purchase at not exceeding 110 per cent and the cancellation of prior lien 4 per cent bonds, and 2296
when these are not obtainable, then to the purchase, at not exceeding 100 per cent and the cancellation of general lien 3 per cent bonds. The remaining half of the proceeds are to be used for betterments and additions to the mortgaged property.

Since the cancellation of all the mortgages securing the "Land grant" bonds of the old Northern Pacific Railroad Company the proceeds of land sales have been applied as above provided and $1,282,500 of prior lien bonds have been purchased and canceled.

2297 CAPITALIZATION AND FIXED CHARGES.

During the same period of increased assets and earning power the mortgage debt and fixed interest charges have been increased as follows:

Date of balance sheet.	Mortgage debt.	Average rate of interest.	Annual interest charges.
June 30, 1900	$171,346,596	3.79%	$6,497,655
September 1, 1896	156,157,500	3.98%	6,217,320
Changes	15,189,096	.19%	280,335

2298 While the mortgage debt has been increased 9.72 per cent and the fixed annual interest charges 4.51 per cent, the average rate of interest on the entire mortgage debt, both that of original issue and that assumed, has been reduced 4.8 per cent.

By reason of the application of the proceeds of land sales to the payment of "Land grant" bonds, and the acquisition and construction of additional mileage during the period from September 1, 1896, to June 30, 1900, the capitalization per mile has been reduced $11,623 per mile, or 16.16 per cent.

2299 ADVANCE IN PRIORITY OF MORTGAGE LIENS.

Since September 1, 1896, all the then outstanding bonds of the old Northern Pacific Railroad Company assumed to be paid by the new Northern Pacific Railway Company, being—

$1,776,000 Missouri River Division 6s,
16,142,000 general first mortgage 6s,

$17,918,000 in all—

have been retired and their mortgages discharged of record.

The prior lien 4 per cent bonds have thus become a first lien,
2300 by direct mortgage or through the ownership of securities, upon 4,975.04 miles of main line and branches, including extensive terminal properties at the several termini on Lake Superior and Puget Sound, upon the entire Northern Pacific Railroad land grant and all the equipment of the Northern Pacific Railway Company, exclusive of the St. Paul and Northern Pacific and St. Paul and Duluth divisions, upon which, subject to their

existing underlying mortgages, the new bonds likewise have 2301
subsisting liens.

The general lien 3 per cent bonds have likewise been advanced in order of lien, so that they are now secured by a second mortgage upon the same property that secures the prior lien 4 per cent bonds, and subject to the same exceptions stated.

EARNINGS.

The gross earnings for the fiscal year ending June 30, 1900, were	$30,021,317	
For the year ending June 30, 1896, they were	19,863,159	2302
being an increase of 51.14%, or	10,158,156	

The net income for the same periods increased 105.39%, being from $7,527,913 to $15,461,620.

Appropriations from net income have been made during the past three years to the extent of $5,988,328 for new equipment and additions and betterments to the property.

Dividends have been declared upon both common and preferred shares to the aggregate amount of $14,550,000.

Surplus revenues have been accumulated in cash 2303
amounting on September 30, 1900, to $7,273,248

of which $3,000,000 cash was set aside in 1898 as a special reserve until the end of 1901 to insure the continuity of dividends upon the preferred stock.

CASH WORKING CAPITAL.

On June 30, 1897, the current assets, exclusive of the betterment and enlargement funds, exceeded the current liabilities by	$5,258,592	
On September 30, 1900, the current assets, exclusive of the betterment and enlargement and insurance funds, and the special reserve of $3,000,000 for continuity of dividends on preferred stock, exceeded the current liabilities by	19,540,482	2304

an increase of 271.6 per cent since June 30, 1897.

2305 CASH AND CASH ASSETS.

The cash and available assets of the company on September 30, 1900, including the betterment and enlargement, preferred-stock dividend, and insurance funds, were as follows:

Cash	$8,856,645
Accounts receivable	2,607,601
Materials on hand	2,270,928
Land contracts	2,284,990
Treasury securities:	
Prior-lien bonds, $9,894,000, at 100+%	9,924,000
2306 General-lien bonds, $2,650,000, at 60 %	1,590,000
Miscellaneous bonds and stocks	7,153,854
Total present cash resources	34,688,018

With the exception of the interest on $811,000 general-lien bonds held by the insurance fund, the interest accruing upon the prior-lien and general-lien bonds held as treasury securities has not been included in either the fixed charges or the miscellaneous income of the company for the past fiscal year.

In addition to the above-described cash and convertible assets, 2307 there are the following marketable bonds available under the provisions of their respective mortgages for new construction, betterments, equipment, and other purposes.

Prior-lien 4 % bonds to the extent of not exceeding $1,500,000 per annum	$20,500,000
General-lien 3 % bonds as required for betterments, new construction, equipment, etc	4,000,000
St. Paul and Duluth division 4 % bonds for betterments and additions to this division	5,502,000
	30,002,000

2308 BETTERMENT AND ENLARGEMENT FUND.

Under the plan of reorganization a cash fund amounting to $5,073,964

was provided for early use in the betterment and enlargement of the property acquired by the new company. The entire amount of this fund has been expended for the purposes indicated.

Further cash and bonds have been received from time to time for similar improvements, pursuant to the provisions therefor under the terms of the prior-lien mortgage, to the aggregate amount of	$18,028,579	2309
During the same period there has been expended from this additional fund for new mileage, equipment, real estate, and improvements	9,564,065	
leaving, September 30, 1900, still available in cash and bonds for similar expenditures	8,464,514	2310
after a total disbursement as above described of	14,638,029	
	23,102,543	

PHYSICAL CONDITION.

In addition to the large amounts charged to operating expenses during our period of trusteeship for improvements and additions to the property, there has been $5,988,328 appropriated from net income during the past three years for these purposes.

The following details will indicate the amount and character of the expenditures made from September 1, 1896, to November 1, 1900, to place the property, exclusive of the proprietary companies, in condition for economical operation and maintenance: 2311

Heavy steel rails laid on	1,042	miles
Added second track, spurs, and sidings	221	miles
Embankments widened to 16 feet on	1,391	miles
Roadway ballasted for	1,426	miles
Replaced	7,550,000	ties
Grades reduced, with incidental improvement of alignment and curvature, over engine districts aggregating	1,700	miles 2312
Tonnage capacity of freight-train cars increased	70.6	%
Horsepower capacity of road locomotives increased	62.2	%

OPERATING RESULTS.

The increase of net income to the extent of 103.89 per cent in the past four years, while largely due to the improvement in

2313 general business, could not have been attained in the face of voluntary reductions in freight and passenger rates but for the decrease of expenses of transportation through the intelligent application of the best methods known in the science of railroad operation and engineering. The results of such methods are shown in the following comparative statistics for that period, by which it will be seen that invested capital, labor, and fuel have been utilized with an economy and profit seldom before shown in the solution of railroad problems of this country.

Although there has been in this period of four years an in-
2314 crease of 67.45 per cent in tons of revenue freight carried one mile, yet by increasing the tonnage loaded in each car 25.66 per cent and the number of loaded cars in each train 34.93 per cent, the number of revenue tons in each train has been increased 69.57 per cent, and the increase of 888,358,921 tons one mile has been transported in 1900 in trains that ran 85,181 miles *less* than was required for that much less tonnage under the methods and facilities of 1896.

Although the mileage of loaded freight cars increased 33.22 per cent, and the average receipts per ton per mile decreased
2315 12.65 per cent, yet the total freight earnings per train mile increased 48.29 per cent.

The following statistics are from the annual reports:

Operating units.	Year.	Tons, miles, etc.	Increase or decrease.	Per cent.
Tons of revenue freight carried one mile.	1900	2,205,317,271		
	1896	1,316,958,350	888,358,921	67.45
Average tons of revenue freight in each loaded car	1900	13.42		
	1896	10.68	2.74	25.66
Average number of loaded freight cars in each train	1900	24.45		
	1896	18.12	6.33	34.93
Average number of tons of revenue freight in each train	1900	328.16		
	1896	193.52	134.64	69.57
2316 Miles run by freight trains	1900	6,720,173		
	1896	6,805,354	*85,181*	*1.25*
Mileage of loaded freight cars	1900	164,314,552		
	1896	123,342,454	40,972,098	33.22
Average receipts per ton per mile revenue freight	1900	.00987		
	1896	.01130	*.00143*	*12.65*
Total freight earnings per train mile	1900	3,295		
	1896	2,222	1,073	48.29

Italic figures denote a decrease

The above record appears even more creditable when it is considered that 42 per cent of the mileage of the system now operated is composed of 63 separate branch lines.

SUMMARY. 2317

The strength of the Northern Pacific Railway Company in its physical and financial condition, as well as in its management, may be briefly stated in conclusion as follows:

While the mileage has been increased 30.4 per cent, the capitalization has been decreased $11,623 per mile.

The prior lien bonds have been made a first mortgage, and the lien of the general lien bonds has been correspondingly advanced to the second position.

Even with unusual charges to expenses for improvements to the property, the net income during the past three years has 2318
averaged 5.16 per cent on both preferred and common stocks.

The net cash working capital on September 30, 1900, was $19,540,482, while the total cash assets of the treasury amounted to $34,688,018.

There are additional resources for present and future requirements in $30,002,000 of bonds issuable under existing mortgages of the Northern Pacific Railway Company.

The condition of the railroad and its equipment is of the first class.

The officers have given continued evidence of their ability to 2319
improve and extend the property while increasing its net revenue.

The directors have contributed, by their varied experiences and personal attention, so much to the strength and credit of the company that we consider their continuance in the guidance of its affairs to be of the greatest importance to its future prosperity.

Because of the conditions above described, we believe that the purposes of our trusteeship have been fulfilled and that we are warranted in now dissolving the Voting Trust. 2320

J. PIERPONT MORGAN,
DR. GEORG VON SIEMENS,
JOHNSTON LIVINGSTON,
AUGUST BELMONT,
CHARLES LANIER,
Voting Trustees.

2321 *Traction statistics of the Northern Pacific Railway Company.*

Statistics.	September 1, 1896.	November 1, 1900.	Increase.	
			Amount.	Per cent.
Number of engines	574	688	114	19.9
Weight on drivers	41,915,565	61,756,335	19,840,770	47.3
Number of road engines	505	604	99	19.6
Weight on drivers	36,732,815	54,647,035	17,914,220	48.7
Horsepower of road engines	242,475	393,345	150,870	62.2
Number of cars in service	18,032	25,130	7,098	39.4
Total capacity in tons	368,914	629,269	260,355	70.6
Net tons per train mile [a]	234.2	[b] 451.3	217.1	92.7

[a] Including company as well as commercial freight. [b] September 1, 1900.

2322 *Population of States tributary to the railroad system of the Northern Pacific Railway Company.*

States.	1890.	1900.	Increase.	Per cent.
Wisconsin	1,686,880	2,068,963	382,083	22.6
Minnesota	1,301,826	1,751,395	449,569	34.5
North Dakota	182,719	319,040	136,321	74.6
Montana	132,159	243,289	111,130	84.1
Idaho	84,385	161,771	77,386	91.7
Washington	349,390	517,672	168,282	48.2
Oregon	313,767	413,532	99,765	31.8
Totals	4,051,126	5,475,662	1,424,536	35.2
Alaska	32,052	44,000	11,948	37.3
Manitoba (approximate)	150,000	300,000	150,000	100.0
Totals	4,233,178	5,819,662	1,586,484	37.5

2323 The following is a copy of the minutes of the meeting of the board of directors of the Northern Pacific Railway Company, held November 13, 1901, offered in evidence by complainant:

COMPLAINANT'S EXHIBIT G.

I, George H. Earl, secretary of the Northern Pacific Railway Company, hereby certify that the following is a true copy of the minutes of meeting of the board of directors held on November 13, 1901, and of the whole thereof.

Witness my hand and the seal of said company this eighteenth day of September, 1902.

_____ _____,

Secretary Northern Pacific Railway Company.

2324 **NORTHERN PACIFIC RAILWAY COMPANY, DIRECTORS EIGHTY-THIRD MEETING, NOVEMBER 13, 1901.**

At a meeting of the board of directors held pursuant to due notice at the office of the company, No. 49 Wall street, New

York City, on Wednesday, November 13, 1901, at 2 o'clock 2325
p. m., there were present the following newly elected directors (constituting a quorum) viz:

Messrs. Baker, Harriman, Hill, Ives, James, Kennedy, Lamont, Mellen, Rea, Rockefeller, Steele, Stillman, Thomas, Twombly.

On motion Mr. Ives was chosen to act as chairman. He thereupon took the chair and announced the meeting ready for organization.

The secretary then submitted the report of the inspectors of 2326
election showing that at the annual meeting of stockholders held on October 1, 1901, the following were elected directors for the ensuing year, to wit:

Robert Bacon, George F. Baker, Edward H. Harriman, James J. Hill, Brayton Ives, D. Willis James, John S. Kennedy, Daniel S. Lamont, Charles S. Mellen, Samuel Rea, William Rockefeller, Charles Steele, James Stillman, Eben B. Thomas, Hamilton McK. Twombly.

The directors then proceeded to the election of officers.

On motion, it was 2327

Resolved, That the secretary be, and hereby he is, directed to cast a ballot in favor of the election of the following-named persons to serve as officers of this company for the ensuing year, to wit:

For president, Charles S. Mellen.

For vice-president, Daniel S. Lamont.

For comptroller, Henry A. Gray.

For treasurer, Charles A. Clark.

For secretary and ass't treasurer, George H. Earl.

For assistant secretary, Richard H. Relf. 2328

For general counsel in New York, Francis Lynde Stetson.

For general counsel in Saint Paul, Charles W. Bunn.

The secretary cast the ballot as directed, and the chairman announced that the above-named persons were duly elected to the offices set opposite their names, respectively.

Mr. Ives then resigned the chair in favor of Mr. Mellen.

The resignation of Mr. Robert Bacon as a director of this company was presented, and, on motion, the same was accepted.

Mr. Samuel Spencer was nominated as a director to fill the

vacancy caused by the resignation of Mr. Bacon, and on motion, the secretary was directed to cast a ballot in favor of the election of Mr. Spencer. This was done, and the chairman announced that Mr. Samuel Spencer had been duly elected a director of this company to fill the existing vacancy.

On motion of Mr. Steele, it was

Resolved, That the following directors be, and hereby they are, appointed as the executive committee of this company, viz: Messrs. Baker, Harriman, Hill, Kennedy, Spencer, and the president, or in his absence, the vice-president, exofficio.

The following preamble and resolutions, offered by Mr. Kennedy and seconded by Mr. Baker, were unanimously adopted:

Whereas, under and pursuant to an agreement dated July 13, 1896, the Northern Pacific Railway Company did acquire from Messrs. J. P. Morgan & Co., a copartnership in the city of New York (in said agreement called the Reorganization Managers), certain stocks, bonds, and other property representing the system formerly of the Northern Pacific Railroad Company, and in consideration of such agreement and transfer did issue and deliver to the Reorganization Managers certificates for 750,000 shares of its fully paid and nonassessable preferred stock and 800,000 shares of its fully paid and nonassessable common stock of the character described in a certain plan and agreement for the reorganization of the Northern Pacific Railroad System, dated March 16, 1896; and, furthermore, did agree at all times and in all ways and particulars to cooperate with the Reorganization Managers and assist them in carrying into effect and in accomplishing the purposes of the said plan and agreement of reorganization; and

Whereas in and by the said plan and agreement of reorganization it was expressly provided that the right would be reserved by the new company (being the Northern Pacific Railway Company) to retire this preferred stock in whole or in part at par from time to time upon any first day of January during the twenty years succeeding the date of said reorganization agreement; it being the purpose and the intent of the said agreement that the ultimate control of the new company should be held and be exercised by the holders of the common stock, and that

the preferred stock should as soon as practicable be liquidated 2333
and be paid off in cash at par; and

Whereas upon the first day of July, 1896, at a meeting of the stockholders of the Northern Pacific Railway Company, each and every stockholder being present and voting in favor thereof, a resolution was duly adopted providing for the issue of $80,000,000 of common stock and of $75,000,000 of preferred stock of the Northern Pacific Railway Company, and expressly prescribing that such preferred stock should be issued upon the condition that at its option the company might retire the same in whole or in part at par, from time to time upon any first 2334
day of January prior to 1917; and

Whereas at a meeting of the directors of the Northern Pacific Railway Company, duly held on the 8th day of July, 1896, a form of certificate for the preferred stock of the company, with the conditions and regulations to be incorporated therein or endorsed thereon, was duly adopted by the unanimous vote of the board of directors of the Northern Pacific Railway Company, including the following provision:

"The company shall have the right, at its option, and in such manner as it shall determine, to retire the preferred stock in 2335
whole or in part, at par, from time to time on any first day of January prior to 1917;" and

Whereas at a meeting of the stockholders of the Northern Pacific Railway Company, duly held upon July 13, 1896, the said resolution of the board of directors adopting the said form of stock certificate to be issued for the preferred stock was duly ratified and approved by the affirmative vote of every stockholder of the company; and

Whereas each and every certificate for the $75,000,000 of preferred stock of the Northern Pacific Railway Company con- 2336
taining the express provision for the retirement thereof, from time to time thereafter, was issued under and pursuant to the provisions of the said resolution of July 1, 1896, and each and every certificate for stock now outstanding contains such express provision for the retirement thereof; and

Whereas under and pursuant to section 8 of the act, chapter 244 of the private and local laws of Wisconsin, approved April 15, 1895, it was expressly provided that all the affairs of this

company should be managed by a board of directors who should be stockholders, and who thereby were invested with all the powers of the corporation save as thereinafter provided; and

Whereas in and by section 11 and section 12 of the said act, chapter 244 of the laws of 1895, it was expressly provided that this company might make its preferred stock convertible into common stock upon such terms and conditions as should be fixed by the board of directors, and that it might in its corporate name execute and deliver its notes, bonds, debentures, or other evidences of indebtedness in such form as from time to time should be prescribed by the board of directors, and in such amount as should be deemed from time to time by said board expedient, and might make the same convertible into its capital stock of any class upon such terms and conditions as to the board of directors might seem advisable; and

Whereas the holders of a majority of the common stock of the Northern Pacific Railway Company have requested the board of directors to take all such action as may be requisite to retire the whole of the preferred stock upon the first day of January, 1902, and have given satisfactory assurances that the necessary moneys for that purpose will be furnished, and that all action requisite for that purpose will be taken by the holders of the common stock; and

Whereas in the judgment of the board of directors of the Northern Pacific Railway Company it is desirable that this company should now exercise the option to retire the preferred stock in whole upon the first day of January, 1902:

Now, therefore, it is hereby unanimously

Resolved, (1) That the Northern Pacific Railway Company, in exercise of its right specifically expressed in each and every certificate of stock of this company, has determined, and hereby does determine, to retire the preferred stock of the Northern Pacific Railway Company, in whole, at par, upon the first day of January, 1902.

(2) That notice of the retirement of the preferred stock, substantially in the form of that annexed to the minutes of this meeting, be published in the manner prescribed by the by-laws for notice of stockholders' meetings, and that a copy thereof be mailed to every stockholder of this company.

(3) That for the purpose of raising the funds necessary to 2341
retire the preferred stock, this company will make and will issue its negotiable bonds, dated November 15, 1901, for the aggregate principal sum of $75,000,000, payable January 1, 1907, in gold coin of the United States of the present standard of weight and fineness, at this company's office in the city of New York, with interest in like gold coin at the rate of four per cent per annum from January 1, 1902, payable semi-annually at said office. Every such bond shall be convertible into shares of the common stock of this company at the rate of one share of $100 for each $100 of the principal sum of such 2342
bond remaining unpaid at the date of such conversion; and upon surrender to it of any such bond this company will issue to the holder of such surrendered bond shares of this company's common stock at the rate aforesaid. Such conversion may be made by the company at its option at any time after November 15, 1901, and shall be made at the demand of any holder of any such bond at any time on or after the first day of January, 1902. Such bonds shall be coupon bonds or registered bonds, in denominations each of $1,000, or of some multiple thereof, and shall be in such form as shall be determined by the president or 2343
the vice-president of this company. Every such bond shall be subscribed by the president or a vice-president and by the secretary or an assistant secretary and shall be issued under the corporate seal.

(4) That the president and vice-president of this company, and each of them, be, and hereby they are, authorized and empowered to contract to sell and to sell all or any of said bonds at a price not less than par and accrued interest; and in such contract to provide for the delivery of all or any part of said bonds upon receiving such payment therefor on or prior to or after 2344
December 31, A. D. 1901; and also to covenant and agree that any and all moneys received for said bonds shall be specifically appropriated and used exclusively for the retirement of the preferred stock at par; and accordingly it is hereby expressly declared that all such proceeds shall be set apart and shall be held as a trust fund for such purpose.

Any such contract for delivery of such bonds prior to January 1, 1902, may provide for the payment of the whole or any part of the purchase price of said bonds with allowance of interest,

at a rate not exceeding four per cent per annum from the time of the receipt of the price of such bonds until January 1, 1902, the date when such bonds begin to bear interest.

Any and every such contract shall contain a provision giving to the holder of every share of this company's common stock now outstanding suitable opportunity on demand to receive through or from the purchaser of said bonds under said contract, at a price not exceeding par and accrued interest, such bonds (or a like amount of common stock received upon conversion of such bonds, if theretofore converted) to an amount equal to seventy-five eightieths of the par amount of said common stock at such time owned by such holder; and for the purpose of providing for subdivision of interests, suitable certificates representing fractional interests in bonds from time to time may be issued, and may be redeemed in such manner as shall be determined by the president or the vice-president.

(5) That the proper officers of this company be, and hereby they are, directed, out of the proceeds of said bonds, and out of any other moneys in the company's treasury available for that purpose, to pay at the company's New York office, to each holder of record of the preferred stock of this company, on and after January 1, 1902, upon surrender of the certificates for such stock, $100 for each and every of the shares of preferred stock for which the certificates shall be so surrendered.

(6) That all of the preferred stock of this company be, and hereby it is, declared to be retired from and after December 31, A. D. 1901, and that from and after that date all of the authorized capital stock of this company, fixed at $155,000,000, by resolution of this company's stockholders at the meeting thereof held on the first day of July, 1896, be of one kind and be without preference in favor of any part thereof, and the total authorized capitalized stock of this company continue to be $155,000,000, as so fixed at said meeting.

(7) That the president, the vice-president, the treasurer, and the secretary of the Northern Pacific Railway Company be, and hereby they are, authorized from time to time to take all proceedings and to do all acts necessary or suitable to carry these resolutions fully into effect.

(8) That for the purpose of the retirement of the preferred stock, the transfer books of the stock of this company be closed

at three o'clock p. m. on Tuesday, December 10, 1901, and that 2349
the transfer books of the common stock be reopened upon Thursday, January 2, 1902, at ten o'clock a. m.

On motion, the following resolutions were adopted:

Resolved, That the action of the executive committee in declaring from the net earnings of this company a dividend of one per cent on the preferred stock of this company, to be paid December 5, 1901, to the holders of record of preferred stock at the closing of the transfer books on November 8, 1901, be, and hereby the same is, ratified and confirmed.

Resolved, That there be, and hereby there is, declared from 2350
the net earnings of this company a final dividend of one per cent on the preferred stock of this company, the same to be paid on or after January 1, 1902, to the holders of record at three o'clock p. m. on Tuesday, December 10, 1901, at which time the transfer books are to be closed for the retirement of the preferred stock under the resolutions of this company.

The executive committee reported by the reading of the minutes of its meetings held October 7th and 21st and November 4th, 1901, and on motion the committee's action as reported was approved, ratified, and confirmed. 2351

On motion, it was

Resolved, That the following treasury securities be sold to the Northwestern Improvement Company as of October 31, 1901, at and for the prices named, to wit:

$330,000.00	prior lien bonds at 105	$346,500.00
1,800,000.00	general lien bonds at 70	1,260,000.00
260,000.00	St. Paul-Duluth Div. bonds at 100.	260,000.00
9,000.00	Minnesota transfer bonds at 100..	9,000.00
2,000,000.00	N. W. Improvement Co. stock at 75	1,500,000.00 2352
2,245,000.00	Wash. and Col. River Ry. inc. bonds at 40.....	898,000.00
280,000.00	Washington Central bonds at 90...	252,000.00
323,183.64	Montana R. R. notes.....	323,183.64
381,992.24	Minn. and International notes....	381,992.24
762,393.01	Brainerd and No. Minn. notes....	762,393.01
8,391,568.89		5,993,068.89

On motion, it was

Resolved, That the action of the president of this company in executing, and the action of the assistant secretary, R. H. Relf, in executing, attesting, and affixing the corporate seal to a certain bond on behalf of this company as principal, and Charles S. Mellen and Daniel S. Lamont, as sureties unto the United States of America for twenty-five thousand dollars, covering northerly 350 feet of Ocean Warehouse No. 1, situate on the water front at Tacoma, Washington, which bond bears date November 4, 1901, are hereby fully ratified and confirmed, and said bond is made hereby the valid obligation of this company.

The president submitted a map, in duplicate, of the definite location of an extension of this company's Gaylord and Ruby Valley Branch, from a point in the north line of section 34, township 3 south, range 6 west, of Montana principal meridian, thence in a generally southeasterly direction to and up the valley of the Ruby River, and to a point in the south line of section 9, township 6 south, range 4 west, of the same meridian, a distance of 19.17 miles, all in Madison County, Montana.

On motion, it was

Resolved, That the map this day submitted showing the line of route of the extension of this company's Gaylord and Ruby Valley branch be, and the same is hereby, adopted as the route of definite location of the extension of said branch.

On motion, it was

Resolved, That the Standard Trust Company of New York, as trustee under the trust indenture securing Northern Pacific-Great Northern, C., B. and Q. collateral 4 per cent joint bonds, dated July 1, 1901, be, and hereby is, authorized to cremate from time to time, in the presence of this company's representative, coupon bonds issued under said trust indenture received and cancelled by said trustee in exchange for registered bond certificates issued under said trust indenture, provided that the said trustee shall thereupon deliver to this company a certificate of such cremation in satisfactory form, which certificate shall be accepted by this company as the delivery of the cancelled coupon bonds prescribed by section 4 of article one of said trust indenture.

On motion, it was

Resolved, That the Farmers' Loan and Trust Company, as

trustee under the general second, general third, and consolidated 2357
mortgages of the Northern Pacific Railroad Company, be, and hereby is, authorized to cremate, in the presence of this company's representative, coupon bonds issued under any of said mortgages received and cancelled by said trustee in exchange for registered bond certificates issued under said mortgages, and to cremate in like manner all coupon bonds now in its possession engraved for issuance but never issued.

On motion, it was

Resolved, That the action of the president in selling to the insurance fund the securities below mentioned be, and the same 2358
is hereby, approved, to wit:

$39,000 Northern Pacific Railway Co. general lien 3 per cent bonds, at 70	$27,300
$7,000 Northern Pacific Railway Co. prior lien 4 per cent bonds, at 105	7,350
$9,000 Northern Pacific Railway Co. St. Paul-Duluth Division 4 per cent bonds, at 100	9,000
$6,000 Washington Central Railway Co. 4 per cent bonds, at 90	5,400
	49,050

The treasurer's statement showing average bank balances for 2359
the quarter ending September 30, 1901, was submitted and ordered filed.

The following schedules showing the execution of deeds, leases, and miscellaneous documents during September, 1901, were submitted:

Schedule of land department deeds executed by the Northern Pacific Railway Company, aggregating 60,446.62 acres, for $117,926.14.

Schedule of land department deeds executed by the Northwestern Improvement Company, aggregating 15,802.04 acres, 2360
for $43,806.71.

Schedule of leases of right of way and other operating department property.

Statement of miscellaneous deeds, contracts, and relinquishments.

Schedule of land department leases executed by the Northern Pacific Railway Company, western division.

On motion, the execution of deeds, leases, etc., this day reported was approved, ratified, and confirmed.

2361 The following schedules showing the execution of deeds, leases, and miscellaneous documents during October, 1901, were submitted:

Schedule of land department deeds executed by the Northern Pacific Railway Company, aggregating 80,648.94 acres, for $168,323.34.

Schedule of land department deeds executed by the Northwestern Improvement Company, aggregating 24,017.66 acres, for $50,007.35.

Schedule of leases of right of way and other operating depart-
2362 ment property.

Statement of miscellaneous deeds, contracts, and relinquishments.

Schedule of land department leases executed by the Northern Pacific Railway Company and the Northwestern Improvement Company.

On motion, the execution of deeds, leases, etc., this day reported was approved, ratified, and confirmed.

On motion, the meeting then adjourned.

GEO. H. EARL, *Secretary.*

2363 The following is copy of circular issued by Northern Securities Company, November 22, 1901, to holders of stock of Great Northern Railway Company, offered in evidence by complainant:

COMPLAINANT'S EXHIBIT H.

[Northern Securities Company. James J. Hill, president; John S. Kennedy, first vice-president; George F. Baker, second vice-president; D. Willis James, third vice-president; W. P. Clough, fourth vice-president; E. T. Nichols, secretary and treasurer.]

27–29 PINE STREET,
New York City, November 22nd, 1901.

2364 *To holders of stock of the Great Northern Railway Company:*

The Northern Securities Company, incorporated under the laws of the State of New Jersey, with an authorized capital stock of $400,000,000, and with power to invest in and hold the securities of other companies, has commenced business, and has acquired from several large holders of stock of the Great Northern Railway Company a considerable amount of that stock.

A uniform price has been paid of $180 per share, in the fully paid stock of this company, at par. This company is ready to

purchase additional shares of the same stock at the same price, 2365
payable in the same manner, and will accept offers made on that basis if made within the next sixty days.

Offers for sale of stock of the Great Northern Railway Company should be made upon the enclosed form, and should be accompanied by the certificates of the stock offered with transfers duly executed, having United States stamps for transfer tax of two cents per share affixed.

Upon receipt of any such offer, so accompanied, the Northern Securities Company will deliver to the seller of the stock of the 2366
Great Northern Railway Company certificates of its own stock to the amount of the purchase price above named, or, if such certificates are not then ready for delivery, its negotiable receipt, obliging it to issue and deliver such certificates as soon as ready. For fractional parts of shares scrip certificates convertible into stock in multiples of $100 will be given.

NORTHERN SECURITIES COMPANY,
By JAMES J. HILL, *President.*

To the NORTHERN SECURITIES COMPANY, 2367
New York:

The subscriber hereby offer to sell and deliver to the Northern Securities Company ——— shares in the capital stock of the Great Northern Railway Company, represented by the certificates hereto attached, for the price of one hundred and eighty dollars ($180) per share, payable in the fully paid stock of the Northern Securities Company, at par, in accordance with the terms of the circular of the latter-named company, dated November 22nd, 1901.

The stock of the Northern Securities Company to be paid in 2368
accordance with the foregoing tender should be issued as follows:

Shares.	Name.	Full address.

Dated ————, 190—.

2369 The following is copy of testimony of Edward H. Harriman, given before the Interstate Commerce Commission, at Chicago, January 25, 1902, and reported on pages 78 to 115, inclusive, of the printed report of that hearing, and offered by complainant as original evidence in this case:

EDWARD H. HARRIMAN, being duly sworn, testified as follows:

Mr. DAY. Please give the stenographer your full name.

Mr. HARRIMAN. Edward H. Harriman.

Mr. DAY. And state your official relations to the Union
2370 Pacific Railway.

Mr. HARRIMAN. Chairman of the executive committee.

Mr. DAY. Of the board of directors?

Mr. HARRIMAN. Of the executive committee, and a member of the board of directors.

Mr. DAY. And your official relations to the Oregon Short Line?

Mr. HARRIMAN. President.

Mr. DAY. And the Oregon Railway and Navigation Company?

Mr. HARRIMAN. I think that is chairman of the executive
2371 committee.

Mr. DAY. And the Southern Pacific?

Mr. HARRIMAN. President.

Mr. DAY. And member of the board of directors?

Mr. HARRIMAN. Yes, sir.

Mr. DAY. Have you any relations to the Chicago and Alton Railway Company?

Mr. HARRIMAN. A director. I am a member of the executive committee. I think I am chairman of that, too.

Mr. DAY. Are you officially related to the Chicago and Alton
2372 Railroad Company?

Mr. HARRIMAN. I am a director, I say.

Mr. DAY. Of the old organization?

Mr. HARRIMAN. I think so.

Mr. DAY. Who appointed Mr. Stubbs, the traffic manager of your system?

Mr. HARRIMAN. The various companies.

Mr. DAY. What companies?

Mr. HARRIMAN. The ones that he may be director of traffic of. It is all set out—Union Pacific and Southern Pacific.

Mr. DAY. What part did you take in his appointment, in 2373
selecting him, in naming him as traffic director?

Mr. HARRIMAN. One vote in the board of directors.

Mr. DAY. You simply voted for him in the board of directors?

Mr. HARRIMAN. Yes, sir.

Mr. DAY. Was his appointment agreed upon before the vote was taken?

Mr. HARRIMAN. I can not say it was agreed upon. There is a difference between agreeing and understanding.

Mr. DAY. Well, understanding? 2374

Mr. HARRIMAN. Of course, in all such matters that come before the board of directors they are not asked to be decided at once. Usually they are talked over in board meetings and decided at a future meeting. I can not say now how the selection of Mr. Stubbs was brought about.

Mr. DAY. Now, the understanding which preceded his final appointment, what was said to be the scope—what was said respecting the scope of the new office about to be created, called a traffic director?

Mr. HARRIMAN. Well, that is very difficult to remember 2375
just what was said. I think the intention was, if that is what you want, that Mr. Stubbs was too far away from the center of traffic controlled or too valuable a man to keep out of the Pacific slope. He could not come into contact with the other bright minds arranging the traffic of the different railroads and the methods of conducting it.

Mr. DAY. What were proposed to be the duties of the traffic director; what was said?

Mr. HARRIMAN. A general supervision of the traffic in cooperation with the various presidents of the different systems. 2376

Mr. DAY. Was he given control—direction of traffic?

Mr. HARRIMAN. No, sir.

Mr. DAY. By the routes and lines of your system?

Mr. HARRIMAN. No, sir.

Mr. DAY. What was said in respect to that?

Mr. HARRIMAN. That he should advise with the traffic officers of the various systems and presidents.

Mr. DAY. You mean the various lines comprising the system?

2377 Mr. HARRIMAN. Yes, sir.

Mr. DAY. Was anything said about an excess of traffic going by one route over another, or one line or route getting a less share of the traffic than some might think was its due?

Mr. HARRIMAN. No, sir.

Mr. DAY. Was that subject discussed at all?

Mr. HARRIMAN. No, sir.

Mr. DAY. About a division of the traffic, and apportioning it fairly and justly between the lines composing your system?

Mr. HARRIMAN. No, sir.

2378 Mr. DAY. At no time among the members of the board of directors, so far as you know, was that discussed?

Mr. HARRIMAN. I do not remember that that subject ever came up. I think the word "director" is perhaps misunderstood. He is not director of the traffic to go by one line as against the other, but in the sense of being a director having charge of the traffic departments of the several lines, so that he could work in cooperation with the officers of those lines, just as I am a director of these various lines, but I can not direct the affairs of those companies.

2379 Mr. DAY. You are one of a number that may direct them?

Mr. HARRIMAN. Decide questions brought before them.

Mr. DAY. Mr. Stubbs is not a director of any of the railroads?

Mr. HARRIMAN. Not at present.

Mr. DAY. Was the power to raise or make rates committed to Mr. Stubbs?

Mr. HARRIMAN. In cooperation with the officers of the various lines.

Mr. DAY. That was discussed?

2380 Mr. HARRIMAN. In the board of directors?

Mr. DAY. Yes, sir.

Mr. HARRIMAN. I think not.

Mr. DAY. Well, whether sitting as a board or members of the board together discussing the subject, what are the limits of Mr. Stubbs's powers as traffic manager?

Mr. HARRIMAN. Well, I think I have answered that. He can arrange the matters pertaining to the traffic departments by advising with and cooperating with the executive officers and traffic officers of the systems.

Mr. DAY. Has he power to direct whether traffic shall go 2381
by the route of the old Southern Pacific, the most southerly route to the Pacific coast, rather than what was originally the Union Pacific and Central Pacific?

Mr. HARRIMAN. I do not think Mr. Stubbs or any other man could direct that.

Mr. DAY. Well, there are instances where the shipper does not direct that?

Mr. HARRIMAN. I do not know of any instance. In any event, Mr. Stubbs has no more control of that now than he had before he was brought to Chicago. 2382

Mr. DAY. I remember an instance testified to in this city where many hundred carloads of traffic were consigned by the shipper over one of the trunk lines and that trunk line turned it over to a rival trunk line. The shipper had no voice.

Mr. HARRIMAN. We are not a trunk line. I do not know about those matters. But I do not know of any instance in the Southern Pacific.

Mr. DAY. I am asking you whether he has power to do that?

Mr. HARRIMAN. You are giving an illustration, and I do 2383
not think it is a fair one. The affairs of the Southern Pacific have always been conducted on certain lines and are still conducted that way.

Mr. DAY. What I am endeavoring to do is to determine what those lines are on which it is now conducted. What are the powers of Mr. Stubbs? I can only know from what you say and Mr. Stubbs testifies. I have no other knowledge. I want to know the limits of his powers, what he is expected to do and does do under the direction of your board or chairman of the executive committee. 2384

Mr. HARRIMAN. I tried to answer that.

Mr. DAY. You have answered fully?

Mr. HARRIMAN. I think I have. I do not know that there is anything more.

Mr. DAY. Well, we will pass that. Now, the Union Pacific Railway Company; what are the relations between the Union Pacific and Southern Pacific Company?

Mr. HARRIMAN. Connecting lines.

Mr. DAY. Anything else?

2385 Mr. HARRIMAN. No, sir.

Mr. DAY. Has the Union Pacific any stock interest in the Southern Pacific?

Mr. HARRIMAN. Yes, sir.

Mr. DAY. What is that?

Mr. HARRIMAN. You mean the amount?

Mr. DAY. Yes, sir; the extent of it.

Mr. HARRIMAN. I think between 35 and 40 per cent.

Mr. DAY. Of the entire capital stock?

Mr. HARRIMAN. Yes, sir.

2386 Mr. DAY. How was that interest acquired?

Mr. HARRIMAN. By purchase.

Mr. DAY. Any other interest in the Southern Pacific except what results from that ownership?

Mr. HARRIMAN. No, sir.

Mr. DAY. No lease?

Mr. HARRIMAN. No, sir.

Mr. DAY. No guarantee of dividends?

Mr. HARRIMAN. No, sir.

Mr. DAY. Or bonds?

2387 Mr. HARRIMAN. Nothing whatever.

Mr. DAY. Approximately, in round numbers what does that at par value amount to?

Mr. HARRIMAN. About $75,000,000.

Mr. DAY. And the capital stock of the Southern Pacific is what?

Mr. HARRIMAN. Two hundred millions; within a million or two of that.

Commissioner CLEMENTS. Is that held by the Union Pacific Company itself or the people interested in it?

2388 Mr. HARRIMAN. That is held by the Union Pacific.

Commissioner CLEMENTS. The corporation?

Mr. HARRIMAN. The corporation.

Mr. DAY. Is it carried on the books of the Southern Pacific as the property of the Union Pacific?

Mr. HARRIMAN. I do not remember whether it is or not.

Mr. DAY. Who votes the stock?

Mr. HARRIMAN. I think that stock stands in the name of one or two directors of the Union Pacific.

Mr. DAY. As trustees? 2389

Mr. HARRIMAN. In their individual names, I think; I do not remember.

Mr. DAY. In your annual report it is carried as the property of the Union Pacific Railroad Company?

Mr. HARRIMAN. It so states in the report; yes, sir.

Mr. DAY. Who are those gentlemen that vote that stock?

Mr. HARRIMAN. I think I am one. I know I am one. I think the other is Mr. Pierce.

Mr. DAY. Winslow?

Mr. HARRIMAN. Winslow Pierce; I think so. 2390

Mr. DAY. You are president of the Oregon Short Line, are you not?

Mr. HARRIMAN. Yes, sir.

Mr. DAY. What interest has the Union Pacific in the Oregon Short Line?

Mr. HARRIMAN. It owns its stock.

Mr. DAY. Approximately all of it?

Mr. HARRIMAN. Well, I think approximately all.

Mr. DAY. Has the Union Pacific Company any interest in the Great Northern Railroad Company? 2391

Mr. HARRIMAN. No, sir.

Mr. DAY. Proprietary, share owner, or otherwise?

Mr. HARRIMAN. No, sir.

Mr. DAY. Has it in the Northern Pacific Railway?

Mr. HARRIMAN. No, sir.

Mr. DAY. Has the Oregon Short Line any interest in the Northern Pacific Railway Company?

Mr. HARRIMAN. No, sir.

Mr. DAY. Has the Union Pacific had any interest as a share owner in the Northern Pacific Railway Company? 2392

Mr. HARRIMAN. No, sir.

Mr. DAY. Has the Oregon Short Line had?

Mr. HARRIMAN. Yes, sir; that states in the report that we had about seventy-eight millions of Northern Pacific stock.

Mr. DAY. When did the Oregon Short Line acquire that?

Mr. HARRIMAN. Last spring. I do not remember exactly.

Mr. DAY. Prior to last spring had the Oregon Short Line any interest as owner in the Northern Pacific Railroad Company?

2393 Mr. HARRIMAN. Prior to last spring, not to my knowledge. It may have some years back. I do not know.

Mr. DAY. What is the total capital stock of the Oregon Short Line?

Mr. HARRIMAN. I think between twenty-seven and twenty-eight millions.

Mr. DAY. It purchased how much stock of the Northern Pacific?

Mr. HARRIMAN. Seventy-eight millions.

Mr. DAY. How did it pay for that stock?

2394 Mr. HARRIMAN. Some in cash and some by issuing its own obligations against that stock.

Mr. DAY. How much cash did it pay approximately?

Mr. HARRIMAN. Fifteen or twenty million dollars.

Mr. DAY. That came out of its own treasury?

Mr. HARRIMAN. Yes, sir.

Mr. DAY. How was the money raised by the Oregon Short Line to acquire the balance of $60,000,000?

Mr. HARRIMAN. By issuing its own certificates of indebtedness.

2395 Mr. DAY. Who did it issue the certificates to? What I want——

Mr. HARRIMAN. What you want is to find out if the Union Pacific has any interest in that purchase?

Mr. DAY. Yes, sir.

Mr. HARRIMAN. I want to be frank about it. The Union Pacific helped the Oregon Short Line to finance it and purchased from the Oregon Short Line the certificates of indebtedness, the money for which it used in paying for the Northern Pacific stock.

2396 Mr. DAY. The sixty-one millions of that purchase money came out of the Union Pacific treasury, practically?

Mr. HARRIMAN. Yes, sir.

Mr. DAY. Directly or indirectly?

Mr. HARRIMAN. Yes, sir.

Mr. DAY. Now, the Union Pacific owns $75,000,000 of the Southern Pacific stock—a controlling interest?

Mr. HARRIMAN. Oh, no.

Mr. DAY. Practically so?

Mr. HARRIMAN. I do not know. 2397

Mr. DAY. The Union Pacific does control it?

Mr. HARRIMAN. There are some of them members of the board of directors, but there are others also.

Mr. DAY. Speaking to the substance of the thing, rather than the legal aspects, the Union Pacific now does control it?

Mr. HARRIMAN. Anybody that had seventy-five millions out of two hundred millions would have a strong influence in making up the board.

Mr. DAY. But, as a matter of fact, the Union Pacific does control the Southern Pacific system, does it not, to-day? 2398

Mr. HARRIMAN. For instance, the Union Pacific might to-morrow sell its seventy-five millions and then it would not.

Mr. DAY. I am speaking of to-day—your actual possession, irrespective of the seventy-five millions. Does the Union Pacific interest to-day control the Southern Pacific Railroad?

Mr. HARRIMAN. You mean without any other voice; any other interest?

Mr. DAY. Does it not operate it to the same extent it operates the Oregon Railway and Navigation Company?

Mr. HARRIMAN. Not quite. Hardly. There are other in- 2399
terests represented in the Southern Pacific, and it is not always harmonious.

Mr. DAY. But the actual control of the property?

Mr. HARRIMAN. Usually the voice of the Union Pacific representatives controls; that is, they impress on the board of directors the matters they have in hand for the benefit of the Southern Pacific or those that are best to be done. For instance, I will give an illustration of that. As you probably all know, the Union Pacific has during the last two or three years expended a very large amount in repairs, you might say, and 2400
improving its own property. It has done so to the extent of $25,000,000 or $30,000,000 and has put itself in a position where it can operate to the best advantage and give the best service in the territory served by it. In taking the Southern Pacific in hand, the Union Pacific interests considered that that same method should be adopted as to the Southern Pacific. Some of the representatives of the other stockholders thought not, but the voice of the Union Pacific representatives prevailed.

2401 There are some twenty millions to be expended this year in improving the Southern Pacific on the same basis as the Union Pacific.

Commissioner PROUTY. What part of it?

Mr. HARRIMAN. It will be distributed over the lines from New Orleans to Los Angeles, and from Los Angeles to San Francisco, and from San Francisco to Ogden.

Commissioner PROUTY. Not especially between San Francisco and Ogden?

Mr. HARRIMAN. No, sir; a large amount is to be expended
2402 there; I think one-third of it. It has been carefully gone over, and I think distributed over the whole line; and there is also motive power to be distributed over the line. There are, I think, 180 engines—large locomotives—to be provided.

Commissioner FIFER. What is the character of the improvements?

Mr. HARRIMAN. Reduction of grades, elimination of curvature, and elimination of the old light equipment.

Commissioner PROUTY. How do you raise the money for that?

2403 Mr. HARRIMAN. We have not raised it at all. Perhaps we would like a little advice on that subject. It is quite a large amount.

Commissioner PROUTY. You do not seem to have had much difficulty in raising seventy-five or eighty millions when you wanted it?

Mr. HARRIMAN. There is nothing like having good credit.

Mr. DAY. Speaking of the facility for raising money, the sixteen millions that the Oregon Short Line did not get from the Union Pacific—did it get that out of its treasury or borrow it?

2404 Mr. HARRIMAN. It had a surplus in its treasury. I think it had several million surplus and it borrowed the rest.

Mr. DAY. Not on the certificates.

Commissioner PROUTY. Have you increased the mortgage obligations of the Union Pacific?

Mr. HARRIMAN. In what time?

Commissioner PROUTY. In making your improvements?

Mr. HARRIMAN. Very little. We have not issued any direct obligations of the Union Pacific to make those improvements.

When I speak of the Union Pacific I refer to the Union Pacific 2405
system that includes the Oregon Short Line as well. But most of the improvements have been made through the Rocky Mountain districts; in fact, the improvement there was really—the elimination of curvature was possibly 200 per cent and the elimination of grades was substantially 100 per cent.

Commissioner PROUTY. Is that substantially done?

Mr. HARRIMAN. Substantially done; yes, sir.

Mr. DAY. You have increased the bonded indebtedness of the Union Pacific the last year, or has it not been increased?

Mr. HARRIMAN. I do not understand that question. 2406

Commissioner PROUTY. I asked as to the mortgage indebtedness, I think.

Mr. HARRIMAN. No, sir; we have not increased it.

Mr. DAY. How much of an increase in your bonded indebtedness has been effected in the past year, or to take the last year, the year preceding?

Mr. HARRIMAN. Have you the Union Pacific report there?

Mr. DAY. Yes, sir.

Mr. HARRIMAN. You have not the one for the year previous, have you? 2407

Mr. DAY. No.

Mr. HARRIMAN. I can only speak from memory.

Mr. DAY. I will ask you this, then: How was the purchase of Southern Pacific stock financed? How was the cash acquired for the purchase of the Southern Pacific?

Mr. HARRIMAN. I think we borrowed the money in the first instance.

Mr. DAY. Then did you not issue some bonds to pay for that?

Mr. HARRIMAN. You refer to convertible bonds? 2408

Mr. DAY. Yes, sir.

Mr. HARRIMAN. I am not trying to hide the fact that I issued one hundred millions of convertible bonds. That is one of the things we can not hide. There are one hundred millions of convertible bonds used in the purchase of these various securities that you see in the annual report of the Southern Pacific. I can not detail them now.

Mr. DAY. You raised one hundred millions on those bonds?

2409 Mr. HARRIMAN. About one hundred million, I think it was.

Mr. DAY. Was any of that money used for improvements?

Mr. HARRIMAN. No, sir.

Mr. DAY. That was all used for the acquisition of new lines?

Mr. HARRIMAN. New lines; yes, sir.

Mr. DAY. And among others the stock of the Southern Pacific?

Mr. HARRIMAN. Some of it. I do not know whether it was altogether that. There may have been some other properties we acquired.

2410 Commissioner PROUTY. Have those bonds been actually sold?

Mr. HARRIMAN. Yes, sir.

Commissioner PROUTY. What interest do they bear?

Mr. HARRIMAN. Four per cent.

Commissioner PROUTY. Did they sell for par?

Mr. HARRIMAN. At par; yes, sir.

Mr. DAY. Let me see if I understand you. The Union Pacific Railway Company owns seventy-five millions of the stock of the Southern Pacific Railroad Company or the Southern Pacific Company. The Union Pacific Company owns all, or
2411 nearly all, of the stock of the Oregon Short Line. The Oregon Short Line owns all, or nearly all, of the stock of the Oregon Railroad and Navigation Company.

Mr. HARRIMAN. The Union Pacific?

Mr. DAY. No; the Oregon Short Line.

Mr. HARRIMAN. The Short Line has a considerable interest in the Navigation Company. I think our report shows that the Union Pacific owns considerable interest in that company.

Mr. DAY. What the Union Pacific does not hold in the Oregon Railroad and Navigation Company the Short Line does?

2412 Mr. HARRIMAN. Not all.

Mr. DAY. Practically?

Mr. HARRIMAN. Practically.

Mr. DAY. And the Oregon Short Line purchased seventy-eight millions of the common and preferred stock of the Northern Pacific Railroad Company last spring?

Mr. HARRIMAN. That is about right.

Mr. DAY. How is that stock held?

Mr. HARRIMAN. In the Oregon Short Line Railroad.

Mr. DAY. In the name of that company? 2413

Mr. HARRIMAN. It is held for that company.

Mr. DAY. In whose name?

Mr. HARRIMAN. Harriman and Pierce.

Mr. DAY. As trustees?

Mr. HARRIMAN. No; I think in their names.

Mr. DAY. But there is a memorandum, I suppose, of the trust under which you hold it?

Mr. HARRIMAN. I think there must be. There would be naturally.

Mr. DAY. Where is that memorandum? 2414

Mr. HARRIMAN. I suppose it is in the office of the Oregon Short Line.

Mr. DAY. You are president of that company?

Mr. HARRIMAN. Yes, sir.

Mr. DAY. Is that stock still held in your name and that of your cotrustee, Mr. Pierce?

Mr. HARRIMAN. Now, let us jump again. What you are trying to get at is whether we sold that stock. I had a talk with Commissioner Knapp and he said he would try to let me go on the train to-day, so I want to save time. 2415

Mr. DAY. Well, proceed and tell the whole history of that transaction.

Mr. HARRIMAN. The Northern Pacific stock has been sold.

Mr. DAY. All of it?

Mr. HARRIMAN. All of it.

Mr. DAY. I thought you wanted to go ahead and tell the whole story.

Mr. HARRIMAN. Well, that is all you asked. There is no more story to tell.

Mr. DAY. To whom was it sold? 2416

Mr. HARRIMAN. To individuals.

Mr. DAY. Who are the individuals?

Mr. HARRIMAN. I do not remember.

Mr. DAY. When was the sale effected?

Mr. HARRIMAN. Some time during the summer, I think; the last of August or September. It has been sold since July, September, or October, or August.

2417 Mr. DAY. How long before the meeting of the board of directors of the Northern Pacific Company was it sold?

Mr. HARRIMAN. Oh, some time—I do not remember—thirty or sixty days, perhaps.

Mr. DAY. Who negotiated for the sale of that stock?

Mr. HARRIMAN. I did, principally.

Mr. DAY. Were you authorized to make the sale by a vote of the board of directors of the Short Line?

Mr. HARRIMAN. No, sir.

Mr. DAY. Your action was without consultation with your
2418 codirectors?

Mr. HARRIMAN. We had many talks.

Mr. DAY. What were the terms of the sale—what was the agreement respecting the sale?

Mr. HARRIMAN. I do not mean for you to understand that there was no action by the board of directors of the Oregon Short Line but the final transaction; the Oregon Short Line authorized the sale to be made on the terms that were reported to it. In this instance it took no action as to authorizing negotiations.

2419 Mr. DAY. What were the terms reported to it?

Mr. HARRIMAN. The sale of the stock.

Mr. DAY. What were the terms of it?

Mr. HARRIMAN. You mean what price we got?

Mr. DAY. No; I do not care about the price, but the terms—the conditions of the sale?

Mr. HARRIMAN. No conditions.

Mr. DAY. A price was named?

Mr. HARRIMAN. Yes, sir.

Mr. DAY. You did not know who the purchasers were?

2420 Mr. HARRIMAN. I know to whom the stock was delivered. There were other people. I do not think it was all purchased by one house or one person.

Mr. DAY. Do you know who it was purchased for?

Mr. HARRIMAN. No, sir.

Mr. DAY. Who participated in the conferences with you respecting the sale of that stock?

Mr. HARRIMAN. Mr. Pierce, a partner of the firm of J. P. Morgan & Co., and, I think, Mr. Hill, and, possibly, Mr. Schiff.

Mr. DAY. Where did those conferences take place? 2421

Mr. HARRIMAN. Some in the office of Morgan & Co. and some in my office.

Mr. DAY. There had been a great contest between interests with which you were personally allied and interests with which Mr. Morgan, we may say, or Mr. Hill were allied, respecting the control of the Northern Pacific Railroad last year?

Mr. HARRIMAN. I am very glad of a chance to explain that. I do not think there had been any contest. The facts are that some of us allied with the Oregon Short Line or Union Pacific thought it would be advantageous to the Oregon Short Line to 2422 have an interest in the Northern Pacific, and we went about acquiring that interest and purchased the stock that was lying loose all over this country and in Europe. I suppose it was held by 6,000 or 7,000 people, and to our mind it ought not to make any difference to any other interest whether we owned the stock or whether it was held by several thousand other people. We made no contest for the purchase of the stock and no contest for the control of the road, and I may say here that prior to the supposed contest in the market that stock was acquired, and no stock was acquired during those days of panic 2423 in it, nor were any orders given by us.

Commissioner PROUTY. You had already bought, and the question was whether the other fellow could deliver.

Mr. HARRIMAN. Who do you mean by the other fellow?

Commissioner PROUTY. I do not mean Mr. Hill and his crowd, but the man from whom you bought the Northern Pacific stock. Had not you and others bought Northern Pacific stock from people that did not own or deliver it?

Mr. HARRIMAN. I think this: Of course you know there are markets for American railway securities not only in this 2424 country but in Germany, Holland, and England, and some of the stock that we had purchased had not been delivered, but was on its way from those various markets. It had been purchased in those markets and agreed to be delivered in New York, and of course in the meantime they were using stock of other people to make their deliveries. It was not all coming by any means to interests; it had been delivered very largely with interests associated with me.

2425 The CHAIRMAN. Does that mean that it was not bought from persons that did not own it?

Mr. HARRIMAN. No, sir; it was purchased in New York of agents who repurchased in these other markets. They tried to deliver in New York by borrowing from persons that owned it here. Then, when the contest took place and other parties went into the market and purchased Northern Pacific at very high prices and demanded delivery of the the stock, naturally those persons that purchased in other markets to deliver here found it difficult to get that stock to fill contracts in New York,
2426 and our interests in every instance gave them all the time they wanted to have the stock brought from the various markets from which they had purchased to deliver to us.

Commissioner FIFER. Were those the influences that sent Northern Pacific stock up to nearly a thousand dollars a share last year?

Mr. HARRIMAN. Which ones?

Commissioner FIFER. Northern Pacific went up very high last May in New York, did it not?

Mr. HARRIMAN. Yes, sir.

2427 Commissioner FIFER. What were the influences?

Mr. HARRIMAN. That is the contest, I think, that you gentlemen refer to. We were not in that contest and had no hand in it.

Mr. DAY. That was not the contest my question referred to.

Commissioner PROUTY. You say you did not suppose it made any difference to anybody whether you owned this stock or whether 7,000 persons owned it. If you had secured a few more millions of common stock of the Northern Pacific it would have made a difference to somebody, would it not?

2428 Mr. HARRIMAN. We could have secured it.

Commissioner PROUTY. Do you mean you did not want it?

Mr. HARRIMAN. We did not want it at anything like the price eventually paid for it.

Commissioner PROUTY. You have sold that stock, the whole of it. Was that enterprise a profitable one or the reverse? I take it that finally the public has to pay for it if you lost money there; have to pay it in freight rates or in some way. Now, as bearing on the question whether railroad companies

ought to have a right to speculate in stocks, I would like to 2429
know whether that enterprise was profitable?

Mr. HARRIMAN. That was not gone into by the railroad company as a speculation in any way. We thought that a dominating influence, or a large influence, in the ownership of the Northern Pacific would secure to the Union Pacific system what was already a valuable connection, and keep open avenues of traffic which we thought our interests and the interests of the public and our duty to the public demanded.

Commissioner PROUTY. And in that attempt you failed?

Mr. HARRIMAN. Oh, no; we have not failed. We feared 2430
that there might be some change in the relations of the Northern Pacific and the territory served by it and the territory served by the Union Pacific, and perhaps the territories which the Union Pacific contemplated extending into.

Commissioner PROUTY. Well, I understand that you started out to obtain a controlling interest in the Northern Pacific—a dominating interest in the Northern Pacific?

Mr. HARRIMAN. Which we did do.

Commissioner PROUTY. You have disposed of that interest?

Mr. HARRIMAN. Yes, sir. 2431

Commissioner PROUTY. Why did you dispose of it—because it was not sufficiently dominating?

Mr. HARRIMAN. No, sir; we disposed of it because we were satisfied that the natural conditions and the strength of the Union Pacific system in itself would protect it from any of the restrictions that might be put on the traffic originating on the lines of the Northern Pacific and prevent it from going over the natural avenues open to it.

Commissioner PROUTY. In other words, when you looked over the whole situation you thought better of it. 2432

Mr. HARRIMAN. I hardly think that is fair to put it that way.

Commissioner PROUTY. I would like to know why you changed your mind between the time you bought Northern Pacific stock and the time you sold. Did Mr. Hill convince you that he was going to do the fair thing?

Mr. HARRIMAN. I do not think we rely on anybody's assurance that that there is going to be any fair thing done. Mr. Hill might not be in control of the properties he is in control

2433 of now. Who knows? He says he has only thirty or forty millions of it.

Commissioner PROUTY. He very likely knows where he can find a few millions more.

Mr. HARRIMAN. That may be. That is all right; and let me say Mr. Hill is all right also.

Commissioner PROUTY. You did not answer my question, and I do not know that I am disposed to insist on it if you do not want to.

Mr. HARRIMAN. I want to answer every question I can.

2434 Commissioner PROUTY. It seems to me the Union Pacific went into an attempt to buy the Northern Pacific and afterwards receded from that attempt, and it seems to me if the Union Pacific lost money——

Mr. HARRIMAN. They had accomplished it.

Commissioner PROUTY. There were certain difficulties in the way of bringing that to a permanent fruition?

Mr. HARRIMAN. No; I think not.

Commissioner PROUTY. Well, I know very little about the financial operations.

2435 Mr. HARRIMAN. But you want to know.

Commissioner PROUTY. Yes, sir. I understood that in an imperfect way this was the situation: You had gone in to buy Northern Pacific stock. You had absolutely purchased a majority of that stock, but the stock of the Northern Pacific was made up of two kinds, common stock and preferred stock. You had more preferred stock, but less common stock, than Mr. Hill and his company. The preferred stock of the Northern Pacific could, under certain circumstances, be retired. I have been informed that Mr. Hill and his coadjutors threatened to
2436 retire that preferred stock, and therefore retire you out of control of the Northern Pacific, and it was in consequence of that the arrangement was finally made.

Mr. HARRIMAN. I think if we go into an argument on that subject I will not catch my train.

Commissioner PROUTY. You said you wanted to tell.

Mr. HARRIMAN. That is a question, I understand, that has never been brought to issue; but I think Mr. Hill—I listened to his interesting and very clear statements yesterday—stated

to you something about the agreements after meetings in my 2437
office and Mr. Morgan's office, to the effect that Mr. Morgan was to select the next board of directors of the Northern Pacific. In other words, there was a panic prevailing in the financial markets all over the world for some reason that they did not understand, and apparently for no reason at all, and when the matter was brought to our attention we disclaimed any intention of eliminating the former management of the Northern Pacific therefrom, and as evidence of that intention we agreed that Mr. Morgan should vote our stock at the next meeting.

Commissioner PROUTY. Before you came to that conclusion 2438
had this question of the right of the Northern Pacific common stock to retire the Northern Pacific preferred stock been raised?

Mr. HARRIMAN. Not to our minds.

Commissioner PROUTY. Had it to your knowledge?

Mr. HARRIMAN. Only in a general way, as it has with you.

Commissioner PROUTY. Had your attorney expressed an opinion on that subject?

Mr. HARRIMAN. I do not remember that he had. I think there were various talks on that subject. But we were satisfied that the interest we had acquired in Northern Pacific would 2439
accomplish all we desired in having secured to us and to the territory of the Northern Pacific and to our territory a free movement of the traffic on the lines it would naturally go.

Commissioner PROUTY. And having secured that stock for that purpose and having got enough of it, you proceeded to perpetuate that influence by selling every share of stock you had.

Mr. HARRIMAN. No, sir; there were various conferences, and we had offers for our interests in the Northern Pacific which we thought it was to the interest of our shareholders to 2440
dispose of. What you want to know is whether there was any understanding or agreement whereby we were to be secured in any general way by an alliance with the Northern Pacific?

Commissioner PROUTY. That is one thing.

Mr. HARRIMAN. Well, there was not any.

Commissioner PROUTY. Then, I would like to ask you what you gained by your purchase and sale of Northern Pacific stock? What did the Union Pacific gain?

2441 Mr. HARRIMAN. Well, I do not know. As to that, we developed the fact in our talks and conferences with these various people and with our own officers—the fact that we were strong enough to maintain our position against any other organization.

Commissioner PROUTY. Where did you develop that—in the stock market?

Mr. HARRIMAN. No, sir; in our talks and conferences with our own people and the people affiliated with the Northern Pacific.

2442 Commissioner PROUTY. In other words, you came to a better understanding of the traffic situation?

Mr. HARRIMAN. There was no understanding.

Commissioner PROUTY. You came to a better knowledge?

Mr. HARRIMAN. Yes, sir; we all had by conferences.

Commissioner PROUTY. To come back to my original question, when you sold that stock—you need not answer the question if you do not want to—when you sold that stock did you make or lose money as a Union Pacific Company?

Mr. HARRIMAN. As an Oregon Short Line Company.

2443 Commissioner PROUTY. It is all one as a Union Pacific proposition.

Mr. HARRIMAN. I can answer that we did not lose any. We believe we did not lose any.

Commissioner FIFER. Did the Hill-Morgan influence control the board of directors of the Northern Pacific at the time of these negotiations?

Mr. HARRIMAN. I do not know that Mr. Hill ever had any influence in the Northern Pacific. There had been a voting trust, as I understand, on the Northern Pacific, and I think
2444 that was controlled by the Morgan interests.

Commissioner FIFER. Did you believe at that time that the Morgan interests did control the directors of the Northern Pacific?

Mr. HARRIMAN. It had all along.

Commissioner FIFER. Did that give them the right, or did you believe it would give them the right, to retire this preferred stock of the Northern Pacific and retire you from the control of the Northern Pacific?

Mr. HARRIMAN. Will you repeat that? 2445

Commissioner FIFER. Did you understand at the time of the negotiations, and was that an inducement to you to sell the interest of the Oregon Short Line, or the Union Pacific, the interest it held in the Northern Pacific——

Mr. HARRIMAN. You mean did the fact that they might retire the preferred Northern Pacific stock influence us in disposing of it?

Commissioner FIFER. Yes, sir.

Mr. HARRIMAN. No, sir.

Commissioner FIFER. They controlled the board of directors, 2446 however, or at least claimed to?

Mr. HARRIMAN. Well, they had not had an election, you know. They controlled—I suppose they did—I presume they controlled the board of directors that was then in office.

Commissioner FIFER. Was anything said in those negotiations that if they did attempt to retire this preferred stock, you would appeal to the courts and enjoin them?

Mr. HARRIMAN. In our conferences with them?

Commissioner FIFER. Yes, sir.

Mr. HARRIMAN. No, sir. I do not think that question be- 2447 tween the purchasers and ourselves came up. I do not remember that it did. Of course, you understand, I do not mean to say that that never came up between ourselves.

Commissioner PROUTY. When this stock was sold were the obligations which the Union Pacific and the Oregon Short Line had assumed to purchase it paid off?

Mr. HARRIMAN. Some portion of it.

Commissioner PROUTY. Some portion of it still remains?

Mr. HARRIMAN. Well, the obligations—there are some that can not be paid off until maturity. 2448

Commissioner PROUTY. What was the form of certificate which the Oregon Short Line issued to raise money with which to purchase this Northern Pacific stock? What were the terms of it? It was the obligation of the Oregon Short Line, I suppose?

Mr. HARRIMAN. An agreement to pay.

Commissioner PROUTY. When was the certificate due?

2449 Mr. HARRIMAN. I do not remember. I think in ten or fifteen years, the larger part. Some part there was money borrowed for a short time on collateral, and since has been mostly paid off.

Commissioner PROUTY. But the certificates themselves have not yet been paid and can not be?

Mr. HARRIMAN. I do not think they can be paid unless by agreement with the holders thereof.

Commissioner CLEMENTS. With what house or person were your negotiations made for the sale of this Northern Pacific
2450 stock?

Mr. HARRIMAN. Mostly with J. P. Morgan & Co.

Commissioner CLEMENTS. And it was delivered to that house?

Mr. HARRIMAN. I think it was. I do not have the supervision of that.

Mr. DAY. Who negotiated the sale of your stock, this stock directly owned by the Short Line?

Mr. HARRIMAN. The Northern Pacific, you have reference to?

Mr. DAY. Yes, sir.

Mr. HARRIMAN. I did.

2451 Mr. DAY. With whom did you make the negotiation?

Mr. HARRIMAN. I think I said that.

Mr. DAY. You said with some persons connected——

Mr. HARRIMAN. The negotiations were conducted with members of the firm of Morgan & Co.

Mr. DAY. What particular members did you carry on your negotiations with in which the terms were discussed?

Mr. HARRIMAN. Well, there are four or five there—nearly all the members of the firm—Mr. Steele, Mr. Perkins, Mr. Bacon, and, I think, at one time Mr. Morgan himself, and
2452 there may have been one other member of the firm. At various times they took it up, one by one and together.

Mr. DAY. Who was the attorney who acted at that time for the Union Pacific and Short Line in respect to this stock, the holdings of Northern Pacific?

Mr. HARRIMAN. I do not quite understand that question.

Mr. DAY. You had some negotiations regarding the contest that was on?

Mr. HARRIMAN. We never went into any contest.

Mr. DAY. I used the word "contest" with respect to your 2453
effort to acquire what you say you started out to do, to get control——

Mr. HARRIMAN. I think I tried to explain that we purchased the shares of the Northern Pacific prior to May 8 or 9, when there was a sudden rise. I do not consider that a contest. It never came to any contest for control of the Northern Pacific. There never was any contest.

Mr. DAY. Were not you seeking to control the Northern Pacific Railroad?

Mr. HARRIMAN. To the elimination of the people already in 2454
there?

Mr. DAY. No; to get—you sought to get a controlling interest in the Northern Pacific Railroad, did you not? Did you not say you accomplished that?

Mr. HARRIMAN. We purchased a majority of the capital stock of the Northern Pacific Railroad; seventy-eight millions, I think it was, out of one hundred and fifty-five.

Mr. DAY. And you stated that the Union Pacific accomplished its object in that respect. What was its object?

Mr. HARRIMAN. To preserve to the Union Pacific system 2455
the avenues that were already open to it for exchange of traffic with the Northern Pacific system.

Mr. DAY. You told Commissioner Prouty, in reply to a question propounded by Commissioner Prouty respecting your reasons for the sale of this seventy-eight millions of stock so shortly after you purchased it, that the Union Pacific had accomplished its object in the purchase. What was that object or how did you accomplish that object? What assurances have you that you have accomplished it, if that was the only object? What assurances were given you by anyone respecting the 2456
future conduct of the Northern Pacific or those avenues of communication between it and the Oregon Short Line or the Union Pacific?

Mr. HARRIMAN. I do not presume that it would be possible for any individual or any combination to give any promise that would be a security to anybody else in the affairs of the operation of any railroad, the Northern Pacific or any other. For instance, these people who purchased the Northern Pacific might

2457 sell the stock to-morrow or before the next election, and still whatever assurances there were would be of no avail.

Mr. DAY. Were there any assurances?

Mr. HARRIMAN. No, sir.

Mr. DAY. None at all?

Mr. HARRIMAN. No, sir.

Mr. DAY. Directly or indirectly, controlling the operation of the Northern Pacific?

Mr. HARRIMAN. That covers a great deal of ground. We had many conferences as to what the movement by various lines
2458 would be, and, considering the whole question, the Union Pacific management determined that it was no longer necessary, as it was believed that it would be to the interest of the Northern Pacific to use the avenues open over the Northern Pacific as it had before, notwithstanding it had purchased the Burlington.

Mr. DAY. Were any assurances given you regarding the future relations of the Burlington road with the Union Pacific?

Mr. HARRIMAN. No, sir.

Mr. DAY. Nothing said in respect to that, as to how it should be conducted and used?

2459 Mr. HARRIMAN. No, sir.

Mr. DAY. The Burlington touches the Union Pacific lines at a great many points?

Mr. HARRIMAN. I should think it did.

Mr. DAY. You asked no assurances regarding that and received none?

Mr. HARRIMAN. No, sir.

Mr. DAY. Was any inducement held out to you to enter the Northern Securities Company or take any interest in that?

Mr. HARRIMAN. No, sir.

2460 Mr. DAY. By any of these gentlemen?

Mr. HARRIMAN. No, sir.

Mr. DAY. You are a shareholder in that?

Mr. HARRIMAN. I am individually, yes, sir; but it has been purchased since—within the last month, I expect; a small interest—not in relation to this.

Mr. DAY. Are you a member of the board of directors?

Mr. HARRIMAN. Yes, sir.

Mr. DAY. Have you ever sat with the board?

Mr. HARRIMAN. I think I have. 2461

Mr. DAY. When.

Mr. HARRIMAN. Once or twice. I think about a month ago.

Mr. DAY. That company has only been organized about two months, has it not?

Mr. HARRIMAN. I do not remember. I have not had anything to do with the organization of the Northern Securities Company.

Mr. DAY. You are also a member of the executive committee of the Northern Securities Company, are you not?

Mr. HARRIMAN. I think I am. 2462

Mr. DAY. Has that committee had a meeting?

Mr. HARRIMAN. I think it has.

Mr. DAY. Did you attend it?

Mr. HARRIMAN. Well, I do not remember. I believe I attended one meeting of the executive committee of the Northern Securities Company—I think I did—either the board of directors or the executive committee.

Mr. DAY. You wish to be understood as stating that no one representing the other half, or the minority holding, of the preferred stock of the Northern Pacific made any pledges or prom- 2463
ises to you or to your colleagues in Union Pacific respecting the future operation of the Great Northern, Northern Pacific, or the Burlington in the dealings of all or either with the Union Pacific system?

Mr. HARRIMAN. I think that is a question in another form—I thought I answered that.

Mr. DAY. I thought I would make it broad.

Mr. HARRIMAN. There is a common interest among us all, and we believe that common interest would be served, irrespective of any holding that we or anybody else might have. The 2464
common interest of the producer and the carrier, or the various carriers, would be finally adjusted on its own natural basis, irrespective of what anybody could promise or any agreement that might be made, and it would be impossible, in view of the power of the large systems that now exist, for any one to injure the other without injuring itself. Our interests are so common that we can not help but consider each other.

Mr. DAY. At any of these meetings or conferences were the

2465 terms of an adjustment of the questions outstanding between the majority and minority holders of stock of the Northern Pacific Railroad Company reduced to writing?

Mr. HARRIMAN. There was nothing, except the one just after the financial panic, in which it was suggested that we settle that once for all so as to reestablish confidence, and that was the one. I think there is a memorandum. I am not sure. I think there is a memorandum in which we agreed that we would permit Mr. Morgan to vote our stock.

Mr. DAY. Was anything else stated?

2466 Mr. HARRIMAN. It was merely a wish on our part to indicate to everybody that we had confidence in the then existing management of the Northern Pacific.

Mr. DAY. Did you have any conference with the same gentlemen subsequent to that respecting the holding of the Northern Pacific Railroad?

Mr. HARRIMAN. That conference—of course we had conferences and negotiations, because there was a desire to purchase our interests. Of course we could not sell it without negotiations being conducted by somebody.

2467 Mr. DAY. Did you attach to your negotiations for the sale of Northern Pacific stock any other conditions than the one of the money price?

Mr. HARRIMAN. No, sir.

Mr DAY. No other conditions?

Mr. HARRIMAN. No other conditions that I remember.

Mr. DAY. No other consideration except the one of the money price?

Mr. HARRIMAN. I do not remember any condition of the Union Pacific or Oregon Short Line in any way.

2468 Mr. DAY. Or the gentlemen who held the stock, yourself or your cotrustee, or your attorneys—Mr. Schiff or any member of the firm of Kuhn, Loeb & Co.?

Mr. HARRIMAN. None other than I have stated.

Mr. DAY. Of the various interests?

Mr. HARRIMAN. No, sir.

Mr. DAY. Who has that memorandum?

Mr. HARRIMAN. I do not know. Of course, when the election took place the whole thing fell, and that memorandum may

be in existence and may not, I am not sure. I think that mem- 2469
orandum was conveyed in a published statement—published in a New York paper—to the effect that we had agreed that Mr. Morgan should vote our stock.

Mr. DAY. When you sold your seventy-eight millions of stock, did you receive cash for it?

Mr. HARRIMAN. Cash and securities.

Mr. DAY. What part cash?

Mr. HARRIMAN. I do not remember; quite a large amount cash.

Mr. DAY. What proportion securities? 2470

Mr. HARRIMAN. The same thing. Of course it covered a very large amount of money. We received some securities and some cash.

Mr. DAY. What was the character of the securities you received?

Mr. HARRIMAN. Some of the securities of the Northern Securities stock.

Mr. DAY. And the cash was for your preferred stock?

Mr. HARRIMAN. We made no difference. We sold what we had. 2471

Mr. DAY. Had the Northern Securities Company then been organized or was it an agreement that you would take its stock when it was organized?

Mr. HARRIMAN. I do not remember that.

Mr. DAY. When was the sale made?

Mr. HARRIMAN. In September or October.

Mr. DAY. The Northern Securities Company was not incorporated until November 12. You could not have had its securities then.

Mr. HARRIMAN. Well, we had then the agreement to deliver 2472
us the securities of a company.

Mr. DAY. Is that agreement in writing?

Mr. HARRIMAN. Or cash. I think that is the way it was.

Mr. DAY. Is that agreement in writing?

Mr. HARRIMAN. I think we made a memorandum.

Mr. DAY. Whom do you mean by "we?"

Mr. HARRIMAN. J. P. Morgan & Co., or in the office of J. P. Morgan & Co., and myself.

2473 Mr. DAY. You have a copy of the memorandum?

Mr. HARRIMAN. The transaction was completed.

Mr. DAY. When did you get the securities for the balance?

Mr. HARRIMAN. I think we got them in December before the year was out; I do not know. We may have secured some other securities. I do not know.

Mr. DAY. Were you aware at the time you made the agreement, which you say was in writing, to dispose of your seventy-eight millions of Northern Pacific stock——

Mr. HARRIMAN. Whether there was to be a securities com-
2474 pany formed?

Mr. DAY. Yes, sir.

Mr. HARRIMAN. I think there was some talk of that.

Mr. DAY. Did you then know at that time that it was proposed that the Northern Pacific Company should issue this new bond it did, this new bond and mortgage to raise the money, this convertible bond to retire the preferred stock?

Mr. HARRIMAN. I know nothing about what they were to do or how they were to do it.

Mr. DAY. There was nothing said to you about the seventy-
2475 five millions of convertible bonds?

Mr. HARRIMAN. I can not remember that there was. It had nothing to do with our transaction. We made no difference between common and preferred stock.

Mr. DAY. I want the extent of your information at that time respecting the future policy, the plan by which the preferred stock was to be retired and bonds to the amount of seventy-five millions, convertible bonds, convertible into common stock, was to be issued in payment of the preferred stock to be retired—were you aware of that?

2476 Mr. HARRIMAN. I think not.

Mr. DAY. You were given no option to take that for your stock?

Mr. HARRIMAN. We had nothing to do with the securities issued.

Mr. DAY. Will you file with the Commission a copy of that memorandum?

Mr. HARRIMAN. I will try to if I can get it. I will be very glad to furnish them with any information.

Mr. DAY. Was it before or after you had taken the stock in 2477
the Northern Securities Company—I mean that you had effected the sale, completed the sale of the seventy-eight millions to Pierpont Morgan & Co. of the Union Pacific interest in the Northern Pacific road—that you were elected a member of the board of directors of the Northern Securities Company? Was it prior or subsequent to the sale of the seventy-eight millions of stock that you were elected a member of the board of directors of the Northern Securities Company?

Mr. HARRIMAN. As you say, we sold our seventy-eight mil- 2478
lions of stock.

Mr. DAY. I mean when you completed the transaction, when you actually delivered the stock and took Northern Securities stock in part payment.

Mr. HARRIMAN. I do not think we got Northern Securities Company stock in part payment in the first instance. Our sale was made and completed, I think, before the Northern Securities Company was formed. I think there was only an agreement as to that.

Mr. DAY. When were you elected a member of the board 2479
of directors of the Northern Securities Company?

Mr. HARRIMAN. I do not remember. I guess in November or December. I know I did not attend the first meetings of that company.

Mr. DAY. Who holds that stock in the Northern Securities Company?

Mr. HARRIMAN. I presume the Oregon Short Line.

Mr. DAY. What was the amount of that?

Mr. HARRIMAN. I do not remember.

Mr. DAY. Roughly speaking.

Mr. HARRIMAN. Oh, it was fifty or sixty millions. 2480

Mr. DAY. You think it is in the name of the Oregon Short Line?

Mr. HARRIMAN. No; I think not.

Mr. DAY. Was it prior to the issue of that fifty or sixty million of stock, in which an equity belongs to the Oregon Short Line, that you were elected a member of the board of directors?

Mr. HARRIMAN. That I do not remember. These things had no bearing on each other.

2481 Mr. DAY. They had not?

Mr. HARRIMAN. No, sir.

Mr. DAY. They were entirely independent transactions. Your election as a member of the board of directors of the Northern Securities Company had no bearing whatever, no relation to the ownership of the $78,000,000 of the Northern Pacific Road?

Mr. HARRIMAN. My election to the Northern Pacific board?

Mr. DAY. To the Northern Securities board.

Mr. HARRIMAN. No, sir.

2482 Mr. DAY. I forgot what your answer was to my inquiry as to what your official relation was to the Chicago and Alton Railway Company?

Mr. HARRIMAN. I am a director; a member of the executive committee, and, I think, chairman.

Mr. DAY. Are you also a member of the old company, the Chicago and Alton Railroad Company?

Mr. HARRIMAN. I think I am.

Mr. DAY. What is the capital stock of the Chicago and Alton Railroad Company?

2483 Mr. HARRIMAN. I can not remember those figures.

Mr. DAY. Well, about?

Mr. HARRIMAN. I do not remember, really. I think, whatever it was, I think we had to pay about $40,000,000.

Mr. DAY. What is the capital stock of the Chicago and Alton Railway Company?

Mr. HARRIMAN. I think that is $40,000,000. I may be mistaken about that. It is common and preferred stock—that can be obtained.

Mr. DAY. Both companies are subsisting corporations—the
2484 railroad company and railway company?

Mr. HARRIMAN. Yes, sir.

Mr. DAY. By what sort of title does the Chicago and Alton Railway Company hold the property of the Chicago and Alton Railroad Company, formerly owned and controlled by the Chicago and Alton Railroad; lease or how?

Mr. HARRIMAN. I think it is by lease and ownership both. That is my recollection.

Mr. DAY. The lease was for a term of years?

Mr. HARRIMAN. I think it was. 2485

Mr. DAY. Is there any contract—any contractual relation—between the old company and the new company except as set out in the lease?

Mr. HARRIMAN. I believe not.

Mr. DAY. How much of the stock of the Chicago and Alton Railroad Company (meaning the old company) is owned by the new company?

Mr. HARRIMAN. All but a few millions; I think there is a million or two millions—practically all.

Mr. DAY. All but a few millions is an asset of the new com- 2486 pany?

Mr. HARRIMAN. Yes, sir.

Mr. DAY. Of the stock of the old company all but a few millions is an asset of the new company?

Mr. HARRIMAN. Yes, sir.

Mr. DAY. Do you know whether the railway company guarantees any dividends on the stock of the new company?

Mr. HARRIMAN. I do not remember.

Mr. DAY. If it does, is that set out in the lease?

Mr. HARRIMAN. I think it is all set out. 2487

Mr. DAY. Will you furnish a copy of that?

Mr. HARRIMAN. Yes, sir; I will furnish a copy. I think the lease provides for the net earnings of the company. I am not sure.

Mr. DAY. If the capital stock of the new company is forty millions, as you suppose or approximate——

Mr. HARRIMAN. It is what the property cost. I do not know what it is. Whatever the stock cost, I think that is the capital of the railway company.

Mr. DAY. The capital stock of the new company was all paid 2488 up in cash?

Mr. HARRIMAN. Yes, sir.

Mr. DAY. Par?

Mr. HARRIMAN. Yes, sir; cash or its equivalent. It was issued for cash or for Chicago and Alton Railroad stock or some other property.

Mr. DAY. How was the money raised—by collateral mortgage or trust, or how did the new company raise the money—by bonds?

2489 Mr. HARRIMAN. Some bonds and some stock.

Mr. DAY. The stock was paid for in cash?

Mr. HARRIMAN. Or its equivalent—exchanged for securities purchased.

Mr. DAY. What is the amount of bonds the new company issued?

Mr. HARRIMAN. That I do not know. I could not say. I think $15,000,000.

Mr. DAY. What was the stated price of the stock of the old company that the new company paid?

2490 Mr. HARRIMAN. I do not remember now, but some time ago I think it was about 200.

Mr. DAY. The par value of the old stock was 100, and it paid 200?

Mr. HARRIMAN. Two hundred per cent.

Mr. DAY. Is the Union Pacific System or any of its subsidiary lines or companies interested as a share owner?

Mr. HARRIMAN. In the Chicago and Alton?

Mr. DAY. In the Chicago and Alton—any relationship between the two companies?

2491 Mr. HARRIMAN. No, sir.

Mr. DAY. They are quite independent?

Mr. HARRIMAN. Absolutely independent.

Mr. DAY. No pecuniary interest in the Alton?

Mr. HARRIMAN. No affiliation whatever.

Mr. DAY. In either way?

Mr. HARRIMAN. In either way.

Mr. DAY. Pending the negotiations for the sale of the seventy-eight millions of Northern Pacific stock, which has been referred to, and the questions which arose respecting it from
2492 time to time among your associates, who acted as your legal counsel?

Mr. HARRIMAN. Mr. Pierce.

Mr. DAY. On what basis was such portion of the seventy-eight millions as was taken in exchange or exchanged for Northern Securities stock based or taken? What was the basis of the exchange?

Mr. HARRIMAN. We made no exchange.

Mr. DAY. I thought you said——

Mr. HARRIMAN. No; we had no transaction whatever. I 2493
think you have got a wrong impression. We had no transaction whatever with the Northern Securities Company.

Mr. DAY. You took some stock of the Northern Securities Company in part payment?

Mr. HARRIMAN. What you want to know is what price we took Northern Securities Company stock or agreed to take it at in case it was delivered to us, or any other security.

Mr. DAY. Yes, sir.

Mr. HARRIMAN. At par.

Commissioner PROUTY. You do not mean to say that you sold 2494
Northern Pacific stock at par?

Mr. HARRIMAN. No; that question was not asked. I thought the question was whether what we took was on the basis of cash or Northern securities at par.

Mr. DAY. I understood you to say that you took some Northern Securities in part payment.

Mr. HARRIMAN. Yes, sir; in lieu of cash. We did not make any exchange.

Mr. DAY. You did not subscribe?

Mr. HARRIMAN. No, sir; we had no transactions with them. 2495

Mr. DAY. When you sold this seventy-eight millions of stock, were you advised or informed by any of the people you negotiated with, directly or indirectly, that that stock was to be turned over to the Northern Securities Company when organized?

Mr. HARRIMAN. I do not remember that we were specially advised. That was generally talked, that there was to be a securities company.

Mr. DAY. You relied on it that that would be done, did you not? 2496

Mr. HARRIMAN. That did not influence——

Mr. DAY. I am not asking that. You did rely on that, did you not?

Mr. HARRIMAN. No; we did not rely on it.

Commissioner PROUTY. You mean that you agreed to pay par for the stock of a company that you did not know anything about?

Mr. HARRIMAN. I thought the question was not on that basis.

2497 The question was, I think, what influence the sale of this Northern Pacific stock—that there was to be a securities company formed——

Mr. DAY. I will ask the stenographer to read the question.

The stenographer read the question, as follows: "When you sold this seventy-eight millions of stock, were you advised or informed by any of the people you negotiated with, directly or indirectly, that that stock was to be turned over to the Northern Securities Company when organized?"

Mr. HARRIMAN. That is not as I understood the question.

2498 We knew in a general way, the formation of a securities company was talked about, and we agreed to take in lieu of cash a certain amount of that stock, in lieu of cash, at par.

Mr. DAY. Then I asked if you did rely on the statement that a securities company was to be formed?

Mr. HARRIMAN. In making the sale?

Mr. DAY. Yes, sir.

Mr. HARRIMAN. No.

Mr. DAY. I do not mean that that was the moving consideration. Would you feel that you had a cause of complaint

2499 against the gentlemen you were negotiating with if that stock had not been put into the Northern Securities Company?

Mr. HARRIMAN. I do not think we would. I do not know any reason why we should.

Commissioner PROUTY. Of course, before you agreed to take fifty millions of that stock you knew something about what it was going to be worth. You did not expect that they had a right to put Great Northern stock in at $300 a share. You must have known in some way on what basis that company would be operated.

2500 Mr. HARRIMAN. Yes, sir; in the general talk at that time—the general talk that there was to be a securities company formed.

Commissioner PROUTY. Do you engage in transactions of fifty or sixty millions on general talk?

Mr. HARRIMAN. Yes, sir; very often.

Commissioner PROUTY. Perhaps you had better define what you mean by "general talk."

Mr. HARRIMAN. You mean if there was any specific infor-

mation given or agreement that there should be a certain amount 2501
of Northern Pacific or Great Northern stock put in?

Commissioner PROUTY. I think what Mr. Day wants and what the Commission would like to know, if it is material at all, is what agreement was made, what understanding was had, as to the organization of the securities company, of which you agreed to take the stock at par.

Mr. HARRIMAN. We agreed to take the stock at par if the securities company was formed, and the Northern Securities Company stock issued in payment for Northern Pacific stock not to exceed 115, and if Great Northern stock were put in that 2502
that should not exceed 180. That is the plan.

Mr. DAY. You understood that Northern Pacific stock was to be taken at 115 of the other, and you took it at par?

Mr. HARRIMAN. No, sir; I did not say that.

Mr. DAY. I mean the Northern Securities; you took that at par?

Mr. HARRIMAN. Yes, sir.

Mr. DAY. Oh, yes; I see I was in error.

The CHAIRMAN. As I understand Mr. Harriman, he said he negotiated the sale of this Northern Pacific stock when his com- 2503
pany decided that it was best to sell it. He reported the terms to his company and they ratified the arrangement.

Mr. HARRIMAN. Yes, sir.

The CHAIRMAN. That arrangement fixed a price, and part of it was to be paid in money and the balance in securities, and included in those securities was an agreement on your part to take a certain amount of the securities of the Northern Securities Company, if organized on a certain basis?

Mr. HARRIMAN. Yes, sir.

The CHAIRMAN. Subsequently it was organized on that basis? 2504

Mr. HARRIMAN. And the stock was delivered and received.

The CHAIRMAN. And you took the stock of the Northern Securities Company in payment of the Northern Pacific stock that you sold?

Mr. HARRIMAN. Yes sir.

Commissioner CLEMENTS. When in the course of these negotiations did it become certain that the Northern Securities Company would be a practical organization—would be effected?

2505 Mr. HARRIMAN. In the first place, the talk of forming a securities company—I do not know whether it was the purpose of forming it under the name of the Northern Securities Company or under any other name, but I was generally cognizant of the fact that there had been a plan for forming a securities company for the holders of the Great Northern stock, and I think some time before we had any interest in the Northern Pacific. I think in some of my conversations with Mr. Hill that he had stated to me that he and his associates had a plan in view for forming a securities company, in which they were to
2506 put their holdings of Great Northern stock, a long time before we had any interest in the Northern Pacific.

Commissioner CLEMENTS. When did you first seriously consider taking any stock in that company yourself or for the corporations you represent?

Mr. HARRIMAN. Only when we sold the Northern Pacific stock.

Commissioner CLEMENTS. That was in September?

Mr. HARRIMAN. Whatever the date was that was the time.

Commissioner CLEMENTS. When did you procure that stock
2507 for the Oregon Short Line or Union Pacific, the seventy-eight millions?

Mr. HARRIMAN. For the Oregon Short Line?

Commissioner CLEMENTS. When did you obtain that?

Mr. HARRIMAN. I think the 7th and 8th of May.

Commissioner CLEMENTS. You obtained it in the spring?

Mr. HARRIMAN. Yes, sir.

Commissioner CLEMENTS. And determined in the fall, about September or whenever it was, to take fifty or sixty millions of the proceeds of that and put it in the Northern Securities stock,
2508 not in exchange, but you would sell one and buy the other?

Mr. HARRIMAN. We agreed to take securities and stock with the understanding that it was to be a securities company, if formed.

Commissioner CLEMENTS. At the time you purchased that Northern Pacific stock you apparently must have had some substantial reason for apprehending danger to the properties you represented, as you have already stated, as I understand, that you deemed it necessary for the full and proper protection of

your interests to have a dominating influence in the Northern 2509
Pacific Company. Is that a correct statement?

Mr. HARRIMAN. Yes, sir; that is what I said.

Commissioner CLEMENTS. Now, apparently in the fall you turned that loose, so as to lose that dominating influence, so far as you had obtained it by the purchase of that stock, and there must have been some substantial impression——

Mr. HARRIMAN. May I explain that?

Commissioner CLEMENTS. Certainly.

Mr. HARRIMAN. I think the subsequent action of the Oregon Short Line or the people representing it in what they thought, 2510
and I think what was the prevailing influence with them was that the purchase of the Burlington Company by the Great Northern and perhaps the control of the Northern Pacific by one party might injure the Union Pacific or the territory—it might prevent the Union Pacific from properly serving, I might say, the territory through which it runs, and subsequent to the purchase of that stock, I think that our action in agreeing to give our proxy to Mr. Morgan is evidence enough that we were satisfied that there were more interests than the Great Northern or the people affiliated with the Great Northern in the Northern 2511
Pacific, and the subsequent management of the Northern Pacific is a further indication that we were right.

Commissioner CLEMENTS. When did you give Mr. Morgan that proxy?

Mr. HARRIMAN. The agreement that he should name the board of directors was given in May, about the time that there was this prevailing financial distrust, in which we had no hand, nor any interest, nor any purpose to serve, except, as I have stated before, that we should evidence to the whole financial world that there was no intention of creating a contest as against 2512
the then managers of the Northern Pacific.

Commissioner CLEMENTS. Now, has not the formation of the Northern Securities Company, with an important holding in it by the Oregon Short Line, one of the corporations you represent—the interests under you—a holding in that company of fifty or sixty millions, and the identification of Mr. Hill and his associates, including the great Northern and Northern Pacific and Burlington, with this same company—all of you associated

2513 together—also gone a long way to assure you that there would be no unfriendly action on the part of the Northern Pacific in respect to the traffic?

Mr. HARRIMAN. No more than there has been in existence since the two corporations were organized.

Commissioner CLEMENTS. Which two corporations?

Mr. HARRIMAN. I thought you referred to the Union Pacific or the Oregon Short Line and the Northern Pacific.

Commissioner CLEMENTS. Well, what I mean is that since you and the interests you represent and the interests repre-
2514 sented by Mr. Hill and Mr. Morgan, which include the Union Pacific, the Southern Pacific, and the Oregon Short Line, and now the Great Northern, the Northern Pacific, and the Burlington, are all holding stock in the way that was described yesterday, more or less, in the Northern Securities Company, and Mr. Hill being president of it and you being a member of the board of directors, is there not much less likely to be any friction or contest in the matter of traffic between the Northern Pacific and the Union Pacific and its affiliated lines?

Mr. HARRIMAN. I think it may in this respect, that it may
2515 enable us where we are frequently brought together, or when we are brought together, whether frequently or infrequently—it has been very infrequently so far—it may enable us to so get together that we may be able to eliminate the prevailing distrust as to the various lines maintaining their tariff rates. In other words, I do not know that you have ever had before you a complaint of too high a rate, but it is a complaint as to discriminations, and that is all we are trying to eliminate from the situation to-day. I believe this, that in our association, if we will be able to influence the situation to such an extent that we
2516 will prevent, or largely prevent, discriminations as against the general shipper, and the concessions which are made or said to be made in favor of one shipper as against another—am I not right, Mr. Chairman, that the complaints mostly that come before your body are to the effect that there are discriminations, and not that rates are generally higher than they ought to be?

The CHAIRMAN. I must reserve my answer to that question to another time and place.

Commissioner CLEMENTS. Will not the same power of coop-

eration and unity of action and financial association enable you 2517
also to prevent the reduction of the published rate?

Mr. HARRIMAN. I do not know that we have power to do that, even if we wanted to.

Commissioner CLEMENTS. Well, the carriers are given power to publish the rates, and they publish what they choose to as the rates at which they will carry. They are also authorized to reduce them from time to time or increase them from time to time. Of course there is a general declaration of the law that they shall be reasonable and just, and free from undue discrimination, but now you say that your principal object is to prevent the unjust 2518
discrimination.

Mr. HARRIMAN. I did not say we had an object. I said that I believed being brought together would enable us to consider these questions and prevent by our own officials and the officials of other lines their participating in discriminations and illegal—if you are a mind to—illegal practices.

Commissioner CLEMENTS. Particularly deviation from the published rate?

Mr. HARRIMAN. Deviation from the published rates.

Commissioner CLEMENTS. Now, what I want to know is this: 2519
Inasmuch as under the law you make your own rates and change them from time to time, and you have now cooperation—community of interest—financial and organized cooperation in one concern, directing more or less all these roads, by the election of officers, will it not carry with it not only the power to prevent deviations from the published rate, but also the power to hold up the published rate and prevent its reduction by the separate action of competing roads?

Mr. HARRIMAN. I do not quite understand what you mean by "community of interest." I think we all have a common in- 2520
terest, a common interest to increase the volume of business generally. There can not be one railroad or one community exist at the expense of the other, and it seems to me that whether we meet or happen to meet by an agreement in Chicago or in New York or in San Francisco, or whether we are brought together in a board of directors of a securities company or a bank or trust company, it makes no difference. If we wanted to practice something that was against the law it would not be necessary for us

2521 to form an organization and become directors thereof and advertise it to the world. We could meet anyhow. We have a common interest to preserve—which I think Mr. Hill explained to you yesterday—the avenues of traffic which are natural and over which traffic can be conducted and the products of the producing sections can reach the markets in some other part of the country. I understand your question to be whether it would not give us an opportunity to do something we have no right to do.

Commissioner CLEMENTS. In restraint of competition; reducing rates.

2522 Mr. HARRIMAN. May I ask a question, whether it would be any different whether we met at a specific place you may name, whether as a board of directors of a security company or as a board of directors of some corporation, or whether it was by arrangement at some other place other than where the board of directors meet, it would not give us any more opportunity than we would otherwise have were we not members of one board?

Commissioner CLEMENTS. Well, the ownership of the stock in the one company would be something more potential than a mere coming together as independent representatives of inde-

2523 pendent roads. There have been many conferences between traffic managers and presidents in regard to these matters, but this is something substantially different, is it not? Here is a corporation the stock of which——

Mr. HARRIMAN. You are talking about the Northern Securities Company?

Commissioner CLEMENTS. Yes, sir; the stock of which is held by these various interests.

Mr. HARRIMAN. Yes, sir; but it might be changed at any time. It might be all combined in one holding.

2524 Commissioner CLEMENTS. That might be. So might any pooling contract between an association of roads. It might exist to-day and not to-morrow. So long as it does exist, does it not afford a power of concentration and unity of action?

Mr. HARRIMAN. You mean by holding the stock?

Commissioner CLEMENTS. The holding of the stock, the joint interest in the matter, and the cooperation that comes from that.

Mr. HARRIMAN. I think there are other and larger considerations which move the management of these properties other

than the holding in any security company. As I have tried to 2525
explain, the matters practically control themselves in the end. There are commodities to be moved. There is productive territory. The products of one territory have to be shipped to consuming points, which may be thousands of miles away. We could not control it any more by meeting in that board of directors and having an interest—whether it was a large or small interest—in that stock any more than we could if we did not.

Commissioner CLEMENTS. In times past, when these roads have been separate in ownership and operation, they have reduced rates in order to get business, one road away from the 2526
other. That has been the operation of competition in the past. Does not this directly tend to restrain that by the cooperation brought about?

Mr. HARRIMAN. You mean reducing the published rates?

Commissioner CLEMENTS. Yes, sir.

Mr. HARRIMAN. I do not think it will, nor do I know in any case where it has.

Commissioner CLEMENTS. Do you mean to say that there will be the same freedom and activity and competiton, in your judgment—is that what you state now—that there would be if these 2527
roads were entirely separate and independent of each other?

Mr. HARRIMAN. They are entirely separate and independent of each other.

Commissioner CLEMENTS. They are in a technical sense, and at the same time you are president of the Southern Pacific and also chairman of the board of the Union Pacific, as I understood your testimony.

Mr. HARRIMAN. Yes, sir.

Commissioner CLEMENTS. And president of the Oregon Short Line? 2528

Mr. HARRIMAN. President of the Oregon Short Line. They are all connecting lines and feed to each other.

Commissioner CLEMENTS. Yes, sir; and they have been competing lines, have they not?

Mr. HARRIMAN. Not to my knowledge any more than now, and more than the situation of the lines makes it necessary.

Commissioner CLEMENTS. You do not mean to have us understand that Mr. Stubbs, as traffic director of these lines, would make one compete against another in the reduction of rates?

25529 Mr. HARRIMAN. I do not know of any territory that one or the other serves that would make that necessary.

Commissioner CLEMENTS. Well, the traffic from the eastern coast to the western coast could go by the Southern Pacific or the Union Pacific, or by the Oregon Short Line in connection with other roads?

Mr. HARRIMAN. On a published tariff?

Commissioner CLEMENTS. Yes, sir.

Mr. HARRIMAN. I do not know any instance where a shipment was changed in that way. I think we would hear from
25530 the shipper if it was so. Because of the interest that the Union Pacific acquired in the Southern Pacific, I believe it is going to enable the Union Pacific or the combined interests to give very much better service and enable them to improve the lines of the Southern Pacific to such an extent that it can be operated to better advantage and possibly more economically. If these matters are not brought about that way I do not see how the railroads will exist, and they will not be able to take care of an increased volume of business any cheaper or as cheap as they are to-day. You may separate all these lines that now make
25531 up these different systems. Formerly there may have been ten times more than to-day. If you want to separate them and put them into small lines I do not think the business of the country could be conducted. We are natural connections of the Southern at one point and do not interfere with it in any way at any other point. We may develop in connection with the Southern Pacific new avenues, which will reach also the Northern Pacific territory. That is a thing I had in mind. We are now extending a line of the Oregon Short Line from a point in Nevada to Southern California.

25532 It will open an entirely new avenue of traffic between the Northwest and southern California, New Mexico, and those southern points and the territory served by that portion of the Southern Pacific, and enable us to interchange commodities with points which are on the Oregon Short Line, owned by the Union Pacific, points on the Northern Pacific over the Short Line, and also new avenues of traffic and new markets for commodities in all the territories served by all those companies. How could we do that if we did not have a close affiliation?

Would it be possible to put a middle company in between the 2533
existing Short Line and the Southern Pacific in southern California?

Commissioner CLEMENTS. Those matters are all interesting and instructive, and no doubt——

Mr. HARRIMAN. You are trying to find, apparently, something that was in our minds in making these affiliations.

Commissioner CLEMENTS. The change in the conditions and the opportunities that it afforded—not whether you heard particular complaints or whether or not you have raised the rate here and there, but what I am trying to get at is your judgment 2534
as to whether or not this community of interest, as it may be termed, by the holding of stock——

Mr. HARRIMAN. May I not change that into a common interest? I think we have a common interest; not only the railroads, but the producers.

Commissioner CLEMENTS. Put it in that way. I mean the common interest as it is concentrated now in the Northern Securities Company. I am talking now of the interests of carriers separate from producers and shippers. Has it not placed it in such way that it will be feasible and practicable in a much 2535
great degree than before for carriers to prevent deviations from the published rate and also to prevent reductions in the published rate by the separate action of each of them?

Mr. HARRIMAN. I think not.

Commissioner CLEMENTS. You do not think there is any greater opportunity for that than before?

Mr. HARRIMAN. I think not.

Commissioner PROUTY. Mr. Harriman, you say it is for the interest of railroads that traffic should move by its natural channels. For instance, take cotton raised in Texas and the South- 2536
ern States. Is the natural channel by which that cotton is moved from this country to Japan by the Southern Pacific or by the Great Northern?

Mr. HARRIMAN. I think that would be controlled largely by the prevailing conditions at the time that commodity was to move.

Commissioner PROUTY. Both of those roads could take it?

Mr. HARRIMAN. Yes, sir.

2537 Commissioner PROUTY. And both would probably be competitive for it. Don't you think that out of that competition the cotton grower would be likely to get a better rate to Japan than if you owned both roads, or Mr. Hill owned both roads?

Mr. HARRIMAN. I think if Mr. Hill, myself, or any other man owned all of the railroads that they would get a very much better rate than they would if they were separate.

Commissioner PROUTY. Why?

Mr. HARRIMAN. For the reason that the conditions prevailing on each line could be taken advantage of in favor of a par-
2538 ticular shipment. We have often had conditions where we could induce the shipment of cotton or any other commodity where we have a prevailing movement of empty cars one way or the other; and with a freer hand I believe the railroads could increase the movement of commodities from one part of the country to the other, to Japan, or any other foreign country, if we had less restriction and could have more elasticity than is now given them in the matter of giving rates at any particular time.

Commissioner PROUTY. Just assume, for instance——

2539 Mr. HARRIMAN. One moment, please. I think Mr. Hill explained that yesterday: that commodities of the Northwest have to be moved to points on the Chicago, Burlington and Quincy Railroad; they have to be moved to points on the Union Pacific Railroad, and the prevailing movement of empty cars the other way would influence the rate at any particular time, which could be given to cotton or to anything else.

Commissioner PROUTY. Take cotton. Suppose you owned all of the transcontinental roads, so that a man could not get his cotton across the country unless it went by your road; why
2540 would you reduce his rate?

Mr. HARRIMAN. Because it would be to our interest to make such a rate as would induce the movement of that commodity.

Commissioner PROUTY. If by reducing the rate you could increase the movement or volume, it would be to your interest to reduce the rate and you would reduce it?

Mr. HARRIMAN. Yes, sir.

Commissioner PROUTY. Unless you could increase the volume of traffic, you would not reduce the rate?

Mr. HARRIMAN. It would not move. The same principle 2541
that would induce the rate that was made on the first bale of cotton would influence the rate which was made on a million bales of cotton. You would have to make a rate in the first instance that would enable the producer to ship his commodity.

Commissioner PROUTY. So you do not think, Mr. Harriman, that competition between different lines would reduce the rate on cotton—competition itself?

Mr. HARRIMAN. I think it is only temporary.

Commissioner PROUTY. I will take another illustration that you may know something about; I guess you do. Take the 2542
movement of grain from the Mississippi River to the Atlantic seaboard. Some years ago this Commission made an order—before I came on it—that corn should be transported from the Mississippi River to New York for 17 cents per hundred pounds, and the railroads of this country said it was confiscatory. Four years ago, in the winter time, when there was no competition by water, there was a published rate in effect from the Mississippi River to New York of 13½ cents per hundred pounds, and we had an investigation to determine why that rate was 13½ cents, and every railroad man that testified on that occasion 2543
testified that there were no market conditions abroad that required it—that it was entirely competition between rail lines.

Mr. HARRIMAN. Who benefited by it?

Commissioner PROUTY. I am not asking who benefited by it.

Mr. HARRIMAN. I can not account for the inequalities or stupidity in railroad management.

Commissioner PROUTY. I am not asking about stupidity. I am talking about the rate. What was it that reduced that rate to 13½ cents if it was not railroad competition?

Mr. HARRIMAN. May I ask you another question? Did the 2544
rate stay at that point?

Commissioner PROUTY. The rate stayed a great deal lower than it had been before.

Mr. HARRIMAN. I confess that there are matters in railroad management which I can not understand. I do not pretend to be an expert traffic man; but I know what the shipper wants and the railroad wants is stability, and that there are special instances, such as you cite now, where there are reductions in

2545 rates because of the then specially existing condition. Now, if we could, as I said before, have a little elasticity—there may have been in that instance, I do not know, a movement of empty cars east bound which enabled them to take the commodity at that rate you named. I do not know what the conditions were at that time, but that might have been the influence of one railroad.

Commissioner PROUTY. Those conditions prevailed for two or three winters.

Commissioner CLEMENTS. Every year when the lake is frozen
2546 up the rates go up on the railroads, I understand, and when the lake is open the rates go down. That must be the influence of competition.

Mr. HARRIMAN. Is it not a fact that there is a larger volume moving in any event during the time of navigation than there is after navigation is closed? That enables them to make a more attractive rate.

Commissioner PROUTY. You have said, and repeatedly, that the railroad was interested and the public was interested in having these systems developed and put into first-rate shape.
2547 That is undoubtedly true. That is because the public is interested in the rate at which merchandise finally moves, is it not?

Mr. HARRIMAN. No; not only in the rate, but in the facilities furnished and the regularity of movement as much as in the rate. There is no advantage to a shipper if he is shipping his goods at a favorable rate if he is not well assured that that particular commodity will reach its destination within a reasonable time.

Commissioner PROUTY. If your rate from here to Denver was 5 cents higher than rates by other lines, how much stuff do
2548 you think you would ship?

Mr. HARRIMAN. I think that 5 cents is a little out of proportion. We might get a little more if we had better facilities, but 5 cents is out of proportion.

Commissioner PROUTY. You know, Mr. Harriman, that competing rates have to be practically the same between the same points. You do not rely on facilities to enable you to secure a better freight rate, do you, ordinarily?

Mr. HARRIMAN. No; but what I have been trying to illus-

trate is that by having better facilities and more economical 2549
methods for transporting our business that we would be enabled to make better rates; but if we have destructive competition and irregular rates we will not be able—as it has been in the past—we will not be able to give the facilities to continue the increase in the volume of business all over the country.

Commissioner PROUTY. Is not the thing in which the public is ultimately interested the rate?

Mr. HARRIMAN. No, sir; not absolutely.

Commissioner PROUTY. Well, pretty near.

Mr. HARRIMAN. Not pretty near. 2550

Commissioner PROUTY. Do you think you can charge a higher rate than your competitor, no matter what facilities are?

Mr. HARRIMAN. I think there are certain conditions. One manufacturer can give better goods and get a higher price.

Commissioner PROUTY. If the public is interested along with you in rates and facilities, why should not the public have some voice in determining and supervising the rates?

Mr. HARRIMAN. They have. They practically make it.

Commissioner PROUTY. What do you mean?

Mr. HARRIMAN. Apparently a shipper in the past has been 2551
able to make the rate.

Commissioner PROUTY. Name some rate.

Mr. HARRIMAN. I do not know. I am not a traffic man.

Commissioner PROUTY. Mr. Stubbs is.

Mr. HARRIMAN. Don't I understand, as it exists to-day, that if any unequal condition that exists any shipper can make a complaint and have his case brought before a court to adjudicate the same at the expense of the railroad against whom the complaint is made? Am I not right?

Commissioner PROUTY. I won't undertake to answer that 2552
question. But I would like to have you do this: I would like to have you consult your attorneys and file as a part of your examination here a reference to some case in which a court has rendered a final judgment correcting a rate, a discriminating rate. I do not speak of those States in which there is a commission which has power to fix rates, but I speak of interstate rates of vital importance to the public, and rates in those States where there is no commission with power to fix rates. I would like to have you file a reference to some one case of that sort.

2553 Mr. HARRIMAN. I do not know of any that has been brought. I am asking you. I am not as familiar with that as you are.

Commissioner PROUTY. I think as you do with reference to a part of this question, that unless these consolidations and unifications result in the overcapitalization of our railroads they are good for the country and a good thing for the carriers. I think that they may result in imposing on the public, and have resulted in some cases in imposing upon the public, an unjust rate.

Mr. HARRIMAN. May I ask you——

2554 Commissioner PROUTY. Just a minute. I think the public ought to have some means by which a shipper can complain, and by which, if his complaint is found to be reasonable, he could get relief. I do not think he has any such relief now.

Mr. HARRIMAN. Do you know of any special case where you fear that there may be some discrimination or some hardship?

Commissioner PROUTY. I do not think that the discrimination between shippers is so likely to take place after consolidation as before. I think the hardship is likely to come from the

2555 charging of too high a rate.

Mr. HARRIMAN. It has not in the past.

Commissioner PROUTY. I am not quite certain about that.

Mr. HARRIMAN. Can you give me an instance.

Commissioner PROUTY. I will give you an instance without saying whether it is in point or not. The actual rates from Buffalo to New York for three or four years had been on corn 2¾ cents a bushel, something higher on wheat. Two years ago you organized up there, or the railroads organized up there, what is called the Buffalo Grain Pool, and the sworn testimony

2556 before this Commission is that that pool absolutely eliminates competition on ex-lake grain from Buffalo to New York, and that its effect has been to raise rates from one-half to 1 cent a bushel, which amounts on all grain moving through Buffalo in a year to a million and a half dollars. The rate is that much higher without competition than it was with competition. I do not say it is unreasonable.

Mr. HARRIMAN. You do not say it is unreasonable?

Commissioner PROUTY. I do not express any opinion about it.

Mr. HARRIMAN. You do not ask me to? 2557

Commissioner PROUTY. No; I do not ask you to.

The CHAIRMAN. Is there anything further you desire to ask, Mr. Day?

Mr. DAY. Yes, sir; you said when my examination was broken that you got part cash and part stock for the sale of the $78,000,000 of Northern Pacific stock?

Mr. HARRIMAN. Part cash and part securities.

Mr. DAY. What became of the cash?

Mr. HARRIMAN. It was used to pay the obligations of the Oregon Short Line—money which they had borrowed to pay 2558 for the Northern Pacific.

Mr. DAY. And none of it went back into the treasury?

Mr. HARRIMAN. The treasury of the Oregon Short Line and was used——

Mr. DAY. Used to pay any of the $61,000,000 or the securities, certificates, or obligations of the Short Line that had been put out to raise these $78,000,000?

Mr. HARRIMAN. Had that been reduced? I think not.

Mr. DAY. You said that the subsequent management of the Northern Pacific showed that subsequent to the election of the new board of directors that you were right—that the Union 2559 Pacific interests were right—in turning the property over to the stockholder, Mr. Morgan. What did you mean by the subsequent management of the Northern Pacific that justified your action?

Mr. HARRIMAN. Perhaps the subsequent management might have been the continuation of the same management.

Mr. DAY. Is that what you meant?

Mr. HARRIMAN. That is what it was.

Mr. DAY. Has any agreement been made, or any understanding been entered into, regarding a division of trans-Pacific 2560 traffic between the Southern Pacific and the Union Pacific?

Mr. HARRIMAN. No, sir.

Mr. DAY. Or between the Southern Pacific and the Union Pacific and the Atchison?

Mr. HARRIMAN. No, sir.

Mr. DAY. Or with the Northern Pacific or Great Northern or the Canadian Pacific?

2561 Mr. HARRIMAN. Not that I know of.

Mr. DAY. You are not a party to it, and have no knowledge of it?

Mr. HARRIMAN. I have no cognizance of it.

Mr. DAY. Has there been any change in the routing of traffic or regarding rates, division of traffic, or pooling of traffic, since you assumed the management of the Union Pacific system?

Mr. HARRIMAN. Not to my knowledge.

Mr. DAY. The Union Pacific is just as independent and is
2562 operated just as independently of the Southern Pacific as before the union of interests?

Mr. HARRIMAN. I do not know of any instance where there has been any change.

Mr. DAY. And the same is true of the Union Pacific and competing lines to the northward? They are just as independent of each other as they were prior to this union of interests?

Mr. HARRIMAN. There has not been any union of interests.

Mr. DAY. Whatever results from the interlacing of stock.

Mr. HARRIMAN. So far as I know, the relations of the com-
2563 panies are on the same basis as before.

Mr. DAY. Does the Union Pacific stand in a better position to get traffic that formerly went by the Southern Pacific? Does it now?

Mr. HARRIMAN. I do not think so.

Mr. DAY. The Southern Pacific is not used to—or the traffic is not diverted from the Southern Pacific to the Union Pacific proper?

Mr. HARRIMAN. No, sir.

Mr. DAY. Nor vice versa?

2564 Mr. HARRIMAN. No, sir.

Mr. DAY. That is all I wish to ask.

The CHAIRMAN. Mr. Harriman, about when did your connection with the Union Pacific system begin?

Mr. HARRIMAN. Just after the reorganization, I think, in 1898.

The CHAIRMAN. You at that time acquired a large interest and became the chief executive officer?

Mr. HARRIMAN. No; I became a member of the board of directors and a member of the executive committee. I was

made chairman of the executive committee and preside at meet- 2565
ings of the committee.

The CHAIRMAN. And that is the relation which you have since sustained to that system?

Mr. HARRIMAN. Yes, sir.

The CHAIRMAN. And that relation has been practically the same from the time of the reorganization down to the present?

Mr. HARRIMAN. Down to the present time.

The CHAIRMAN. And that was, of course, before the acquisition of any of the Southern Pacific stock by the Union Pacific? 2566

Mr. HARRIMAN. Yes, sir.

The CHAIRMAN. At the time the Union Pacific began to acquire stock of the Southern Pacific, had you individually any interest in the Southern Pacific?

Mr. HARRIMAN. No, sir.

The CHAIRMAN. You had not been connected as a stockholder or otherwise with the Southern Pacific system?

Mr. HARRIMAN. Not as an officer in any way. I might have had an interest in Southern Pacific stock at some time, but I do not remember that I had. If so, it was so small as not to 2567
have had any influence at all.

The CHAIRMAN. You have had to do with deciding upon the policy of the Southern Pacific after acquiring that large interest in the Southern Pacific which was acquired?

Mr. HARRIMAN. Yes, sir.

The CHAIRMAN. Your testimony may have covered the point I have in mind in a general way, but I desire to ask you what was the direct purpose in acquiring that interest in Southern Pacific stock?

Mr. HARRIMAN. To prevent its control by some other line 2568
that might have diverted the business into other channels against the Union Pacific system.

The CHAIRMAN. Had you reason to apprehend that the Southern Pacific might fall into such unfriendly hands?

Mr. HARRIMAN. It might have. We had no reason to suppose that any other company were acquiring it, but it was not advisable for us to wait until somebody else moved.

The CHAIRMAN. You were not moved by immediate apprehension or by knowledge of efforts being made on the part of others?

2569 Mr. HARRIMAN. As you remember, the principal holder of Southern Pacific stock had recently died, and there was a chance always of that stock being disposed of to some interest that might have been adverse to and prevented the free interchange which had formerly existed between the two companies.

The CHAIRMAN. It was on general grounds and for the future prosperity of the Union Pacific road?

Mr. HARRIMAN. Yes, sir; and we believed for the future prosperity of the Southern Pacific.

The CHAIRMAN. And that was the sole inducement on the
2570 part of the Union Pacific to acquire this large interest in the Southern Pacific?

Mr. HARRIMAN. Yes, sir; to preserve the then existing conditions.

The CHAIRMAN. The Southern Pacific at that time owned the line from San Francisco to Ogden?

Mr. HARRIMAN. Yes, sir.

The CHAIRMAN. The Union Pacific and its connections could not reach the Pacific coast over its own rails except at Portland?

Mr. HARRIMAN. Well, it does not now. It could by build-
2571 ing a railroad.

The CHAIRMAN. Except as it controls the Southern Pacific.

Mr. HARRIMAN. That is all.

The CHAIRMAN. Before you acquired control in the management of the Southern Pacific you could not reach by your own rails the Pacific coast at any point south of Portland?

Mr. HARRIMAN. No more than we do now.

The CHAIRMAN. So that all transcontinental traffic which reached the Pacific coast at points south of Portland, passing over the Union Pacific, had to go from Ogden on the Southern
2572 Pacific rails?

Mr. HARRIMAN. There was no other way provided for it then; naturally it must, no matter who owned it.

The CHAIRMAN. Did that give the Southern Pacific the position which enabled it to control transcontinental rates upon the Union Pacific route?

Mr. HARRIMAN. I think not.

The CHAIRMAN. Then, is the present control of the Union Pacific system over transcontinental rates by the Union Pacific

route no greater than it was before the Union Pacific acquired 2573
this interest in the Southern Pacific?

Mr. HARRIMAN. I think not. Understand me; I have already explained that in these matters the traffic officers and executive officers of the various companies have to be communicated with and——

The CHAIRMAN. I understand that.

Mr. HARRIMAN. All has to be done by conference with the managers of those various lines, the same as it had to be before, to arrange the divisions.

The CHAIRMAN. In point of fact, Mr. Harriman, has there 2574
been any change in transcontinental rates since this acquisition by the Union Pacific of Southern Pacific stock?

Mr. HARRIMAN. I understand that Mr. Stubbs was on the stand yesterday. I did not hear his testimony and I have not had any conference with him, and he would be the proper one to answer that.

The CHAIRMAN. You do not know?

Mr. HARRIMAN. No, sir.

The CHAIRMAN. You do not know of any change?

Mr. HARRIMAN. No, sir; I do not. 2575

The CHAIRMAN. Either by increase or reduction?

Mr. HARRIMAN. In any way whatever.

The CHAIRMAN. Is it your understanding that your rates and basis of rates to-day are the same as they were before the Union Pacific acquired the interest in Southern Pacific stock?

Mr. HARRIMAN. I do not know of any change whatever.

Commissioner PROUTY. How about the maintenance of rates? Are rates better maintained or not so well maintained as they were?

Mr. HARRIMAN. As between the transcontinental routes, do 2576
you mean?

Commissioner PROUTY. Transcontinental rates.

Mr. HARRIMAN. I do not know of any change whatever.

Commissioner PROUTY. I did not understand exactly what Mr. Stubbs's duties were. He is the traffic director of these two companies. Has he power to do anything except to tell somebody what he thinks had better be done?

Mr. HARRIMAN. He has the power, as far as possible, to

2577 unify the management of the different officers by conference with the officers of these various companies.

Commissioner PROUTY. Suppose Mr. Stubbs thinks some rate ought to be changed on the Southern Pacific system, has he any power to change it?

Mr. HARRIMAN. I think Mr. Stubbs's influence on the Southern Pacific could enable him to change it. He has no power, as I understand it, to issue a tariff. There is a traffic manager of the Southern Pacific.

Commissioner PROUTY. You think, then, if Mr. Stubbs's
2578 reasons were sufficiently cogent, he could influence the traffic manager to change the rate?

Mr. HARRIMAN. Yes, sir.

Commissioner PROUTY. On the Union Pacific, is that the same?

Mr. HARRIMAN. Yes, sir.

Commissioner PROUTY. Practically Mr. Stubbs can make the rates on the Southern Pacific and the Union Pacific?

Mr. HARRIMAN. I should think he could.

Commissioner CLEMENTS. Mr. Stubbs told us yesterday that
2579 these roads, and probably all the transcontinental roads, had a joint agency at San Francisco, or that there was an understanding in practice whereby no one would reduce a rate except through this joint agency after notice to competing lines. Don't you think that tends to hold up rates?

Mr. HARRIMAN. To keep rates stable.

Commissioner CLEMENTS. Don't it tend to prevent reduction of the published rate?

Mr. HARRIMAN. I do not think it does. I do not know what Mr. Stubbs testified to, but whatever his testimony was, I
2580 think he ought to be questioned on it. I am not familiar with those details of traffic matters, but Mr. Stubbs's general powers are that he shall have the general supervision, in cooperation with the managers, of the various lines.

Commissioner CLEMENTS. You have asked us some questions, one of which was whether we believe there were any unreasonable rates, and also in respect to the effect of association in regard to the raising of rates and keeping rates up. Now, it is a pretty well-known fact, I suppose, in New York and through-

out the country, that about two years ago, when the volume of 2581
traffic began to grow immensely, after the depression, that the carriers, particularly in trunk-line territory, got together and through their classification committee raised hundreds of articles from one class to another. They took articles of great importance out of the commodity list and put them at a higher rate in the class list. It effected something like eight or ten hundred changes by one paper that was issued, 90 per cent of which, or more, perhaps, were increases, and some of which were increases in the rates over what they had been for fifteen years previous to that—an average increase on the whole of the arti- 2582
cles changed was about 33 per cent. That was done by a representative committee of some sixty-odd roads which adopted the classification. I call that to your attention as an illustration of what can be done by cooperation, community of interest, or joint interest, or common interest of the carriers, when they get together to prevent competition and get a better rate.

Now, laying aside for the time being the question of whether the rate was too low before or not, the shipper under the law is declared to have the right to a reasonable rate. Must he look always to the judgment or discretion or generosity or conscience 2583
of the railroad manager in order to get his just rate? If in the present state of the law competition is to be eliminated in this way, will he not be left entirely to that tribunal to get his rate?

Mr. HARRIMAN. I do not understand that he is at present left to that tribunal, if there is such a tribunal. But it seems to me that if that rearrangement of the various commodities was made and there has been no evidence of any dissatisfaction, that in itself is evidence that it was reasonable.

Commissioner CLEMENTS. There was a multitude of com-
plaints brought before the Commission, five or six hundred, by 2584
wire and letter, and by all known means of communication, and several formal complaints have grown out of it since.

Mr. HARRIMAN. Are they still in process of being adjudicated?

Commissioner CLEMENTS. They are in process of adjudication.

Mr. HARRIMAN. Are they going to be adjudicated?

Commissioner CLEMENTS. The Commission will report upon them when they are finally argued. These cases are tedious,

2585 and voluminous testimony has been taken, and at various times. All of this suggests that if there is to be any remedy for the public against the exaction of unreasonably high rates the shipper must have the rate before he ships, because the merchant and business man—I think you will agree with me—can not very well conduct his business on rates which he must pay, and then take his chances of getting a part of it back by some process in court, which would require perhaps a suit on each transaction, and the amount involved would not pay for the suit; it is cheaper for him to lose it than to try to get it back.

2586 Mr. HARRIMAN. As I understand, the railroad in that case has to bear the expense of the suit.

Commissioner CLEMENTS. If he gets judgment, the company would.

Mr. HARRIMAN. I understand, whether or no, the expense of that suit has to be provided by the railroad complained against.

Commissioner CLEMENTS. That is not the law, that I know of.

Commissioner PROUTY. Where will that suit be brought?

Mr. HARRIMAN. Now you are getting me into a tangle of
2587 things that I do not know about. I am attending to the every-day matters of these corporations that come before me.

Commissioner PROUTY. You are looking after the railroad interest and letting somebody else look after the public interest?

Mr. HARRIMAN. No; I am looking after the public interest too, because they are both common.

Commissioner CLEMENTS. There is a difference between the rate that traffic will bear and the rate that is reasonable. In answer to a question this morning you said it would not do to make a rate too high; that the traffic would not move; that you
2588 would not get the business. It will move at a high rate sometimes, perhaps, because it is of no value unless it does move, provided there is something left the shipper after he pays the rate; but that would not be the measure of the reasonableness of the rate. It was said by Mr. Hill at some time—I do not know whether in this investigation or not—that the increase of 1 mill per ton per mile—it seems very little—would aggregate to the roads of the country $165,000,000 and take from the public $165,000,000, at a mill a ton.

Mr. DAY. Per mile? 2589

Commissioner CLEMENTS. Per mile.

Mr. HARRIMAN. Or 1 cent for moving 1 ton 10 miles. It is a little plainer to understand.

Commissioner CLEMENTS. $165,000,000 is a great deal of money, and yet that would not seem like a very great increase in the rate per ton per mile. It illustrates the extent to which a little stiffening up of the rates by diminution of competition may bring about a very great result in dollars and cents.

Mr. HARRIMAN. Would not the reverse of that be a fact if 2590 the rate were reduced a mill or 1 cent for moving a ton 10 miles?

Commissioner CLEMENTS. Undoubtedly.

Mr. HARRIMAN. It only shows, it seems to me, how the management of these railroads has become refined down to such a fine point, and that they have got to a point where they have got to have some method of preserving their existence. In other words, the manufacturer to-day is dependent upon the railroads as his principal customer. I undertake to say that the increase in volume of business this year is largely because of the im- 2591 provement and additions to the railroad properties as they exist to-day, and the rates that are made are made sometimes as against themselves.

The CHAIRMAN. Have you any further questions, Mr. Day?

Mr. DAY. I have nothing more.

The CHAIRMAN. Mr. Harriman, do you wish to make any further statement?

Mr. HARRIMAN. No, sir; except to thank the Commission for excusing me in time to catch my train. 2592

Witness excused.

ORIGINAL TESTIMONY TAKEN BY COMPLAINANT.

Mr. RICHARDS: I would like to have Colonel Clough sworn.

W. P. CLOUGH, called as a witness on behalf of the complainant, being duly sworn by the examiner, testified as follows:

Examined by Mr. RICHARDS:

Q. Colonel Clough, what position do you hold in the Northern Securities Company?

2593 A. Fourth vice-president, general counsel, a director, and a member of the executive committee.

Q. You have taken an active part in the management of the affairs of the company since its organization?

A. Yes, sir.

Q. In the answer of the Northern Securities Company it is stated that that company has purchased and had transferred to it five-twelfths of the capital stock of the Great Northern Railway Company and has negotiated for four-twelfths of the capital stock of that company. I should like to have you explain what
2594 is meant by the term "negotiated for" and what is the present status of that stock.

A. The total authorized capital stock of the Great Northern Railway Company is 1,250,000 shares of $100 each, of which 1,238,804 shares are outstanding. I am giving this in a way so as to make it as comprehensive as possible. Of the outstanding shares, the Northern Securities Company up to this date has purchased and paid for and had transferred into its own name on the transfer books of the Great Northern Railway Company 528,672 shares. It has also purchased and paid for, but has
2595 not had transferred into its own name on the transfer books of the Great Northern Railway Company, 458,017 additional shares. These latter shares stand on the stock books of the Great Northern Railway Company in names other than that of the Northern Securities Company.

Q. Now, when you say that these shares that have been purchased, but not yet transferred, stand in the names of persons other than Northern Securities Company, do you mean persons named and chosen by the Northern Securities Company?

A. Yes, sir.

2596 Q. The Northern Securities Company, then, if I understand you, has substantially as complete ownership and as full control over the shares of stock not transferred as over the shares transferred?

A. I think I have stated the facts, and the other matter is one of mere inference.

Q. Those shares could not be voted except by the acquiescence or consent of the Northern Securities Company, could they?

A. They could be voted by the persons in whose names they 2597
stand. No other person except those in whose names the stock stands could vote them either in person or by proxy. It is likely that any request by the Northern Securities Company to these persons would be complied with in regard to the votes, if any, which they might cast upon this stock.

Q. These persons hold the stock, then, virtually as trustees for the Northern Securities Company?

A. Yes, sir.

Q. The complete equitable ownership is in the Northern Securities Company? 2598

A. I presume that would be so. However, that is a question of law, in a sense, to be determined upon a consideration of the provisions of the charter and by-laws of the Great Northern Railway Company.

Q. At what time, Colonel, did the Northern Securities Company first have shares of stock in the Great Northern, which it had purchased and paid for, withheld from transfer and placed in the hands of individuals in this way?

A. I don't remember now the precise date of the first transaction of that character, but it was some time last winter or early 2599
in the spring, as the stock was offered for sale to the Northern Securities Company.

Q. Wasn't it, Colonel, some time early in the spring?

A. I don't remember the date now, but if desired I could get the date of the first transaction of that character.

Q. I wish you would get the date of the first transaction.

A. I will do so and hand it to you or to the stenographer.

Note by the Examiner: The witness has accordingly advised the Examiner that the date of the first transaction above referred to is December 11, 1901. 2600

Q. And also let us know how much stock of the Great Northern Railway Company had been transferred—purchased by and transferred to the Northern Securities Company at the time this first stock was not transferred, although purchased. Do you understand my question?

A. Yes, sir. My recollection is—subject to correction by looking at the books—that before the purchases of untrans-

2601 ferred stock began the purchases of the transferred stock had substantially been completed.

Note by the Examiner: The witness has accordingly advised the Examiner that the number of shares above referred to is 490,833 shares.

Q. Do you know how the change of policy in the handling of the shares of the Great Northern Railway Company came about?

A. In the acquisition of stock not transferred to the Northern Securities Company, that company followed the usage almost, probably quite, universal among large financial institu-
2602 tions and dealers in securities in this city, elsewhere and throughout the country, of carrying in names other than its own considerable proportions of its holdings of securities, in order to facilitate the handling of its business and its financial transactions.

Q. And did the necessity of doing that——

A. The desirability.

Q. The desirability of doing it—was that first called to your attention only after you had had transferred five-twelfths of the stock of the Great Northern?

2603 A. We had previously been carrying considerable quantities of Northern Pacific shares in the same way, and it was thought desirable to carry a certain proportion—or some proportion, I will say, instead of a certain proportion—some proportion of Great Northern shares in the same manner.

Q. How much Northern Pacific shares had you been carrying in that way?

A. From a rough recollection thirty-odd million, and at times I think considerably more.

Q. Has that all been transferred to the Northern Securities
2604 now?

A. No, sir; large amounts are still being carried in the names of others.

Q. Can you state what the entire amount is of Northern Pacific that is carried in that way now?

A. As I say, my recollection is that it is more than thirty millions of dollars; that is my recollection.

Q. And how much Northern Pacific has been transferred?

A. My recollection is that it has practically all been transferred now except about twenty millions.

Q. Whether the stock has been transferred or not, the certifi- 2605
cates are in the possession of the Northern Securities Company?

A. Yes, sir; the certificates are in our possession—in the possession of the Northern Securities Company.

Q. Were all these certificates paid for by the transfer of stock of the Northern Securities Company?

A. No, sir.

Q. What certificates were not?

A. On the 18th day of November, 1901, the Northern Securities Company purchased $37,023,000 of the common stock and $41,085,000 of the preferred stock of the Northern Pacific 2606
Railway Company, making a total of $78,108,000 of the stock of the Northern Pacific Railway Company, in one lot, for which it paid the lump sum of $91,407,500. Of this price the Northern Securities Company paid $8,915,629 in cash and $82,491,871 in its own stock at par. That is one transaction. On the 27th day of December, 1901, the Northern Securities Company purchased from the Northern Pacific Railway Company the convertible bonds, so-called, of the latter company to the amount of $34,709,062.50, for which it paid cash. Within two or three days afterwards, about the 1st of January, 1902, it caused 2607
those bonds to be converted into the new common stock of the Northern Pacific Railway Company, which it has since held. It has also from time to time since purchased small lots of Northern Pacific, for which it has paid cash.

Mr. GROVER. Why not state the total amount of those?

WITNESS. I don't remember. I did not get those figures. They are comparatively small lots that came in from time to time and we paid cash for them. They are not large in the aggregate, but they were small holdings that came in and we bought them and paid cash for them. 2608

Q. From whom did you purchase this large block of common and preferred stock—thirty-seven millions of common and forty-one-odd millions of preferred?

A. That is the block of stock referred to in the testimony of Mr. Steele and Mr. Perkins as having been purchased from E. H. Harriman and Winslow S. Pierce, trustees, and afterwards turned over to the Northern Securities Company.

2609 Q. Who carried on the negotiations for the purchase of that stock from Harriman and Pierce?

A. J. P. Morgan & Co., or some members of that firm. I don't know of my own knowledge which one of them. It appears from the evidence of Mr. Perkins and Mr. Steele that they were the members that conducted the negotiation; that is the source of my information.

Q. Do you know how the price paid for this large block of stock was reached; upon what basis the computation, if any?

A. I have not the slightest idea and have never been able to
2610 form one.

Q. The stock was purchased by J. P. Morgan & Co., and then turned over to you and you carried out the terms?

A. Yes, sir.

Q. The purchase as arrived at between J. P. Morgan & Co. and Harriman and Pierce was transferred to the Northern Securities Company, and the Northern Securities Company carried out the sale by direct dealing with Harriman and Pierce on the 18th day of November of last year.

Q. It issued to Harriman and Pierce some eighty-two mil-
2611 lions of its own common stock?

A. Yes, sir.

Q. And paid them over $8,000,000 in cash?

A. $8,915,629 in cash.

Q. Does the stock of the Northern Securities Company thus issued to Harriman and Pierce still stand in their names?

A. It stands in their names on the books of the securities company. That is the extent of my knowledge about its present ownership.

Q. In what way did you pay the money portion of the con-
2612 sideration?

A. The securities company borrowed the funds to make the cash part of the payment on collaterals which it owned and paid Harriman and Pierce from the proceeds of that loan.

Mr. GROVER. By check.

Q. From whom did it borrow the money and on what did it give the check?

A. The money was borrowed from J. P. Morgan & Co.

Q. You gave a check?

A. We gave a check on J. P. Morgan & Co. My recollection 2613
is that the check ran against them.

Q. For that amount?

A. Yes, sir.

Q. Now, as the purchaser of thirty-seven millions of common and of forty-one-odd millions of preferred stock of the Northern Pacific, the Northern Securities Company became entitled to do certain things. It became entitled, in the first place, did it not, to subscribe for convertible bonds?

A. If you will just let me explain that in my own way.

Mr. RICHARDS. Just strike out my question, Mr. Reporter, 2614
and let Colonel Clough go on and complete his statement.

WITNESS. By the terms of the resolutions of the Northern Pacific Railway Company retiring the preferred stock of that company it was provided that the holders of the then existing common stock of that company of record at a certain future day, which I think now was the 10th of December, 1901, would be entitled to subscribe at par for convertible bonds that were to be issued by the Northern Pacific Railway Company in the process of retiring the preferred stock to the amount of 75/80 of their holdings in the existing common stock. All stock that 2615
was transferred on the record of the Northern Pacific Railway Company prior to the date of the closing of the books, which, as I have stated before, as I remember, was on December 10, would carry with it this right of subscription, so that when the Northern Securities Company purchased the Harriman and Pierce stock, common stock, or any other common stock of the Northern Pacific, prior to December 10, with their purchase they got the right of subscription which the resolutions which I have mentioned gave. Now, does that explain it fully?

Q. Yes, that explains that portion of it. Now, as a matter 2616
of computation, 75/80 of 37,000,000 is about 34,000,000, isn't it?

A. Yes, sir; it is about 34,000,000. And I think that the subscription right which the Northern Securities Company exercised was obtained by it almost wholly from its purchase of the thirty-seven and odd millions of the Harriman and Pierce stock. Is that what you want to get at?

Q. That is it.

2617 A. I haven't made the computation. I can make it in a minute, you know.

Q. Now, you have explained the right you acquired by the purchase of the common stock, but you have not explained the right you acquired by the purchase of the preferred stock of forty-one millions. What right did you acquire by that?

A. The right on the 1st day of January, 1902, to have that stock redeemed by the Northern Pacific Railway Company at par in cash.

Q. And was it redeemed at par at that time?

2618 A. It was on the 1st day of January, 1902, all presented to the Northern Pacific Railway Company for retirement and was redeemed at par. The Northern Securities Company received from the Northern Pacific Railway Company on the 1st day of January, 1902, an amount in cash equal to the par of the preferred stock which it turned in.

Q. That amount substantially reimbursed you for those expenditures of cash, didn't it—within one or two million dollars?

A. That is a matter of computation easily made.

Q. Well, it is a fact that the loans you made of J. P. Morgan

2619 & Co. at that time to carry out this transaction were wiped out?

A. No, sir. No, sir; the loans we made from J. P. Morgan & Co. covered some other matters besides.

Q. Some others?

A. Yes, sir; they have since been paid.

Q. They have since been paid?

A. They have since been paid; yes, sir.

Q. Colonel, I don't think I asked you, and I suppose I ought to ask you, who received the dividends on the untransferred stock of the Great Northern Railway Company?

2620 A. All dividends on the untransferred stock which I have mentioned in my previous testimony, accrued and paid after the purchase of the stock by the Northern Securities Company, went into the treasury of the Northern Securities Company either directly or indirectly.

Q. That also applies to Northern Pacific?

A. Also applies to Northern Pacific; yes, sir.

Q. Has there been any election of directors of either the Great Northern or Northern Pacific Companies since the Northern Securities Company purchased the stock?

A. No, sir. 2621

Q. What provision has been made for voting the stock of these two railway companies held and owned by the Northern Securities Company?

A. Nothing except the appointment of proxies, which I stated in my testimony that is already in evidence here.

Q. What is the end of the fiscal year of the Northern Securities Company, according to your regulations?

A. None has yet been adopted, nor has that subject been discussed to any great extent. It has been suggested that the business and calendar year should be made to conform. But 2622 neither the board nor the executive committees has ever had the subject before it.

Q. No annual report of the securities company has yet been prepared?

A. No, sir; but all of its records are at the service of the Government any time they want to inspect them.

Q. When do you have the next annual meeting of the Northern Securities Company?

A. In November.

Q. November 13? 2623

A. I think it is the 10th.

Mr. RICHARDS. That is all I care to ask the Colonel.

The EXAMINER. In connection with Colonel Clough's testimony you recall you asked him for a date he is to supply. How shall that be inserted in the record unless he goes on the stand again?

Mr. GRIGGS. Let it be filled in by consent.

Mr. RICHARDS. It may be put in by consent. Now, that covers substantially all we care to offer, as at present advised. There are a few reports that we might care to produce, reports 2624 that we have not seen yet; and after we examine those, if we care to introduce them, we will hand them in. Under the stipulation and agreement (at least a verbal understanding outside of that entry here) Mr. Harriman was to have the opportunity of going over and making certain corrections in his reported testimony taken before the Interstate Commerce Commission. If he should make material changes which would require explanation, in our opinion, then we would desire to examine him;

2625 but of course the right is reserved in the stipulation to examine any of these witnesses upon doubtful points. Subject to those reservations, we are through now with everything.

Mr. GRIGGS. Mr. Examiner, we are not prepared to go on at the present time, and the fixing of a date and place for resumption of the examination, I think, will have to be postponed till we have a conference with the counsel of the Government to see how far certain matters that he has suggested can be accepted
2626 without formal proof. Perhaps we had better go into the other room and take up that matter now.

(A short recess was here taken.)

Mr. GRIGGS. Mr. Examiner, the counsel of the parties have arranged, subject to your consent, to postpone the further taking of evidence to October 20, at 10 a. m., in the Federal building, St. Paul, Minn.

The EXAMINER. Then, as I understand it, gentlemen, an
2627 adjournment will now be taken until Monday, October 20, 1902, in St. Paul, at 10 o'clock, at the office of the United States district attorney in the Federal building in that city?

Mr. GRIGGS. Yes.

The EXAMINER. And the complainant reserves the right to offer further testimony. Am I right about that?

Mr. RICHARDS. Yes.

The EXAMINER. We will adjourn accordingly, then.

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MAP(S) IS/ARE TOO LARGE TO BE FILMED

ORDER OF ADJOURNMENT.

OFFICE OF UNITED STATES DISTRICT ATTORNEY,
Federal Building, St. Paul, Minnesota,
Oct. 20, 1902, 10 A. M.

This cause having come on to be heard at this time and place pursuant to adjournment, all parties interested appearing, it was by consent of all parties agreed that the further hearing and taking of testimony in this case be adjourned to the court-room of the United States District Court in and for the District of Minnesota in this building. Thereupon said adjournment was taken and the following proceedings were had.

DEFENDANTS' TESTIMONY.

JAMES J. HILL, called as a witness on behalf of the defendants, being duly sworn by the Examiner, testified as follows:

DIRECT EXAMINATION.

By Mr. Young:

Q. You are the president of the Great Northern Railway Company?

A. Yes, sir.

Q. You have been such since what time?

A. Since the organization of the company.

Q. Prior to the organization of the Great Northern Company, what corporation owned and operated the railways which I might say formed the nucleus of the Great Northern Railway system?

A. The St. Paul, Minneapolis & Manitoba Company owned a portion of them, the main portion.

Q. When was that corporation formed?

A. The corporation was formed under the charter of the St. Paul & Pacific, and was formed in 1879.

Q. That is, the St. Paul, Minneapolis & Manitoba Company?

A. Yes, sir.

Q. You were one of the original proprietors of the Manitoba Company, were you not?

A. Yes, sir.

2632 Q. And at the formation of that company, in 1879, did you become connected with it in an official capacity?

A. Yes, sir, I was active in connection with it both before the re-organization of the St. Paul & Pacific and the formation of the St. Paul, Minneapolis & Manitoba Company, and afterwards as manager, vice president and president.

Q. You became president in 1882, I believe?

A. 1882 or 1883.

Q. As president of the Manitoba Company and of the Great Northern, will you state whether you have been acquainted
2633 with the operation and the policy of those companies, and to what extent you have been concerned in framing and carrying out the policy of the road?

A. The general business of the company, for the first years, was mainly left in my hands. The directors, almost entirely, were non-residents and later lived abroad. The business was left very largely in my hands. The policy of the company, the extension of its lines and the general methods were left with me, necessarily, because the directors were non-residents. Sometimes I felt the responsibility was quite heavy.

Q. Since the formation of the Great Northern Company,
2634 state to what extent you have been concerned with the operation and with the matters of traffic, matters of extension and the general policy of the road.

A. The general policy of the company has been largely, I might say almost entirely, on the lines recommended by me. At the present time we have more of our directors in the West and they visit the road more frequently than was the case formerly, and are better able to advise than were our former directors. The others were excellent, good men. I suppose mainly on account of their financial ability they were connected with the company, when its necessities were great-
2635 er than they are now.

Q. What was the mileage of the Manitoba Company when organized in 1879?

A. About 400 miles.

Q. That was situated wholly in the state of Minnesota, was it not?

A. I think when our party (myself and associates) bought the bonds, they had about 380 miles, and we completed 125 or

something of that kind, which carried it over 500 miles at the 2636
time of the organization; but under the direction of the United States court we had been working for a year prior to that.

Q. Were those lines wholly in the state of Minnesota?

A. They were all in the state of Minnesota, yes, sir.

Q. At what time did the Manitoba Company begin the construction of its road from Minot, westerly, towards the Pacific coast?

A. In the spring of 1887. During the year 1887 the line was extended from Minot, in North Dakota, to Helena, 2637
Montana,— something over 700 miles, I think.

Q. And when was the line completed to the Coast?

A. In 1893.

Q. In 1893?

A. It was commenced in the fall of 1889, and finished in 1893, probably in January. In 1893 the rails were connected on the Cascade range, and opened for traffic the following June.

Q. This line was built by the Manitoba Company, but was leased and operated by the Great Northern?

A. Yes, sir. It was thought best to have the one ownership 2638
of the main line through to the Coast, and it came under the lease. The Manitoba stockholders preferred it that way, and I suppose they were entitled to say how they would have it.

Q. Before undertaking the construction of the railway to the Coast, to what extent did you acquaint yourself with the character of the country which it traversed and in the neighborhood of the terminus, and the sources from which the road must look for such traffic as it might obtain?

A. I visited and made personal inspection of various lines on the ground, examined the country and the soil, water and climate, and the company spent a very large sum of money in 2639
examining the various locations; practically made examinations enough, from the international boundary line south to the Big Hole river, to enable us to make a model of the Rocky mountains. We spent, I think, over eight hundred thousand dollars in surveys before we did any work at all.

Q. What was your purpose in making such extensive, minute survey?

2640 A. The purpose was to be certain that we built upon the best possible location, that we secured the best line in regard to distance and especially in regard to grades. A great many lines in the older part of the country had been built and rebuilt, and we wanted to avoid that if we could. We wanted, in the first place, to get the best location possible. For instance, I remember something which impressed my mind very strongly. Between Philadelphia and the Alleghany mountains through to Pittsburg, the Pennsylvania was building its road, part of it on the fourth right-of-way. I wanted to avoid that, if I could.

2641 Q. Was there anything in the nature of the traffic which you expected to get, which made you give especial attention to getting low grades?

A. The traffic in that country to be developed—it was all to be developed—must come from the natural resources of the country. It was a country very sparsely populated, and no manufacturers, and likely to be none except in connection with lumbering, mining, possibly milling, and flour manufactured for local consumption and for export on the Pacific coast.

2642 Q. What eastern-bound traffic, then, did you look for and expect to get from the Pacific coast?

A. Well, from the entire line the traffic had to be what the country would produce. From the Pacific coast, the present great item of traffic east-bound is, naturally, the lumber from the forests. They have large forests of very high grade timber.

Q. Is that lumber a product that will bear a high rate for transportation in proportion to its bulk and weight, or is it something that must be carried at a low rate in order to find a market?

2643 A. I remember when I went to the Pacific coast, before our road was built there, the rate on lumber east was 90 cents a hundred pounds, and it was practically prohibitory. I called the representative lumbermen together. They thought a reduction of 25 cents a hundred would enable them to ship their lumber East, and if we could make a rate of 65 cents a hundred they would be able to ship their lumber East. But I remember saying to a gentlemen who was with me at the

time, that they could not pay 50 cents, in my judgment, and 2644
move any large amount of lumber. The rate we made was 40 cents a hundred, and that rate has continued, that is, it is the present rate. And that has built up considerable trade, a trade equal, or maybe a little more than equal, at the present time, to the west-bound tonnage. The west-bound tonnage, that is, the local supplies consumed along the line, was at first considerably in excess of the amount eastward, but the east-bound traffic has been very largely developed.

Q. What is the market, the principal market, for this lum- 2645
ber of the Pacific that you haul eastward, what territory?

A. Portions of it go from Washington to Newport News, to Portland, Maine, but the great bulk of it is in the interior of the West, north of the Ohio river and north of St. Louis; you may say through central Iowa, Nebraska, Kansas, and a good deal used in this state, North Dakota, Wyoming, Colorado, Montana, Utah, and a great deal goes to California.

Q. In order to give these low rates, which would enable the lumber to be shipped to an eastern market, what was necessary to be done in reference to getting return freights to your western terminus? 2646

A. The rate or any rate that would pay the cost of moving a car from the eastern terminal to the coast, empty, to bring eastward a carload of lumber, would be prohibitory, and I think certainly a rate of 65 cents would be necessary in order to move cars west-bound, empty, for east-bound loads from the Coast; it would be as much as 65, maybe a little more, because the service would be twice—would have to run two train miles to get one loaded train mile.

Q. State whether the Pacific coast and the population reached by your lines there furnished a sufficient market for the commodities which it was necessary for you to carry west- 2647
ward in order to give low rates eastward on your line.

A. At the time the road was completed, and for a short time after, the west-bound merchandise furnished more than enough empty cars to move the lumber east, but within a short time (two or three, or at the most, four years) the lumber trade had grown very rapidly, and the Alaska trade sprang up, and that furnished a larger west-bound movement, in-

2648 creased the west-bound movement; Honolulu increased the west-bound movement; and to some extent in 1896, by making very low rates, we were able, for the first time, to take American rails to Japan.

Q. Just a minute, Mr. Hill. I was speaking of the market on the Coast in our country; I am coming to this oriental trade. I will ask you another question.

A. Well, answering the one led to the other. I will answer your question briefly. The market on the Coast, when the road was completed, was more than sufficient to furnish
2649 empty cars to move the lumber east, because the lumber had been moving at 90 cents a hundred, and there was little demand for it and little knowledge of what it was; and by building it up, by seeking markets for it and making a low rate, we developed the lumber trade very fast, faster than the merchandise trade of the people of Washington, even with the addition of Alaska and Honolulu.

Q. What steps did you then take? What markets did you seek for west-bound traffic on the line?

A. Well, we took every step that we thought would result in developing the trade. I sent men to Japan and China and
2650 kept them there, one man for over a year; his business was to get a manifest of every ship that entered or left a Chinese or Japanese port, as far as he could; to find what the exports and the imports of those countries consisted of, and where they went. Afterwards we sent one of our traffic representatives, and kept him there for a time. We also had men in the East, and wherever there was any business or likelihood of business.

Q. Mr. Hill, I wish you would go on now and state in a general way the growth and development of this oriental business and traffic; what steps you took to secure transporta-
2651 tion across the Pacific ocean; and also what connection or relation, if any, there was between the building up of this oriental commerce and the purchase of the Burlington road, or the stock of the Burlington road.

A. We found that the lumber supply of the United States east of the Rocky mountains and north of the Ohio river was becoming more and more dependent upon the Washington and Oregon forests, and that the time was rapidly approach-

ing when the states that theretofore furnished the lumber for 2652
that region would not be able to furnish lumber enough to meet their own consumption; as, for instance, Michigan. Michigan furnished for a long time the bulk of the lumber going into the states east of Lake Erie or east of Detroit, and also the large market in Chicago and west of Chicago. I think it is reasonably safe to say that Michigan does not furnish today as much lumber as she consumes. I have given a great deal of attention to that matter, because at the time we considered building the road and when I first went to the Pacific coast, if we could not carry that lumber to market
there was absolutely nothing else for us to carry and no use in 2653
building a road there. I felt, after making a thorough examination of the lumber trade of the country, that it was only a question of time when that would be the source from which all the northern lumber would have to be supplied, or practically all; and the result has shown that the time when such will be the case is much shorter than I had anticipated. But in order for that lumber to move, it must be moved at a low rate; and in order to make a low rate you must have a large tonnage, and you must load your cars in both directions. That carried us to investigating the different markets to which we 2654
could send anything that was made in the East. In 1896, in the fall, we had just closed an agreement with the Japanese General Steamship Company to put on a line of through steamers running to our terminal at Seattle, in connection with our road; and the conditions of the contract were such as to enable us to make a rate from the East to the Orient. I remember when those men were present with us. Some of them were interested in securing rails for their railways. I asked them where they were going to get their rails. Well, they thought they would either get Belgian rails or English rails. The Belgian rails would come from Antwerp, the Eng- 2655
lish rails from Middlesboro. I asked them, as they were going to stay here a day or two, to let me see what could be done for American rails. I immediately cabled to my friends in London and got quotations for Antwerp and Middlesboro rails and the best charters to Yokohama. I remember that the rails could be laid down at about $29, the English or Belgian rails. I telegraphed to Chicago. The time was rather a quiet one

2656 in American manufacturers, especially with the rail mills (the Joliet and one or two others were about closing down), three or four weeks before election, and possibly they were a little anxious to keep their mills running. I told them if they would make a rate of $19.50, we would give them a rate of eight dollars a ton—of 40 cents a hundred—from Chicago to Yokohama, which would be $1.50 a ton lower than the English or Belgian quotations. After some hesitation they made the rate and got the contract for 15,000 tons. That is one case. The cotton business: Some Japanese were passing
2657 through. The men I had out there reported the amount of cotton spun in Japan and the fact that the cotton came—the raw cotton—came mainly from India; a short staple cotton, which made an inferior yarn and sold at a low price. I got these gentlemen to try a small shipment of American cotton, with the guaranty, if it did not prove profitable to mix our long staple with their short staple of India, that I would pay for the cotton. The result of that was very satisfactory. The cotton trade has grown very fast, both raw and manufactured, but especially raw cotton. We have chartered ships to run to Honolulu, and make low rates there. The rates we
2658 made and the rates we are making now are very low. We make a rate from Minneapolis to Hong-Kong, or from St. Paul or any part of the state here to Hong-Kong, that would enable them to ship flour, if the Chinamen wanted to use flour or were able to buy it (they are rather poor over there just now, and have to be content with millet, they can't buy flour). In carrying this business forward we were soon brought to a point where we realized that the rates, in order to build the traffic upon a permanent basis, must be permanent, or reasonably so. We found in going to the south for cotton,—Texas cotton going to Galveston, and the Gulf states cotton
2659 going to New Orleans, that it went at different rates, and went from New Orleans to foreign ports at such rates as the ships were inclined to make, according to the supply and demand for tonnage. We found that it was necessary for us, in order to be on a permanent basis, to have more than a joint rate, to have more than a joint tariff, which might be withdrawn at any time. We could not build up a great permanent business, extending across the continent and even across

the ocean, on the basis that tomorrow the rate might be 2660
changed or the party with whom we were working to reach the different points of production or consumption had some other interest or some greater interest elsewhere. It was necessary in doing this that we should have some reasonable expectation that we could control the permanency of the rate and that we would be able to reach the markets. In other words, if the man producing lumber on the Coast, or cattle on the ranges, or ore in the mines, could not find a market for it and if we could not take it to a market that would enable him to sell his stuff for a profit, he would have to stop making 2661
it. That was the line we worked upon, and that was the reason we felt called upon to put ourselves in a position where we could control access to the markets for him and access to the production for the west-bound. The Burlington reaches, more than any other road in the country, I think, these particular conditions; I think probably as much as all the other western roads put together.

Q. In that particular, as to the places which it reaches, what are the distinguishing features of the Burlington, as compared with the other roads; what points does it reach?

A. Well, if you will commence in the West, it connects with 2662
the Northern Pacific at Billings; it reaches Denver; it reaches Lincoln and Omaha, Nebraska; coming east to Des Moines and to Burlington, and going south to St. Joe, Kansas City and St. Louis; and then you may commence at St. Louis and it reaches every town between St. Louis and the Twin Cities. It reaches Chicago, Peoria, Galesburg, Aurora—all those large points in Illinois. I had the figures and probably I might be able to find them. It reaches a very large percentage of all the manufacturing interests in the state of Illinois, and Illinois is a large manufacturing state.

Q. What are the principal markets in the West for the cat- 2663
tle that are brought over your line, from the ranges?

A. Well, the principal markets in this country, over all lines, are Omaha, St. Joe, Kansas City and Chicago.

Q. All reached by the Burlington?

A. By the Burlington.

Q. As for this ore from the mines, that is shipped eastward?

2664 A. Well, the Burlington runs to Denver and has connection over some road to Colorado, but Denver and Pueblo are the principal western terminal smelting points.

Q. Omaha?

A. Omaha, Kansas City, Aurora (Illinois), and the Black Hills. I think, outside of the copper smelting in Montana, those points cover three-quarters of the smelting in the United States.

Q. What advantage does the Burlington give you in regard to obtaining cotton for shipment?

2665 A. The Burlington, at St. Louis and Kansas City especially, connects with all the southern railways reaching the cotton fields. To illustrate, Mr. Ripley, President of the Atchison, a few weeks ago told me he found they could make more money loading their cars that went down to Texas and back to St. Louis with cotton than they could in hauling the cotton to San Francisco. They would rather haul it up to St. Louis in the return cars and give it to us and let us take it abroad, because they had to haul the car that took it to San Francisco back empty. They had no lumber to bring back, and we had lumber to bring back, for every car we carried.

2666 So that the question is one that depends on the low rate, on the bulk of the traffic, the density, the amount of the traffic and the ability to load in both directions. It would seem rather strange that we should take cotton from Texas to Puget Sound (I think Puget Sound last year carried 75 per cent of all the cotton that left the Pacific coast, and it is the farthest port from the cotton), but the conditions are such as to enable us to carry it there.

Q. Mr. Hill, when was your first shipment of cotton to Japan, or when did that traffic there begin to be of any consequence; in what year?

2667 A. Well, I would not say whether our first shipment was in 1895 or in 1896. At first it was small. After the Cuban war commenced and the vessels were taken for transports, I remember that it was very much curtailed for want of tonnage. Sometimes within a week we would refuse fifteen or twenty thousand bales, for we had no ships to carry them.

Q. What advantage, if any, did you expect to derive, and

have you derived, from the Burlington purchase in regard to 2668
the supply of coal for the country traversed by your line?

A. On the west end we have a local supply of coal. On the east end the coal in the past has come from Pennsylvania, West Virginia mainly, and some from Ohio; but during the season of navigation of 1901-2, and commencing with 1900, the difficulty in getting coal from Pennsylvania mines up to Lake Erie was very great. It was first quite apparent in 1900. In 1901 it was impossible for us to get our full supply of coal. In fact, in both these years the contracting miners were unable to furnish the coal at Lake Erie ports; we had 2669
our own steamers, and could, in an emergency, bring the coal from Lake Erie ports to the head of Lake Superior; we were willing to take it at the head of Lake Superior or at Lake Erie ports, and we were unable in 1900 to get our full supply of coal. We had to bring coal from the south, and bring some of it through all rail, that is, from the east. Last year the situation had grown worse. While the railroads were unable to bring coal for our own consumption, they were also unable to bring it for domestic use, and they were unable to do this because at the same time they were unable to supply the furnaces on their own lines. Furnaces 2670
within a hundred miles of the coke ovens were cold all last winter for the want of fuel, because the railroad companies had absolutely reached the capacity of their facilities. Now, that was, I think, not the capacity of their ability to haul it from one point to another, but they could not move it. I made as close an examination of the general situation as I could, and I came to the conclusion that it was because the business could not be moved at the terminals. It was like the hour-glass—the opening was not large enough to run it through in the time necessary, and that was shown by the fact that the car movement had gone from thirty miles a day to twenty 2671
miles a day in ten years,—the average movement of cars; so they didn't move the cars. This year—1902—the case is much worse, I think. Speaking for the Great Northern Company, at this time we haven't missed a solitary load that we could get, and have kept a man traveling from the mines to the railroad offices trying to get the cars, and we are now well on into October and we have not got half our order of coal

2672 up the lakes. And that applies still more, I understand, to coal for domestic consumption. But that was a matter we saw (and I have spent a great deal of time investigating coal matters; used to be engaged in the coal business; I brought to St. Paul the first coal ever sold here), and naturally the coal supply is an important one, and I felt that unless something were done to secure a supply of coal here in the Northwest there would be a coal famine this winter and no way to avoid it, and every year hereafter it will be greater and greater and no amount of work can avoid it, because the peo-
2673 ple down in the older states, Pennsylvania and Ohio, will see that their own demands are supplied before it comes away out here.

Q. You have been speaking of bituminous coal.

A. Yes, sir, bituminous coal. Anthracite coal is used in the cities, but as long as people have bituminous coal they can live; they can get along without anthracite, and they will be very glad to get bituminous coal before they are done. The coal situation of the Northwest is a very serious one. I think it is one that is very little understood by the public.

Q. Wherein would the purchase of the Burlington shares
2674 which was made, and the control thereby given of the Burlington road, be of benefit to your road and to the country which your road traverses, in helping them to a better supply of bituminous coal for fuel or for domestic use or for manufactures or other purposes?

A. To begin with, the Burlington road has a very low grade down the Mississippi river,—a water grade, 16 feet to the mile, and can carry with a train of properly equipped cars, well designed for the purpose,—a heavy locomotive can carry a modern boat-load on a train.

Q. How does that compare with the capacity of other roads
2675 into the coal fields?

A. I think a Burlington locomotive could haul, for instance, as compared with the Chicago-Northwestern, three times the load; or, to put it in another shape, I am sure that the Northwestern, coming up by way of Madison and Elroy, the Burlington would move a hundred thousand tons of coal with one-third of the train miles necessary on the other line.

Q. What bearing has that capacity of the road to haul so

much heavier trains upon its ability to carry at a low rate, 2676
and consequently the furnishing of this country with coal at a reduced price?

A. Coal at a low price is a necessity. The people in the northwest would have to abandon the country for five months in the year if they could not get coal at a reasonable price; and they cannot get it from the East at any reasonable price. The time has come when the East cannot supply us, and then they have to go to St. Louis or the country between us and St. Louis for the supply of coal. You can get some in Iowa. The Iowa coal is not as good as the Illinois coal, and the northern Illinois coal is not as good as that further south. 2677

Q. Perhaps you didn't get my question, Mr. Hill. I am asking what bearing the fact that the Burlington road can carry so much heavier train-loads than other roads, has upon the question of the rate at which it can carry and the price at which the coal can be sold here and in the country traversed by your road?

A. The load it is able to carry determines the rate, and the rate on the coal is more, in any event, than the cost of producing the coal at the mine; the importance of the rate is, therefore, very manifest. It fixes the price at which the 2678
coal can be sold in the Northwest here. And, again, there was a further reason for buying the Burlington, namely, that the coal may be loaded on cars and the situation controlled so that when cars are in demand we may furnish our cars or they may furnish theirs and let the cars go through to their destination in Minnesota or in Dakota without unloading the coal and breaking it. Every time it is handled it interferes with the quality of the coal. The main point, however, is our ability to control the movement of coal at all. We bought, so that we might supply coal, if the coal miners in Illinois were at any time unwilling or unable to supply coal at rea- 2679
sonable prices—we hoped they would always be so willing—but if not, we have, through the Burlington people, bought twenty-five or thirty thousand acres of coal land in the best part of Illinois, and for the purpose of extending or reaching more into the coal fields, the Burlington bought the Jacksonville & St. Louis, about 100 miles.

2680 Q. Whereabouts does the Burlington road reach the coal fields of Illinois, in what part of the state?

A. Well, it reaches the coal fields of Illinois on their northern extremity, and through its lines and this Jacksonville & St. Louis it reaches to the southern limit of the coal field, down at Centralia or southeast of St. Louis.

Q. How extensive an area are those coal fields of Illinois, as compared with others that are reasonably accessible from this point of the country?

A. Well, there are no others reasonably accessible, unless
2681 you may so call the few pockets in Iowa, and they do not begin to supply—I don't imagine they supply 15 per cent of the consumption of the state of Iowa today.

Q. Then, practically, these coal mine fields of Illinois are what we shall have to almost entirely depend upon in the future in this part of the country?

A. They are the nearest by far to this part of the country; and, with the low grade of the Burlington road and the physical conditions under which the business may possibly be done, it will furnish the cheapest and only certain supply of coal that this country can rely upon, unless you are willing
2682 to pay a price that will bring it. If you have money enough you can bring coal here. But I am speaking of bringing coal here in competition with the ordinary markets East and West under the rule that coal is handled. Coal in this country has, in any event, to come a long way.

Q. Mr. Hill, I desire to ask you in regard to the coal fields of the state of Washington.

A. There are large coal fields in Washington.

Q. I will ask you another question: How far east can that coal be profitably carried?

A. The coal fields in Washington would come half way
2683 across that state. They are mainly located on the western coast, or west of the Cascade mountains; they would come half way across the state of Washington, or as far as Spokane Falls. Spokane Falls is about the same distance from here as is Boston—very little difference; so that it could not come in this direction very far. East of there, there is some coal, excellent bituminous coal, in British Columbia. That is 1,300 or 1,400 miles from here, nearly as far as to Spokane Falls.

The coal from east of the Rocky mountains is, much of it, the same class as the Illinois coals, but the distance is twice or twice and a half as far as it is to the Illinois fields, and there is no population there to consume anything that would load these cars back. Now we are working up an iron ore trade with St. Louis. Within the last week we had advices of seventy-five or a hundred thousand tons of iron ore to go, through the winter, from the iron mines of Northern Minnesota to St. Louis. Coming back the cars will be loaded with coal. The fact that the coal has to come north, or that there is coal to come north, makes it possible to make a lower rate on the iron ore, and together the iron ore rate and the coal rate are both affected and are both reduced to the extent that we can load the cars both ways. This is a matter we have had under consideration; this iron matter we have had under consideration maybe for a couple of months, but it has culminated within the last week. We hope that it will reach 300,000 tons before spring. 2684 2685

Q. In reference to shipments of cotton especially, and other articles, what disadvantage was there in its being carried over separate lines under a joint tariff which you do not have, where it is carried with both roads under the same control,— for instance, in the matter of breaking bulk, or anything of that kind, shifting from cars? 2686

A. Well, it is almost a necessity, if business is to be at all permanent, to be able to control the rate. The rates on the high seas vary according to the supply and demand for ships; and we, in order to take this business west, must be in a position to compete to take the traffic, one day with another. The line between here and St. Louis, if the Burlington was not in a position to work with us and to continue to work with us, might find some other connection that would give them a larger division that we could of the rate; they might find or feel that it was their interest to work with somebody else. Maybe they would give them some other business in lieu of this, and we would have to hire some other road to haul that business from St. Louis here, at the best rate we could get. We could not control it except through the option of some other road which might at any time withdraw the rate; might at any time refuse to make a joint rate with us, except on 2687

2688 terms that would be prohibitory. And, in that way, we could not go very far. We would not be in a position to compete for that business. We must either take that business to the Coast—we must take all the west-bound business we can get to the Coast, or else we must advance the rate on the lumber. Now, outside of cotton—take nails, wire, articles of that kind —that business has grown to very large dimensions, but our rate is a very low one. From Lake Erie to Hong-Kong it is 45 cents a hundred, $9 a ton, on those commodities. But the demand for American steel at home makes it almost a matter
2689 of indifference whether they send it or not, and we have to look not only to cotton, but we have to look to anything that will furnish us business going to the west, whether it is going to the Pacific coast or to Alaska, or to Honolulu, or to the Orient or Manila—anywhere; we must try everything. During the season of open water, during the season of navigation, we can make rates from Buffalo and the lower lake ports by way of Lake Superior on our own lines, but that does not reach to the south, and only takes the manufacturing districts south of the lakes during the season of navigation. A line reaching St. Louis and all the trunk lines of the
2690 south and the trunk lines of the east, between St. Louis and Chicago, puts us in a vastly different position; and that is the reason why it was of such importance for us to control the situation. We could not control it without controlling the access to the main centers. We could not control it unless we could give a market for the production of the line—products raised along our road—whether it was out of the mine, from the farm, or out of the forest. If the man who produced it could not sell it, he would stop producing. And that was the problem we had to meet, and with the Burlington we find ourselves able to meet it.

2691 Q. As I understand it, Mr. Hill, by having control of the Burlington, that was obtained by purchase of its stock, freight originating on the Burlington or brought to it is either carried over that line or over yours and the Northern Pacific without changing cars, whereas, if it were the ordinary practice, in the absence of such an arrangement, there would be a change of articles from one car to another or the breaking

of bulk. Now, what is gained in that particular by avoiding change of cars? 2692

A. Well, the avoidance of changing cars is a decided advantage, but there is a greater advantage in uniformity of service and cars. For instance, we found ourselves face to face with this condition: our cars are larger than the cars of most of the roads. The cars we use in the Pacific trade, in order to carry a respectable load or a paying load of lumber or cedar, carry a large quantity. We found that the small cars of the Southern and Southwestern lines that come up here would hold, for instance, but little more than half our load. Many of the shipments, parties wanted them to be preserved—car number so and so kept separate, not to be mixed. 2693 One of our cars would hold 185 or 190 bales—

Q. Of cotton?

A. Yes, or 160 bales; and we found cars from connecting lines coming in with ninety bales. We could not put two into one; and one of their cars would only a little more than load half of the capacity of our cars. That would make us haul practically empty cars over the road. By controlling the situation we could send Great Northern cars to St. Louis and load them there, if the Burlington cars were not large enough, 2694 or we could transfer them here, because we are in a position to say what we wanted done.

Q. Mr. Hill, to what extent do the conditions that you have said surrounded the Great Northern Company and had to be met—to what extent did these same conditions affect the Northern Pacific Railroad Company?

A. The conditions that would affect the Great Northern would, to a very large extent, affect the Northern Pacific, in a similar way. I would be unable to give the figures as to the effect on the Northern Pacific, but they would be very easily arrived at, as they would on the Great Northern. Except 2695 in the matter of coal, I happen to know that they are about in the same position for their supply of coal from the lakes that we are. They have got possibly a little less than half of their coal purchase for the year, and I think there is practically no soft coal on the docks at Lake Superior to supply the domestic use of the Northwest.

2696 Q. And as to the general traffic of the roads in the country traversed by them, the business afforded by that country and by the country at their terminals, state whether or not the roads are substantially in the same condition?

A. What would affect us would affect them in the same way, as applied to the same business, naturally.

Q. And is their business, to and from the Coast, and their other business such as to put them in the same position with you in regard to the need of such purchase as that of the Burlington?

2697 A. I think entirely so, and in fact I know that that is the case. Both the Northern Pacific and ourselves, as far as that business was concerned, would have to limit the eastward movement or else increase the westward movement in order to furnish the facilities. In order to do that we have got to compete with the Suez canal; we have got to compete with anything that floats on the high seas; and it is a big undertaking, but we are doing it, and doing it successfully.

Q. With what line of transportation does your route, say from St. Paul to China and Japan, compete at the Oriental points which you reach, speaking generally?

2698 A. We compete with not only lines of transportation, but with markets. We compete with goods. The goods are counted at their value laid down there, and the competition extends all the way though from the production, the transportation, the cost of laying them down.

Q. With what lines? In other words, from what countries?

A. Germany, Great Britain, as far as the production and transportation; with transportation alone, Norway and Sweden; they do not produce so much, but they furnish a great deal of cheap transportation. And we compete, of course,

2699 with lines across the American continent, the Isthmus, the Panama route. It is hardly called competition, because the Suez canal is so much more effective that our competition with the Suez canal leaves the Panama route practically out of the question. The other is much more serious. And the rail transportation; take, for instance, traffic going from anywhere in Ohio (Ohio is a large manufacturing state) to go by Suez canal it would have to go down to the seaboard. The same

thing from Scranton or from Bethlehem, Pa., or from Pitts- 2700
burg or Harrisburg; have to go down to the seaboard to take the ship, and the same miles of transportation would carry it, if it was a season when corn—grain—is moving east from Chicago, would carry it in an empty car out to Chicago, and we could take it there and carry it to the Pacific coast, rather than haul a car empty when we were going to bring that car back to Chicago loaded with lumber. In that way we make rates against the high seas.

Q. What lines are there on the—

A. Well, now, you ask me questions as to what lines. I 2701
was thinking of the larger competition. Then you come to the Southern Pacific and the Atchison and the Union Pacific, Northern Pacific, ourselves and the Canadian Pacific. Those are the principal competing lines across the continent. Some of the lines reach out as far as Salt Lake and have various connections there. May be other lines built. They have one now, I think, under construction from somewhere in southern California up towards Salt Lake. We are not sure they will continue to compete for the business. They may. We are entirely satisfied that they should. But whether they are able to compete for this traffic or not, we will be able to compete 2702
for it as long as we have a carload of freight on the Pacific coast waiting to come back; we can certainly afford to haul at a low rate to the Pacific coast, and we will be able to compete for it for a long time, and we will carry that traffic whether the others carry it or not. We are not competing with them; we are competing with the conditions that are made applicable through the Suez canal and through any possible route to get it to the Orient. We have to meet whatever the conditions are, or else not do it.

Q. Mr. Hill, I omitted to ask you, when I was inquiring about the steps you took to develop this Oriental traffic, in 2703
reference to the causing of construction of some ships for that purpose, for that business.

A. A few years ago—say three years ago this fall—we found ourselves entirely unable to get tonnage to carry the business going west. We had to refuse thousands and tens of thousands of bales of cotton. I think we refused between

2704 August and January fifty or sixty thousand bales of cotton because we could not get the tonnage.

Mr. Griggs. That is, cotton intended for Asia?

Witness. Yes, sir. And we started to build our own ships, and they are about ready to go into the water; the first should be launched in December.

Q. How do those ships compare in size with vessels in ordinary use—freight steamers?

A. They are the largest now afloat, I think, except the Celtic.

2705 Q. What is her tonnage, do you know?

A. About 18,000. The tonnage of our steamships is 28,000—about 10,000 greater than the largest afloat.

Q. Those are to ply between your terminus and Oriental ports?

A. Yes, sir. There are now two 18,000 ton ships belonging to the Boston Company, running from the Pacific coast—new ones, built at Sparrow's Point, making their first trip.

Q. Mr. Hill, are you able to state the comparative growth of that Oriental traffic since its inception up to this time?

A. The growth has been very rapid. In some commodities
2706 more rapid than in others. Last year the increase was very large in cotton goods, both raw and manufactured, and in machinery; and in some other commodities it fell off. The oil, I think, was considerably reduced. The Batoum oil, by some arrangement with the American reducers, had that market largely, and we do not carry the oil we did.

Q. Taking the aggregate of the traffic, the total amount of it—

A. Well, I should say the year ending June 30, 1902, the business was more than twice as great as it was the previous year, ending June, 1901. We were in better position to do the
2707 business.

Q. Can you give us the quantity of cotton, in raw cotton or piece goods, that was carried in 1901 and 1902?

A. I can give it to you exactly, by the Great Northern.

Q. Yes, by the Great Northern we are speaking of.

A. In 1901 the amount of cotton piece goods was 13,070 bales; 1902, 64,542 bales. Raw cotton in 1901 was 13,230,000 pounds against 41,243,000 pounds the next year.

2708

At 12:35, the hearing was adjourned until 2 o'clock P. M.

AFTERNOON SESSION.

The witness, James J. Hill, was recalled, and his direct examination resumed as follows:

By Mr. Young:

Q. What is the purpose and advantage of making those steamships of so large a size as you have testified to, rather than making more of them of a smaller size?

2709

A. They are built in a very substantial way, and we felt it was necessary to go as far as we did in the most modern construction and to carry the largest load, in order that we might be able to make a low rate. We carry the cargo of five ordinary freight steamers with one crew, in place of five crews.

Q. That is, then, it was in pursuance of your policy of carrying a large volume of traffic at the lowest rate?

A. Yes, sir. The problem we have to meet is, in any event, a difficult one. We have to compete with the transportation of the whole world, and we cannot afford to do anything except the best that we can possibly devise.

2710

Q. In the purchase of the shares of the Burlington road, was there any purpose or intention on your part, or so far as you know on the part of either of the Railway Companies or those connected with them, to restrain or hinder commerce between the states or among the states or with foreign nations?

A. That, I am sure, never occurred to us. The object was exactly the opposite.

Q. What, if any, has been the effect of that purchase upon commerce between the states and with foreign nations? Has it restrained it, or otherwise?

2711

A. It has very greatly increased it. It has increased it more rapidly than I ever have known commerce of the same extent to be increased in my forty years' experience.

Q. In the same time?

A. In the same time. It has only been in effect practically a year, and in that year the business has more than doubled on the Great Northern Railway.

2712 Q. What has been its effect on the local business of the road?

A. The increased tonnage eastbound, growing out of the increased tonnage westbound, has very largely increased the total tonnage. I think the total tonnage on the Great Northern Railway for the last year—the annual report will give the figures accurately—I think the increase is about 33 per cent. The foreign business has increased over 100 per cent, which is a very unusual increase in one year. And the effect of that, the increase of the entire business, has made a large increase in the revenue of the company.

2713 Q. And what effect has that had in enabling you to reduce rates?

A. We have been able to reduce rates from ten to fifteen per cent in a year on the local business, between the Pacific Coast and the Twin Cities and Lake Superior. When I say ten to fifteen per cent I speak of business in a general way, and that is very nearly the actual reduction.

Q. What has been the effect of the Burlington purchase on the business of the Northern Pacific Railroad Company, as far as you know?

2714 A. Well, I can only testify as to that matter in a general way. The same conditions would affect their road that affect the Great Northern and in the same way, because they are doing the same general business. Their rates have also been reduced, and their revenue has been such as to enable them to make this reduction, without any reduction in their dividends.

Q. Have they also had a largely increased volume of traffic following the purchase of the Burlington shares?

A. Yes, sir; very large.

Q. What, in your judgment, will be the future effect of this
2715 common ownership of the Burlington shares upon the interstate and international traffic of the two companies? Will it tend to restrain the trade of the companies or to increase it?

A. To carry out the policy that has been uppermost in our minds from the time when we built the road, the general plan and purpose in building the road, building with low grade and in arranging for the business, if carried out will very materially increase the business, increase the tons moved and enable

the company to move the tonnage at lower rates, both inter- 2716
state and state, foreign and domestic.

Q. At the time of the purchase of the Burlington shares, was there any purpose or intention to restrain or hinder the traffic of the Burlington road itself,—interstate traffic?

A. No, sir; none whatever.

Q. What has been the effect of that purchase upon the traffic of the Burlington road? Has it hindered it, restrained it, or has it increased it?

A. I think that the traffic of the Burlington road from Billings to the southwest has been very largely increased, 2717
and from here to the south the increase has been considerable.

Q. What is likely to be the future effect? Will it be to restrain or to enlarge the commerce of the road?

A. If the plan as contemplated is carried out, it should make a very large increase in the traffic. For instance, if the iron ore from Minnesota can find the furnaces in Missouri or southern Illinois, or down in that country where they get cheap coal, and bring back coal in the same cars, cars adapted to moving both, that business alone should run very soon into millions of tons. That is one. I know of no place where the business would not be increased; I know of no place where it 2718
would not be increased and benefited. I can imagine none.

Q. Why was it, Mr. Hill, that you took no steps for the purchase of the Burlington road or some other eastern connection prior to 1900 and 1901?

A. The earliest consideration of that question, which I recall, of a line to the south—and the Burlington was mentioned at the time—was in 1897. It was by some friends of mine in London. But we were just emerging from a period of business depression, and the undertaking was a very large one for the Great Northern Railway,—a very large one. It
was thought that if two roads having the same general in- 2719
terest in the broad question of developing their local business would take it up, the burden would be very much less, and the Northern Pacific was hardly in a condition to take it up sooner than the time when it was taken up. Its earnings and dividends were hardly established. While its earnings had been increasing quite rapidly, the company's recent reorganization left its credit somewhat on a different basis from the

2720 Great Northern, which had been paying dividends from its organization or commencement.

Q. Do you remember when it was that the Northern Pacific common stock first reached par in the market?

A. When it first reached par?

Q. Yes.

A. In the spring of 1901. I think it was rather a surprise to some of the shareholders at the time.

Q. In planning and carrying out the purchase of the Burlington shares, was it any part of that scheme, so far as you know, that the shares of the Great Northern and the North-
2721 ern Pacific Companies, or any of those shares, should be put into a holding company?

A. That was no part of the Burlington transaction; it was not considered. I don't know that it was thought of. I know it was never discussed, and I don't think it was thought of or cut any figure whatever in the Burlington purchase. Some of the people connected prominently with the Northern Pacific recognized the advantage of a line to Chicago, and wanted to consider the purchase of another railway that was offered to them, or, as I understand, was offered to them if we would
2722 join. It would not answer our purpose. It practically did not reach anything except Chicago; did not reach St. Louis; did not reach the great markets and material that we wanted to reach and desired to reach, and it was not seriously considered. But the question of the Northern Pacific and the Great Northern ever being put into a common ownership was not thought of in that connection, nor until long afterwards.

Q. At the time of making the Burlington purchase was there any purpose on your part, or so far as you know on the part of your associates, or Mr. Morgan and his associates, of increasing your holdings of Northern Pacific stock so as to
2723 obtain a controlling majority of that stock?

A. At what time?

Q. At the time of making the Burlington purchase.

A. There was no effort made to increase the holdings of the Northern Pacific by the stockholders of the Great Northern that I know of, and I am very well satisfied had such been the case I would have known of it. In fact some of them had sold their stock as the prices advanced. As to Mr. Morgan's

views about increasng his Northern Pacific, I don't think Mr. 2724
Morgan's people increased their holding of Northern Pacific up to or during the time the Burlington transaction was being considered. They could answer that question better than I can.

Q. I meant to ask you so far as you knew.

A. Yes, sir.

Q. Do you remember the date when the resolution of the board of directors of the Great Northern Company was passed authorizing the purchase—

A. I couldn't give the exact date.

Q. —of the Burlington stock? 2725

A. I couldn't give the exact date. It would be in the month of April.

Q. You were present at that meeting?

A. Yes, sir.

Q. State whether or not a suggestion was made at that meeting that, in order to protect the Great Northern Company, the control of the Northern Pacific common stock should be acquired in its interest.

A. As I remember it, one of our directors raised a question that inasmuch as the purchase of the Burlington stock and 2726
the creation of a bond to pay for it involved the joint and several liability of the entire amount of the purchase, it was a matter of consequence to the Great Northern to know that the Northern Pacific would not pass into the hands of people who might be interested in other directions, in developing in other directions or other sections of the country; and I remember I answered that with what myself and friends held at that time, and what Morgan & Company held we would have somewhere in the neighborhood of 35 or 40 millions of the stock out of a total of 155 millions, which was larger than is usually held in any of the large companies. I did not think 2727
at the time that it was at all likely that anybody would undertake to buy in the market the control of 155 millions of stock.

Q. At the time in April, Mr. Hill, how much common stock did you and your immediate associates hold in the Northern Pacific?

A. I should think, on the first of April somewhere from 33

2728 to 35 millions. That is, however, an estimate, and I think a reasonably close one.

Q. Is that common stock?

A. Common stock.

Q. And about how much of that was held on the 21st of April?

A. Well, I don't know that it was not all held then. I know that on the 9th of May, after there had been a struggle, or we will say up to the 3rd of May, after prices had been put up to above par, 110 or 120, and it was actually demon-
2729 strated that there was an attempt to buy the Northern Pacific, I sent word to a few of my associates who were large stockholders, and they sold no more of their stock from that time. Some of them had parted with large amounts of the stock. I know that Morgan & Company, for a fund they had (about a million and a half), on the 2nd of May sold over a million dollars, probably a million and a quarter or more, of the stock. They thought that the market price was quite high and did not believe that anybody was trying to raid the property.

Q. In your statement as to the holdings on the first of
2730 April, putting it, I think, at thirty-five millions, did you include the holding of Morgan & Company?

A. No, sir. I recollect one gentleman who, I think, held three and a half millions, and he sold it all out before he received a telegram from me. He said he would rather have burned it than to have sold it. There were others who held large amounts,—and when I speak of large amounts I mean anywhere from $250,000 up to two or three million.

Q. On the 5th and 6th of May the holdings of yourself and the gentlemen associated with you amounted, as I think has already been testified, to between 21 and 22 millions of com-
2731 mon stock?

A. I think at that time the closest estimate I could make was about between 20 and 21 million.

Q. Between 20 and 21 millions?

A. Yes. Afterwards I think it turned out to be a little more. That was on the 2nd or 3rd of May, I couldn't say which.

Q. And that holding continued?

A. They held from that time on regardless of what the price was. 2732

Q. And the holdings of Mr. Morgan on the 1st of May and before they went into the market to buy, was about how much?

A. Oh, probably in the neighborhood of five or six millions. I couldn't say whether they owned it or whether it was held in their office for the account of other people.

Q. Mr. Hill, after the return of Mr. Kennedy in June, and when it was contemplated taking the stock of the Northern Pacific in the proposed holding company, what proportion of the stock of the Northern Pacific Company was it then expected would be taken into the holding company? 2733

A. Mr. Kennedy returned from Europe early in June and I discussed the matter with him and with one or two (maybe three) other shareholders, I think four, three of whom owned Northern Pacific as well as Great Northern. One had sold his Northern Pacific, attracted by the high price. Following out the plan we had for a long time, of putting our Great Northern stock into one company, the question came up whether we should not put our Northern Pacific in as well. The Northern Pacific that we held at that time was something over 20 millions. Morgan & Company held about the same amount. They had bought in the market in the neighborhood of 15 millions of common stock, and they held something over 20 millions. Together our holdings amounted to about 42 million dollars, probably a little less than 42 million dollars. At the time I discussed that with Mr. Kennedy, after his return, and with the other gentlemen, there was no conclusion, no definite conclusion, arrived at in regard to the Northern Pacific as I remember there was in regard to the Great Northern. That had been considered for a long time, although in view of what happened Mr. Kennedy said we must devise some plan to prevent hereafter such raids as have occurred. 2734 2735

Q. How soon after that was it that an understanding was arrived at that a holding company should be formed, large enough to include the holdings of yourself and associates and Mr. Morgan and his associates?

A. I think it was in the last half of August. It was during the month of August, is my best recollection. I know it was

2736 after Mr. Morgan returned from Europe, and he returned some time in the early part of July.

Q. At that time what amount of capitalization was either agreed on or thought to be the proper amount for the proposed company?

A. When the matter was discussed with Mr. Kennedy and Mr. James and myself in June, I think that we thought a hundred millions would cover the necessity, provided that a large number of the shareholders of the Great Northern did not deposit their shares. There was also a good deal of hesitation; in fact, the formation of a holding company, in the first
2737 place, was discussed among a very limited number of Great Northern shareholders. The amount was comparatively small. It was the stock of those who had always been most active in carrying on the business of the company. But when it came to making a holding company that would hold the ownership of the stock held by these people, they all hesitated about forming any company to hold the shares of the Great Northern Railway in which all the shareholders might not be allowed to participate, if they so desired. And in that way it became necessary—it was decided, and it was decided early, possibly in June; it had been discussed at least a year before
2738 that. I know Mr. Farrer, of the firm of Baring & Company of London, was here and he said, "No matter what you do,—your company has always had the reputation of dealing with all the shareholders on the same basis,—no matter what you do, try and keep that." Everybody seemed to be of the same mind,—that all the shareholders might participate in any advantage that any shareholder might have, so far as related to the action of those who were most active in the company's affairs. That involved the necessity of making the capital of the holding company large enough to take in the stockholders of the Great Northern, if they elected to sell their stock.

2739 Q. Taking that stock at the figures which had been mentioned, 180—

A. That would make 225 million.

Q. 225 millions. What additional sum to those 225 millions was considered necessary on account of the holdings in Northern Pacific stock of your party and the Morgan party?

A. After Mr. Morgan's return from Europe, I bought for myself and a few friends the bulk of his holdings. I think I

bought 12 millions out of the 15 millions that he had purchased 2740
in the market at cost, and with what he held made the control of the Northern Pacific common stock an absolute majority, which controlled the company after the redemption of the preferred. That would take some 48 or 49 million dollars of the stock to purchase the 42 millions of Northern Pacific common, and the additional amount that might be necessary—or rather, the amount, 225, for the Great Northern, with say 50 for Northern Pacific, carried it up 275. We thought at one time of making it 300, covering these amounts and some other properties that the Northern Securities Company desired to buy. 2741

Q. Did you at that time take any account of what ought to be provided in case of your getting additional common stock for your preferred, on the retirement of the preferred?

A. That was considered. Those steps came one after another. They were considered, I should say, after the latter part of August, and prior to the organization of the company. One condition as it took shape called for a relative change in the plan of the stock, that is, an increase in the amount of the stock. I might answer that further, that Mr. Morgan, acting as he had been for the Northern Pacific for a great many years, since its reorganization, was very urgent that whatever 2742
was done for his shares, any other holder should have the same right. That had to be considered.

Q. In case of a retirement of the preferred stock of the Northern Pacific, to be replaced by common stock, if you had taken your proportion, you and the Morgan interest, your proportion of new common stock, what would have been the amount then of your holdings? You would have taken 75/80 of $42,000,000, I suppose?

A. Yes, sir.

Q. That would have brought you up to about in the neighborhood of 90,000,000, or about 80,000,000? 2743

A. Yes, a little over 80; between 80 and 90.

Q. Now, what I wanted to get at was whether at this time, at the end of August, when you were fixing your proposed capital for the holding company, you took into account the increase of your holding which would or might result from a retirement of the preferred stock?

2744 A. That had to be considered; it was considered.

Q. Now, if that was taken at 80,000,000—that was 115—it would be about 120,000,000? Oh, no—

Mr. Richards. 92 million.

Q. It would have been about 92 millions?

A. But there was not 80 millions of the preferred.

Q. No, 75 millions of the preferred.

A. Yes.

Q. To 80 of the common. You would have had 15/16 that you could have taken?

A. Yes, sir.

2745 Mr. Grover. 75/80.

Mr. Young. Well, that is 15/16. I was merely taking round numbers.

Mr. Griggs. 92 millions of the stock of the Northern Securities Company to pay for the common stock of the Northern Pacific, which you and Morgan would have had after the retirement of the preferred?

Witness. I could get at that with a pencil and a piece of paper; I haven't any on this chair. You can figure it out.

Q. It is nearly 82. That would bring that to something
2746 over 300 million. Now, what did you have in mind as to the disposition of the rest of that 400 million at that time, supposing you made it 400 million?

A. Well, I think up to possibly the middle of September it was hardly deemed necessary to make the capital over 300 million. I think that is substantially correct, because we were to offer the Great Northern shareholders the right to come in if they desired, but the market price was higher than the price we offered.

Q. The price offered was 180, I believe?

A. Yes, sir.

2747 Q. And what was the market price of the Great Northern stock during the fall and winter of—

A. I think it ran from 187 to 190 or 195. I don't think it has ever been 180 from the time the offer was made to the present time. The amount was made large enough to provide for—I remember the question asked of me and answered a number of times: make it large enough to cover what you may have to do, so you won't have to amend your articles. I am testifying up to, I should say, the end of September.

Q. The end of September, 1901? 2748

A. Yes, sir.

Q. *The amount actually fixed at 400 million was arrived at* when?

A. Oh, I think some time in October. It might have been the latter part of October. I have had a great many things to think of, and it was in the office in New York and I have no opportunity of going back to refresh my recollection as to the actual date. I am testifying from my best recollection.

Q. What was the purpose after the purchase of the Burlington Company and after the very large purchases of Northern Pacific stock made in the Union Pacific interests,—what was 2749 the purpose after that time of you gentlemen who promoted the Northern Securities Company in forming that company and putting into it a majority of the stock of the Northern Pacific Company?

A. We were particularly anxious to put a majority of that stock where it could not be raided again as it had been. We wanted to put it in a corporation that was not a railroad company,—a company that would hold it as an investment, and the larger the company the more difficult it would be to secure a majority of it. Then, again, a reason why we preferred an 2750 investment company: railroad charters, I think I may say almost entirely, are drawn or granted on terms that do not permit railroad companies to buy the shares or own the shares or investment companies. Railway companies, under certain conditions, can buy the shares of other railways, as a means of consolidation, or they might buy the shares of a road that they would otherwise build. We were advised that we would be safer with the shares held by an investment company, the stock of which could only be held by individuals or by corporations that were not railway companies, and to that extent we would be more free from such raids by interests that were 2751 anxious to destroy or restrict the growth of this country,—such raids as had been made by the Union Pacific interests, so-called.

Q. What injury did you consider was likely to result to the stockholders of the Great Northern Company or the stockholders of the Northern Pacific Company, or to those corporations, if a majority of the stock of the Northern Pacific or a

2752 controlling interest in that company should be obtained by a hostile railway interest?

A. With the Northern Pacific as a half owner in the shares of the Burlington and responsibility for one-half of the purchase price of these shares, the transfers of the shares of the Northern Pacific or the control of the Northern Pacific to an interest that was adverse or an interest that had greater investments in other directions, the control being in the hands of companies whose interests would be injured by the growth and development of this country would, of course, put the Great Northern in a position where it would be almost help-
2753 less, because we would be, as it were, fenced out of the territory south which produces the tonnage we want to take west and which consumes the tonnage we want to bring east, and the Great Northern would be in a position where it would have to make a hard fight—either survive or perish, or else sell out to the other interests. The latter would be the most business-like proceeding.

Q. What would be the effect of such an acquisition by a hostile interest on the minority shareholders in the Northern Pacific?

2754 A. Why, it would practically put the control of the Northern Pacific interest in the hands of people who were hostile to its growth or development.

Q. Exactly.

A. The measure of injury would be destruction.

Q. And its effect on—

A. It would destroy the entire plan upon which the whole enterprise was originally designed and carried out, as far as it had been carried out.

Q. That is, your plan of building up a great interstate and Oriental traffic?

2755 A. Yes, sir; and the conditions under which that business should be done, because the other lines could not—it was a physical impossibility for them to carry at the rates that are necessary to carry it, and the rates that we must make, without making a positive loss on the business.

Q. So that, in effect, they would not only deprive you of that commerce, but they would destroy the commerce itself?

A. Destroy the commerce itself.

Q. It would not be done? 2756

A. It could not be done. I can show it in a moment. The great interests centering in San Francisco have no return cargo from the west except fruit, and that is carried in a special service, in a special car; that car is not intended or designed to carry this Oriental or sea-going business at all; and for every car we can get to the Pacific Coast we have a carload of lumber ready, loaded by the shipper and unloaded by the consignee, and all we have to do to it is to hitch to it and haul it; and the conditions are entirely different. We have no objection to their getting any rates that we make. They have the right to make any rate that we make. We 2757 cannot prevent that, and do not desire to. But we must, in order to carry this business, meet the competition of the Suez Canal and the high seas and the entire world, and we are prepared to do it and we are doing it. And that we are doing it successfully is shown in the enormous increase in the business in the last year.

Q. Was there any other motive, Mr. Hill, in having the Northern Securities Company acquire a majority of the stock of the Northern Pacific Company—was there any other motive in that than the intention to defend and protect the interests of the stockholders and this enterprise which you had 2758 undertaken?

A. The object and the intent was to defend the property that otherwise would be destroyed, both of the Northern Pacific and the Great Northern. When I say *destroyed*, there would be something left, but the main plan would be destroyed; there would be something left, but the property would be incapacitated from doing what it was intended to do and what it was quite able to do.

Q. Was there any intention or purpose on your part or on the part of anyone else, so far as you know, in forming the Northern Securities Company, to restrain trade or commerce 2759 among the states or with foreign nations, or at all?

A. There was absolutely none whatever, and that view of the case never occurred to us; on the contrary, it was constantly in our minds that it was going to be the most effective way of developing and increasing commerce between the states and international commerce. And it was necessary, if

2760 we were to bring his enormous business to the eastern markets,—it was necessary that we should pretty soon be able to reach some point where there was a market, where people would buy our products, and in the growth of that business our increased earnings would put us on a firmer basis and in a better position to make lower rates on the local traffic of our line. The average rates on the Great Northern Railway today are much lower than the average rates on the other transcontinental lines. I think the average rate on the Atchison would raise our revenue five and one-half millions annually, and on the Union Pacific would raise our revenue five and a
2761 half millions, maybe six.

Mr. Griggs. That is, if you carried as much as you do now?

Witness. Just carrying the same amount we do now. If the amount we carry now was carried at the average rate of those southern lines, we would have from five to six millions more money than we have. But by increasing our tonnage and by increasing our revenue we have been able to reduce our rates, and we expect to go on reducing our rates for the same reasons. If we carry that out I see no reason why our rates cannot be materially reduced in the future. We have
2762 little difficulty in earning our seven per cent, which is our dividend, and we don't expect to raise it. Now, as we cheapen the cost of transportation and increase the tonnage, what have we to do with it? We will put it on a safer basis by reducing the rates. And I suppose the public are more interested in low rates and good service than they are in any other attitude of the situation.

Q. Mr. Hill, at the time of the formation of the Northern Securities Company or in the planning or making of it, did you have any intention or purpose of destroying or lessening the competition between the Northern Pacific and the Great
2763 Northern Railway Companies, or did any of the other persons or companies have any such intention, so far as you know?

A. The idea never occurred to me, and I never heard it discussed,—and all matters in connection with the transaction were frequently and fully discussed; I never heard that attitude of it presented.

Q. In point of fact, has the formation of the Northern Securities Company caused or resulted in any lessening of com-

petition between the Great Northern and Northern Pacific 2764
Railway Companies?

A. I don't know that it has affected it in the least. Take the interstate business of the two roads, the Northern Pacific and the Great Northern, from one end to the other, and there is very little of that business that could be affected by the two companies in any way without the co-operation of other companies. The amount of business is very small that is not affected directly by various carriers and conditions. So that if the Northern Pacific and the Great Northern should set their minds and exercise all the ingenuity of their traffic departments to affect the business, I am quite sure that they 2765
could not affect ten per cent of it. I think it would be very much less than that. But I am quite sure they could not affect in any way ten per cent of it.

Q. As a matter of fact, Mr. Hill, has anything been done between the two companies for the purpose of reducing competition at any point?

A. Nothing whatever. I think the competition is just as free and as full as it has been at any time in the past twenty years.

Q. So that as far as you know, Mr. Hill, is either road operated less independently of the other since the formation of 2766
the Northern Securities Company than it was before?

A. If there is any difference, I think they are a little more independent of each other. For instance, the Northern Pacific runs three passenger trains from here to Lake Superior; the Eastern Minnesota runs two. The Eastern Minnesota proposed that they would give the Northern Pacific the right to choose which hour of the two they would start, if they would divide the time. I think they both started a train at the same time. They said, "Now, the through passengers don't need two trains, but if you will start yours at one time we will 2767
start ours at another." The Northern Pacific said, "No, we have got so much local business to take care of, we have got to run ours on our own basis," and that was a complete answer. I speak of that because that is the only occasion that has ever come to my mind where there was anything looking that the roads might come together, and the Northern Pacific felt that they had local business to take care of and would

2768 rather keep their train on the same time that they had had it. But that is not an uncommon thing to take up between any railroads, however strong the competition or how light it is—the time of starting and arriving of trains.

Q. Did the Great Northern Railway Company or its board of directors or any of its officers, so far as you know, have anything to do with the organization or formation of the Northern Securities Company, or was it an affair of the stockholders alone?

A. Neither the Great Northern Company nor any of its officers as such had anything whatever to do with it, not any
2769 more than the most distant railway corporation in the country. Absolutely nothing. The matter of forming the Northern Securities Company was purely of the shareholders and limited to a very small number, I think I am safe in saying not to exceed 11 out of 1800.

Q. Who were those eleven, more or less? You can give the names right here.

A. In the order in which they were most active I would probably have to put myself, and Mr. Kennedy, the representative of Strathcona, and Mount Stephen, Mr. John W.
2770 Sterling, Willis James, Samuel Thorne, Johnson Livingston, Col. Lamont, Oliver Payne, Edward Tuck, George C. Clark, George F. Baker. I think now I have got there most of them.

Mr. Clough. Mr. Cannon.

Witness. Mr. Cannon knew of it, but his holding was small. He probably held four or five thousand shares.

Q. About what was the general holdings of these gentlemen in the Great Northern, as you remember?

A. Between 33 and 35 millions.

Q. Out of a capital of 125 millions?

A. Yes, sir. I have a list of the men somewhere, if I could
2771 put my hand on it. I have a list of the men, the names, that I undertook to see, and I checked them off as I saw them, and the amount of stock they held. I may be able to find that list. I saw it within a few months. It was a list of the parties I saw, and I think there are eleven names on that piece of paper of men whom I have seen and with whom I have discussed when we were arranging to go on and form the company.

Q. What corporate action, if any, was taken by the North-

ern Pacific Company or by any of its officers, so far as you know, in forming or organizing the Northern Securities Company? 2772

A. I don't know that there was any and I don't know any they could take as a company. The Northern Securities Company simply bought the stock of the Northern Pacific from the people who owned it, and the corporation had nothing to say as to the disposition of the stock, the corporation didn't own any stock, or at any rate it didn't sell any stock to the Northern Securities Company.

Q. Shortly after the formation of the Northern Securities Company, you yourself transferred to it, sold to it, a large amount of Great Northern stock and Northern Pacific stock, did you not? 2773

A. Yes, sir.

Q. And large amounts were sold in like manner by other holders?

A. Yes, sir.

Q. In your own case, state whether or not your sale or transfer to the Northern Securities Company was an absolute, out-and-out sale and transfer, or whether there was any understanding or condition or trust or anything of that kind connected with it. 2774

A. The sale by myself and by everybody—and as the president of the Northern Securities Company I know the conditions upon which the purchases were made—they were absolute purchases, as absolute as was possible to make them, and outside of any condition or trust or implied agreement or anything else. They were just as free to sell the stock—that is, the Northern Securities Company is the absolute owner of the stock and free to sell it and dispose of it or burn it if it sees fit.

Q. Was there any understanding as to how the Northern Securities should vote that stock? 2775

A. None whatever. It is a matter for its own consideration. Not any more than if you bought it, or any other purchaser. There was no condition of any kind attached to the sale of the stock. They bought it outright and paid for it, and there is no agreement, direct or implied, in existence or ever was in existence or ever contemplated.

2776 Q. In the formation of the Northern Securities Company, was there any agreement among its promoters or any of them, including yourself, by which they or any of them bound themselves to transfer their stock in either railway company to the Northern Securities Company, when it should be organized?

A. There was no agreement of any kind. When I discussed the matter with these gentlemen they said, "All right, go ahead, we will put ours in"—each man speaking for himself, and I think I saw them all separately, with one exception. I saw Mr. Kennedy and Mr. James together; both happened
2777 into my office at the same time, as was a very common thing with them. Possibly I saw Mr. Thorne and Mr. Clark together. The others I saw separately. There was no agreement, an hour—a minute—before any shareholder of the Great Northern transferred his stock he was at liberty to turn round and go away with it.

Q. And in the purchases made by the Northern Securities Company from the Great Northern stockholders, state whether or not such purchases have been the result of any agreement among several shareholders, or whether they were separate transactions with each shareholder who sold his stock.

2778 A. Each sale covered nothing but the sale of that particular stock. Each shareholder acted for himself at all times. And after the company was organized the offer was made to take the shares of the outstanding Great Northern stockholders on the same terms as the few who had been active in forming the company had put in theirs.

Q. Can you state, Mr. Hill, about how many shareholders there were in the Great Northern?

A. My recollection is there were about 1800.

Q. Now, was there any solicitation with the shareholders of the Great Northern, either on the part of the officers of the
2779 Great Northern or of the officers of the Northern Securities Company—any solicitation to them to turn in, to transfer, their shares to the Northern Securities Company?

A. No, sir, there was absolutely none. On the contrary, great pains were taken to see that every shareholder understood that it was a matter for himself to decide and one that nobody else could decide for him. The price was such, being below the market, that it was thought it would deter a num-

ber from selling their stock. In fact, I did not expect that 2780
so large a number of the shareholders would exchange their stock. We gave them the opportunity if they desired to.

Q. About how many individual shareholders of the Great Northern have transferred their shares to the Northern Securities Company?

A. Well, I can hardly say, but I should think possibly a thousand or twelve hundred. But that information can be accurately furnished from the books of the company. I am only speaking from the best general estimate I could make.

Q. I show the witness a paper purporting to be a circular 2781
from the Northern Securities Company to the holders of Great Northern stock. Is that the circular which was sent out by the Securities Company, soon after its formation, to the Great Northern shareholders?

A. (After examining the paper.) Yes, sir, that is a copy of the circular issued by the Northern Securities Company on the date of it.

Mr. Young. We offer this in evidence as defendants' Exhibit 1.

Defendants' Exhibit 1 is as follows:

2782

"NORTHERN SECURITIES COMPANY.

James J. Hill, President.
John S. Kennedy, First Vice-President.
Geo. F. Baker, Second Vice-President.
D. Willis James, Third Vice-President.
W. P. Clough, Fourth Vice-President.
E. T. Nichols, Secretary and Treasurer.

27-29 Pine Street, New York City,
November 22, 1901.

TO HOLDERS OF STOCK OF THE GREAT NORTHERN 2783
RAILWAY COMPANY:

The Northern Securities Company, incorporated under the laws of the state of New Jersey, with an authorized capital stock of $400,000,000, and with power to invest in and hold the securities of other companies, has commenced business, and has acquired from several large holders of stock of the

Great Northern Railway Company a considerable amount of that stock.

A uniform price has been paid of $180 per share, in the fully-paid stock of this company, at par. This company is ready to purchase additional shares of the same stock at the same price, payable in the same manner, and will accept offers made on that basis if made within the next sixty days.

Offers for sale of stock of the Great Northern Railway Company should be made upon the enclosed form, and should be accompanied by the certificates of the stock offered with transfers duly executed, having United States stamps for transfer tax of two cents per share affixed.

Upon receipt of any such offer, so accompanied, the Northern Securities Company will deliver to the seller of the stock of the Great Northern Railway Company, certificates of its own stock to the amount of the purchase price above named, or, if such certificates are not then ready for delivery, its negotiable receipt obliging it to issue and deliver such certificates as soon as ready. For fractional parts of shares scrip certificates, convertible into stock in multiples of $100, will be given.

NORTHERN SECURITIES COMPANY,

By James J. Hill,

President."

Q. After sending that circular, Mr. Hill, state whether or not you received inquiries from shareholders in reference to what conduct they should take, what they should do with their shares.

A. There were a great many letters; I was in New York at the time, and a great many letters came addressed to the office, and some of them addressed to me, wanting to know what I would advise them to do. Some would write to the office and want to know what Mr. Hill wanted them to do or what the company wanted them to do.

Mr. Richards: Mr. Hill, had you signed the circular of the Northern Securities Company as president of that company?

Witness. Yes, sir.

Mr. Grover. Yes; it was after that that this was sent out.

Witness. My name is printed as president of the company.

Mr. Richards. Yes, I didn't recall exactly.

Witness. The circular has the names of the officers of the 2788
Securities Company in the upper left-hand corner.

Q. What action did you take in answer to those inquiries? How did you answer them?

A. Some individuals came in to see me. I told them it was their own affair. Others wrote, and there were so many letters that I prepared a letter that was in the nature of a circular letter, that would answer all their questions, and that was issued.

Q. I show the witness a paper, defendants' Exhibit 2. Is that the circular letter which you prepared?

A. That is a correct copy of the letter which I prepared in 2789
answer to communications from shareholders.

Q. You sent it simply in answer to communications?

A. Yes, sir.

Q. And not to people that you had not received inquiries from?

A. Oh, no, no. This was in answer to communications, and, as I was coming to St. Paul, this general letter could be sent from the office in New York.

Q. Instead of writing a separate letter to each inquirer, you sent him this one? 2790

A. Yes, sir.

The letter was offered in evidence, and marked defendants' Exhibit 2.

Defendants' Exhibit 2 is as follows:

"Copy. November 30th, 1901.

Dear Sir:

Replying to your letter of the 23rd instant, asking for further information about the Northern Securities Company, I beg to say that the business of that company is to deal in high-class securities, to hold the same for the benefit of its shareholders and to do such other acts as will advance the 2791
interests of the companies whose securities it holds.

The powers of the company do not include the operation of railways, banking, nor buying or selling for others on commission.

The organization of such a company has been considered for many years by the original promoters of the St. Paul, Minneapolis & Manitoba Railway Company, and its succes-

2792 sor, the Great Northern Railway Company, who have always remained the largest shareholders therein. These men have deemed it wise to make permanent arrangements for the protection of their interests and for securing a continuous policy in the management of their properties. Believing the Northern Securities Company will secure the objects named, they have generally sold to it their holdings of Great Northern shares, on the terms stated in the circular.

The traffic of coal and other local companies is of great value to the railway, while the conduct of the business of
2793 such companies is outside of the railway's corporate powers. The Securities Company will control this large traffic for the railway and will receive the profits of these separate properties.

The offer contained in the circular came from the request of the large holders of Great Northern, above mentioned, who desired that all other holders might have the same opportunities as themselves in association with them, and upon the same terms. The writer is of opinion that the offer of the Securities Company is one that Great Northern shareholders can accept with profit and advantage to themselves.

2794 Yours truly,

(Signed) JAS. J. HILL."

It is understood that the foregoing examination of Mr. Hill was on behalf of all the defendants.

CROSS-EXAMINATION.

By Mr. Richards:

Q. Mr. Hill, you signed the circular of November 22 as president of the Northern Securities Company; you signed the
2795 circular letter of November 30, which you sent in answer to inquiries, in your individual name. I ask you whether those inquiries came to you from stockholders of the Great Northern, as president of the Great Northern, or to you as an individual, or to you as president of the Northern Securities?

A. It would be difficult for me to answer. I had been president of the Great Northern Railway for a long time, and, coming from the shareholders of the Great Northern, I think in-

variably I was writing to them giving them my individual 2796
view; that is the way it presented itself to me at the time—
my individual views as to the questions they asked. I wanted
to give them the information as fully as I could, whether I did
it as president of one company or the other; I think it was
more in my individual capacity, as one who had represented
their interests for a great many years. It is the first time
that that question has presented itself to my mind in that
light, and I think that—

Q. Well, the circular letter of November 30 really had all
the weight of your opinion as president of the Great Northern 2797
and as the one who was most intimately connected with its
affairs?

A. I don't think there was any advice given in that letter.

Q. Well, whatever the views expressed were, or the facts
given, they came from you?

A. My recollection of the one of the 22nd was a simple
offer to buy—

Q. Oh, I am speaking of the 30th.

A. Oh, of the 30th.

Q. Of the 30th.

A. That gave them the facts, recited the facts, that the 2798
company was not a railroad company, and I think there is in
it an important matter that they (I felt) ought to know. The
company had been negotiating, and at that time was about to
close the deal for some other important properties that would
go to the Securities Company. I hesitated, I remember, about
saying anything about it, because it might be construed as
advising them, but if I concealed it from them I would be
concealing an important fact. So I preferred to put down the
fact and let it go as it was.

Q. You state in this letter: "The organization of such a
company has been considered for many years by the original 2799
promoters of the St. Paul, Minneapolis & Manitoba Railway
Company, and its successor, the Great Northern Railway Com-
pany, who have always remained the largest shareholders
therein. These men have deemed it wise to make permanent
arrangements for the protection of their interests and for
securing a continuous policy in the management of their prop-
erties." What did you mean by that?

2800 A. "The protection of their interests;" protection from raids like the one which had been made in May previous, on the Northern Pacific. Some such raid might be made on the Great Northern. And for the making permanent the general policy. The road was built with great care, with very low grades, built through a country that had very few people for a long distance west of Dakota. When we built it we had to get permission from the government, because it was unceded land; and we had a policy; building a low grade road, a road that could move a large tonnage (if it could get a large ton-
2801 nage) at a low rate, and develop the business, the country. It is true, as every one will find on inquiry, that that country has practically no manufactures, and the traffic has been confined to the natural productions.

Q. Yes, I understand what the policy was.

A. Well, it was to protect that policy.

Q. It was to protect and continue that policy?

A. Yes, sir.

Q. And that meant to protect and to continue the control which had carried out that policy? That is what you meant by it?

2802 A. Well, it was to protect the policy and to—

Q. Now, could you continue the policy without continuing the control?

Mr. Grover. Let him answer the question he started to answer.

Witness. I will answer it if you will permit me.

Mr. Richards. Yes.

Witness. I may say that I think I controlled the policy of the Great Northern Railway Company and its predecessor as fully as the policy of any railway ever was controlled in this country, and I never owned over ten or twelve per cent—
2803 I never owned a majority of the stock, but I always had a following of good, loyal stockholders, and the men who were most active, covering about 33 or 35 millions out of 125 millions, practically formed the company, and they desired that their other shareholders, whoever they were, new or old, might participate in anything that they were doing, if they thought it would be any advantage to them as shareholders.

Q. And so, in order to continue the policy which had ob-

tained for so many years for the benefit of the company and 2804
of the public, they arranged to put their holdings into this holding corporation,—these shareholders?

A. The eleven shareholders.

Q. Yes.

A. And asked that the same offer be made to all the shareholders so that they might not be charged with any discrimination, or doing anything for themselves that they were not willing to do for all the shareholders.

Q. Exactly. Now, would the policy be perpetuated or the interest protected if less than a majority of the stock of the 2805
Great Northern had gone into the holding corporation?

A. Oh, yes, sir.

Q. If less than a majority of the stock of the Great Northern had gone into the holding corporation, wouldn't the stock of the Great Northern have been liable to a raid by hostile or rival interests?

A. The stockholders of the Great Northern were many in number, but we have always considered they were a very loyal list of stockholders and we never felt that we were liable to lose control.

Q. You thought that about the Northern Pacific, too? 2806

A. The Northern Pacific was in an entirely different position. The Northern Pacific stock, when the Burlington was bought, was selling at somewhere from 50 to 60, while the Great Northern was selling at three times that price. The Great Northern was selling at 180 or 190. A different question about getting control of the Great Northern. In answering the question it never occurred to me that we would lose control of the Great Northern except at a price that we would be well paid if we sold. We could afford to take any price that anybody could pay to get control of the Great Northern. I think there has never been in the past ten years an hour 2807
that that was not true. As long as we could control the traffic and develop it, the Great Northern shareholders would be well satisfied and well paid.

Q. Then you never intended to put into the Northern Securities Company a majority of the stock of the Great Northern Railway?

A. I never did put it in. I put in a very small amount.

2808 Q. And you thought you could protect the interests and continue the policy without placing in the Northern Securities Company a control or a majority of the stock of the Great Northern?

A. When we made the offer we decided to make the offer to allow all shareholders to sell their stock on the same terms as those who had been most active—a small number of ten or eleven. It was necessary, if they were going to sell their stock, to be able to give them the Great Northern stock in payment.

2809 Mr. Grover. Northern Securities.

Witness. I mean the Northern Securities stock in payment for the Great Northern. If the question has reference to the desire or preference, I should answer that if the individual men who formed the Securities Company had their choice and all the shareholders were there and could say, "We release you from any responsibility," we would have preferred to have had the Northern Securities Company stock restricted to the 35 millions. There isn't any question about that. I have discussed that with the shareholders many, many times. One gentleman spent an afternoon discussing it with Mr. Grover;
2810 another one spent an evening at my house; came from London to discuss it. So, it is not a new question with us. The question was, Shall we make a corporation and close the door on our old associates? If we do, it is the first time that anything has ever been done in which any shareholder had the advantage over all the shareholders. And that was the reason for making the offer, and the only reason for making the offer.

Q. Now, what was the response to the offer? How much stock of the Great Northern was exchanged for stock of the Northern Securities?

A. Oh, I don't recall the amount. I know a great deal came
2811 in before—I should say nearly half of it came in very soon after,—maybe 40 per cent. Then a lawsuit was started. I think by the state of Minnesota first, or Peter Power, I am not sure which,—but a lawsuit was started, and we took pains then—a great many had sent their stock to the office—we took pains to notify them that a lawsuit had been commenced, and the stock was not purchased, the transaction was not closed, until they were notified and asked: "Do you

still want to sell your stock?" We felt it was a duty to let 2812
them know that such a lawsuit had been commenced, as that might make some difference in their view as to whether they wanted to sell their stock to the Securities Company or to hold it as Great Northern.

Q. Do you recall about how much stock had been transferred at that time? Was that the 5-12 of the stock of the Great Northern, which is referred to in the answer, that had been purchased and transferred at the time this suit was begun?

A. I don't carry those figures in my mind, because it would 2813
only be recollection, and it is so easy to get the record of any or every day in the year.

Mr. Clough. Mr. Richards, I gave it to you; I sent it to you from New York.

Mr. Richards. I just wanted to connect that with this suit —the information you gave me.

Mr. Clough. I gave you the holding on December 11th. You have it.

Q. Well, then, after this suit was brought, the stock of the Great Northern, which was purchased by the Northern Securities, was not transferred to the Northern Securities, but was 2814
held in outside hands?

A. I don't know that it was. I think that the purchase was not completed. Now, I was not in the office in New York until some time in the winter or spring, and the purchase was not completed; some of it was, but some of it was not.

At this time the hearing was adjourned until the morning of Tuesday, October 21, 1902, at 10 o'clock.

St. Paul, Minn., October 21, 1902. 2815

The hearing was resumed at the same place at 10:35 a. m. James J. Hill, recalled, and his cross-examination resumed, as follows:

By Mr. Richards:

Q. Mr. Hill, I understood you to say yesterday that one reason why the stock of the Great Northern and Northern Pacific was put into a holding corporation was to protect it from raids similar to that of the Union Pacific interests on the

2816 Northern Pacific; that a railroad company, while it might acquire the stock of other railroad companies, could not, under the law, acquire the stock of an investment company, and therefore it was thought advisable to virtually change the stock of the railroad companies into the stock of an investment company, or put the stock of the railroad companies in the control of an investment company. Am I correct about that being one of the reasons you gave?

A. Not in that direction. The Northern Pacific Company we considered much more subject to raids than the Great Northern. The Great Northern was held by investors mainly
2817 who had held it for a very long time; but one of the advantages would be that stock held by an investment company was more out of the way of purchase by railroad corporations, and less liable to be purchased in that way; in fact, the question as to the legality of a railroad company holding the shares of an investment company, that was one feature, not a controlling one.

Q. I understood you to say that you had been advised (and I inferred by counsel) that railroad companies could not acquire and hold the stock of an investment company, and that
2818 was one reason why the Northern Pacific stock was put in the control of a holding corporation.

A. The charters of railway companies, I think, generally preclude the idea of holding investment company's shares.

Q. And for that reason do you think the Northern Pacific stock is any safer now than it was before?

A. We hope it is.

Q. Well, then, will you explain how it comes about that the Union Pacific interests now hold about eighty millions of the stock of the Northern Securities Company?

A. How it comes about?

2819 Q. Yes.

A. They sold their shares of Northern Pacific.

Q. But how it comes about, in connection with this legal objection which you spoke of.

A. That is a matter that concerns them and you; it does not concern us. We haven't the enforcement of the law in our hands.

Q. Yes? The Union Pacific interests, that is to say Harri- 2820
man and Pierce, do hold about 82 millions of the stock of the Northern Securities, do they not?

A. Harriman and Pierce are the holders, as far as I know. Now whether it is held by the Union Pacific or whether it is a collateral trust or collateral for a trust bond for a railroad company is a matter, I suppose, of public record; it does not concern us.

Q. Well, it would concern you if Mr. Harriman and Mr. Pierce should go on and, in addition to their holding of 82 millions, acquire enough more stock of the Northern Securities to control that, wouldn't it? 2821

A. Yes, sir, it would.

Q. And if they could find shareholders of the Northern Securities willing to sell, and if they deemed it profitable to go on, they could acquire a majority of the Northern Securities Company, couldn't they?

A. If they could find people who held it and owned it and were ready to sell it to them, they could buy it, if they were able to agree on the price.

Q. Well, then, the only thing that stands in the way of a raid by Harriman and Pierce, or men of that sort, is really the 2822
fact that shareholders of the Northern Securities cannot be found willing to sell a majority of the shares; isn't that true?

A. I don't know that they could not be found; I would be unwilling to testify.

Q. Well, don't you know that they could not be found, Mr. Hill?

A. No, I do not. I suppose the shares of any business corporation have a value at which the owners would sell.

Q. Well, now, that wasn't true with you, Mr. Hill, at the time the value of the Northern Pacific stock went up to fabulous figures, was it? 2823

A. No, sir.

Q. You stayed "put," didn't you? You "stood without hitching?"

A. We had other interests, and there was a matter beyond the ordinary business interests. Our position was largely that, or my position was that of the executive head of a cor-

2824 poration, the existence of which was in jeopardy if that raid succeeded.

Q. That is what I understand, Mr. Hill, and I am putting it to you now whether you do not feel the same way as the president of the Northern Securities Company: that it is your duty as the head of that company, interested in the development of the Northwest, to see that the Northern Securities stock is not raided by some interest which desires to develop some other section of the country?

A. If other parties desire to buy the stock of the Securities
2825 Company, they could only do so by offering a price that would secure to them the shares—a price that the owners would be willing to accept. And it would be very difficult for them to do it. Possibly this will answer the question: We have tried to make it as difficult as we could, in a fair business way, for such raids to prove successful.

Q. Well, now, as a matter of foresight and of prudence, would not you look to it that the stock of the Northern Securities is not in hands that would sell it out to a hostile interest?

A. I haven't the control of—

Q. You haven't the control, but you have the interest?

2826 A. I haven't the control of who should own it or might own it. The stock is for sale. And the owners must always settle that. I think some of the owners who have always worked together would be very slow to dispose of their shares without consulting their associates.

Q. You know how and in what hands the stock of the Northern Securities Company is held, who are the large shareholders?

A. Probably out of eleven or twelve hundred shareholders I know the names of twenty-five or thirty.

Q. Is there any block of stock held by any one individual
2827 larger than that held by Harriman and Pierce?

A. No, sir.

Q. That is the largest holding?

A. If it is held by Harriman and Pierce.

Q. I understood Col. Clough to say that it stands on the books of the Northern Securities Company in the name of Harriman and Pierce.

A. I have seen it announced that it was placed as security 2828
for a bond or debenture,—some security of the Oregon Short Line.

Q. Well, I was referring to the way in which it stands on the books of the Northern Securities Company.

A. Oh! I have not examined the books for several months. It was issued to Harriman and Pierce, I think, as individuals, as far as the record of it.

Q. About what is the outstanding stock of the Northern Securities Company, how many millions?

A. Oh, three hundred and fifty or sixty; possibly more, and 2829
it may be four or five millions less. I haven't looked at the totals for some time.

Q. Well, if Harriman and Pierce were to double their holdings, they would come close to the mark of having one-half of the stock outstanding, would they not?

A. They would have some difficulty probably in doubling their holding; if they did they would have to pay a fair price for it. They would have to pay a price that the owners would be willing to sell at. The shares are held largely by people who have been interested in the Northwest for a long time, and I think have reason to be pleased with their investment, 2830
and would be slow to sell.

Q. Well, then, that is the true safeguard and security of the Northwest interests, the fact that the stock, or a majority of the stock, of the Northern Securities Company is in hands which have the development of this section at heart and would not be willing to sell?

A. Oh, that,—the development of the section of country—

Q. I mean the development of the lines of railway.

A. And the line of railway is a matter of self-interest with them; that is their business interest; the growth of the country reflects upon the growth and value of their property; 2831
and I think investments are always, that is, business investments, are always controlled by business reasons, and the purchase and sale would be one of price.

Q. Mr. Hill, yesterday you stated that but a very small per cent of the interstate business of the Northern Pacific and the Great Northern could be affected by these two companies in any way without the co-operation of other companies.

2832 A. Yes, sir.

Q. I think you mentioned ten per cent; that was in answer to an inquiry touching the competitive business of the two railways. I would like to have you explain what sort of business you refer to by this particular business that would alone be affected by the two companies. You stated it in a general way; I would like to have you go into some detail.

A. I meant to make it reasonably plain, and will try to do so. The business I alluded to was the interstate business on the lines of the Northern Pacific or on the line of the
2833 Great Northern. The interstate business was not controlled; that is, the rate upon it was not controlled or affected by the rates made by other lines. For instance, a station where the Northern Pacific and the Great Northern railways both reached and some other railway line also reached: it would be necessary at that station for all three roads to make the rate; no one or no two could make the rate independent of the other; and at stations of that kind I feel very certain that business of that description on the line of the Northern Pacific and Great Northern together will not amount to ten per cent of the interstate business.

2834 Q. Do you limit it to business that originates and terminates upon the line of either the Northern Pacific or the Great Northern?

A. Oh, I mean that it is business that originates or terminates on the line of the Northern Pacific or Great Northern, and may be destined for or may originate in any part of the country or out of the country.

Q. But business which cannot be handled by any third line; is that your statement?

A. Business that cannot be handled by any third line, that is competitive between the two, would not amount to ten per
2835 cent of the entire interstate business. I feel very sure that ten per cent is in excess of the amount the actual figures would show.

Q. Why do you make that limitation and exclude all competitive business between the Great Northern and the Northern Pacific where there is also another railroad company which may compete? Is it less important to keep up the competition

between the two lines simply because another one may compete? 2836

A. I answered the question. Mine was in answer to a question, and I tried to answer it intelligently.

Q. Well, it was rather a puzzling answer to me; your statement that the action of these two railway companies could not affect more than ten per cent of the traffic, in view of your other statement that the action of the two railroads in acquiring the Burlington and in carrying out certain improvements in service and in rates had resulted in a very large increase of the traffic. I think you said with regard to certain traffic some thirty-three per cent, and with regard to others it had doubled. 2837

A. More than doubled.

Q. Yes.

A. And that had reference to the extension of traffic and the reduction of rates, and, as I understood the question, in reference to the amount that would be affected, that was the amount of business upon which the Northern Pacific and Great Northern might advance the rates. Quite a different question.

Q. Well, now in that connection do you take the view that the Northern Pacific could not advance or lower the rate where some other company had also to take part in carrying the freight? Do you take that view? 2838

A. A railway can always lower the rate.

Q. No matter whether it carries the freight the entire distance or not?

A. It can always lower the rate, as a matter of right; if it advances the rate and other roads are willing to carry it for less, it loses the business.

Q. Exactly. And if it is carrying freight in connection with another line (a connecting line) it can lower the rate so far as its own portion of the carriage is concerned, whether the other railroad is willing to or not. 2839

A. I think that practice is very uncommon.

Q. I think so, too.

A. I think it might be able to do that, but if the rate is a published rate, which the law compels, I do not know how a railroad company would make a published rate, and then in

2840 connection with another road, or what is known as a joint rate, reduce its own rate below the rate at which it was carrying the same class of business over the same country. I think it would be rather difficult to reconcile it with the law.

Mr. Richards. Well, that was not the case I was referring to. Of course, I meant a lawful reduction of rate, not any cutting.

Examined by Mr. Day:

Q. Mr. Hill, you spoke yesterday of the development of the Great Northern Company. Was it organized under a special charter or under the general law?

2841 A. Under special charter.

Q. What is the corporate name of the Great Northern Company?

A. Great Northern Railway Company.

Q. What charter was it evolved out of?

A. I think the name of the original corporation was the Minneapolis & St. Cloud, or it might be Minneapolis, St. Cloud & Superior.

Mr. Grover. Minneapolis & St. Cloud Railway. Simply the name was changed.

2842 Mr. Day. Simply the name was changed?

Mr. Grover. That is all; simply changed the name under the provisions of the charter.

Mr. Day. The Great Northern took all the rights and—

Mr. Grover. Changed the name to the Great Northern.

Mr. Day. It retained all the rights, franchises and land grants that were appurtenant to the charter of the Minneapolis & St. Cloud?

Mr. Grover. It didn't retain it—it was that company.

Mr. Day. I am asking Mr. Hill simply to get it in the record, that is all.

2843 Witness. It is that company, with the change of name, is it not?

Q. How much of a line of railway was built by the Minneapolis & St. Cloud before its name was changed to the Great Northern?

A. About 200 miles, if I remember right; maybe 230.

Q. What mileage does the Great Northern Railway Company own?

A. It has a very short mileage; almost all the lines that it 2844
controls it owns through the ownership of stock or leases.

Q. Could you give approximately what mileage the Great Northern Railway Company owns?

A. A copy of the annual report just published (which I would be glad to give you) shows in detail.

Q. I thought perhaps you might give approximately the mileage owned by the Great Northern Railway Company.

The Examiner. Do you offer that as an exhibit?

Mr. Richards. We would like to have that in, and Mr. Hill says he will furnish it.

The Examiner. Defendants' Exhibit 3 will be supplied by 2845
the witness.

Q. Could you give it approximately, Mr. Hill?

A. Oh, I could approximately. It is changing almost from month to month, added to. Somewhere between 5,500 and 6,000 miles.

Q. That it owns?

A. That it owns or leases, or owns the shares of.

Q. No, my question was as to the mileage that is actually owned by the Great Northern Railway Company.

A. No, I could not. I would have to go back and look at the 2846
titles; I don't know that it owns, except in the way that I have spoken of—I don't know that it owns any.

Mr. Grover. Is that what you want?

Mr. Day. That is what I want.

Mr. Grover. It does not own the fee of any—

Mr. Day. Mr. Hill ought to know; he is the president and was present through its development.

Q. Now, what is the mileage of the St. Paul, Minneapolis & Manitoba road, approximately?

A. About 3,800 miles.

Q. Was that company organized under a special charter 2847
to it?

A. Yes, sir, a special charter; not to that name, but a special charter by the territory of Minnesota, before it was a state.

Q. And to what company was that charter granted?

A. I think the title originally was the Minnesota & Pacific.

Q. Was that another instance of a mere change of name

2848 by which the Manitoba road went on, under the charter of the Minnesota & Pacific?

A. I think the Minnesota & Pacific was changed to the St. Paul & Pacific, and the St. Paul & Pacific to the St. Paul, Minneapolis & Manitoba.

Q. And the St. Paul, Minneapolis & Manitoba road took all of the franchises of the Minneapolis & Pacific and the St. Paul & Pacific?

A. Of the Minnesota & Pacific.

Q. Of the Minnesota & Pacific, and the St. Paul & Pacific?

2849 A. Yes, sir.

Q. Including its land grants and whatever pertained to it?

A. It was a foreclosure of bonds, and it took whatever the decree of foreclosure gave.

Q. How did the Great Northern Railway acquire the title to operate the St. Paul, Minneapolis & Manitoba road?

A. In the first instance by a lease.

Q. In what year was that?

A. I think in 1889.

Q. For what length of time?

A. It was completed probably early in 1890; 999 years, I 2850 believe, was the term of the lease.

Q. The Great Northern has a lease of the Manitoba road for 999 years?

A. Yes, sir.

Q. Now, in addition to that, is it an owner of the stock of that road?

A. It subsequently bought the shares of stock of that company to a very large extent, say 97 or 98 per cent.

Q. What is the relation of the Great Northern to the Eastern Minnesota?

A. It leases it.

2851 Q. Is that a long-term lease also?

A. I think that is 99 years.

Q. Is it an owner in the shares of the Eastern Minnesota?

A. Yes, sir.

Q. What proportion of the stock does it own?

A. Very large; almost entirely.

Q. What other roads are operated or owned, by the ownership of stock, by the Great Northern?

A. The Willmar & Sioux Falls, Montana Central, some lines 2852
in Dakota, some lines in Washington, some lines in Montana, and some in Idaho.

Q. And the total mileage, as operated by the three proprietary lines or leased lines, is now what?

A. The total mileage of the system is between 5,500 and 6,000. The report will show accurately.

Q. You were speaking yesterday of lumber rates from the Pacific coast east, and you mentioned a meeting of some lumbermen who came here to consult you, or you met them elsewhere, in which it was agreed upon that the lumber rates should be reduced; when was that? 2853

A. That is not according to my testimony.

Q. Well, whatever you spoke of; you spoke of a meeting.

A. I said that on my first trip to the Pacific coast I called together the lumbermen to try and find out what rate would enable them to move their lumber to the Eastern markets, to markets east of the Rocky mountains.

Q. Now, I ask you when was that meeting?

A. That meeting, I think, was in the fall of 1889.

Q. When was the rate of forty cents a hundred put in on that lumber?

2854

A. As soon as our road was completed and ready for business, which was in 1893.

Q. You mean by forty cents a hundred, the rate from the Pacific coast to the Mississippi river?

A. To the Twin Cities or to the head of Lake Superior, or fifty cents to Chicago. I think the fifty-cent rate was made at that time, or very soon after.

Q. Did any of the other lines follow your rate of forty cents?

A. Where from?

Q. Well, say from Washington to the Mississippi river,— from the origin of the traffic. 2855

A. The rates to Minnesota Transfer or St. Paul and the rate to Omaha are usually the same; but the rate on lumber to Omaha has never been made as low as it is here.

Q. Did any of the lines meet your rate of forty cents to the Twin Cities?

A. The Northern Pacific did, and I think at that time it was the only line. I know Mr. Villard, a few months before we

2856 opened the road, said that a sixty-five cent rate was an impossibility. But they changed their mind on that subject.

Q. When you made the reduction in rates from the Pacific coast to the Twin Cities or to the Mississippi river, the head of the lakes, did you make a reduced rate correspondingly to interior points between the Mississippi and the Pacific?

A. Certainly; the long and short haul would compel that, wouldn't it?

Q. Well, I am asking as a matter of fact. The rate was uniform, was it,—a blanket rate,—covering the entire territory?

2857 A. The rate from points west of the Rocky mountains, Kalispel valley, was somewhat lower than the Pacific coast rate.

Q. Has the rate continued the same from that time until now, or has it been changed since?

A. It has not been changed; I think the rate has remained. It is a very low rate,—I think the lowest rate on lumber that is made anywhere.

Q. You have mentioned a reduction in rates of ten to fifteen per cent since the purchase of the Burlington road.

A. Yes, sir.

2858 Q. When was that reduction made?

A. During the last year.

Q. About when?

A. Oh, my recollection is that the merchandise reduction was made some time early in the year, soon after the 1st of January. The grain rate was made during the summer, but before the crop moved.

Q. Who directed the reduction of the rates?

A. On the Great Northern?

Q. Yes.

A. It was a matter of conference between the officers and

2859 myself. It was not a new thing, the reduction of rates on the Great Northern; it is not an uncommon thing. It is quite frequent. It has been for a number of years.

Q. Is that reduction, the one that was made early in the year, the one that Mr. D. H. Miller participated in while he was yet vice-president of the Great Northern, and its traffic manager?

A. Mr. Miller, when he was vice-president of the Great

Northern, had to do with considering the reduction. The re- 2860
duction, the character of it, was one that made necessary a great deal of careful work. It was adjusting the distance tariff as well. The distance tariff, owing to changes in the mileage, had become a sort of patch work, and the rate was reduced substantially to making the distance tariff 105 per cent of the terminal tariffs,—the reduction varying in different localities; some places it might be 8 per cent and in others 25 or 30, but I think the average was about 15.

Q. My question, Mr. Hill, was whether the rate, the reduction that was made early in the year on merchandise, as you 2861
called it,—whether that was the schedule that was made by Mr. Miller, in which he participated?

A. He had to do with the matter while he was here. I am not clear as to whether, when the rate was made public, Mr. Miller was here or not.

Q. Were those reductions made on the class rates or on the commodity rates?

A. Largely on class rates and distance tariffs.

Q. Iron or steel is not in your class rates, is it?

A. I have not the classification here; if I had I could tell you. 2862

Q. Do you happen to know?

A. I do not. In carloads it would be in the special.

Q. Yes, I am speaking of carload lots.

A. Well, it would be in the special. But the classification would be a great deal more accurate than my memory.

Q. Then I will put it in another form. The reduction that you claim to have made, after the purchase of the Burlington, did not cover iron or steel, did it, Mr. Hill?

A. I could not say.

Q. Or coffee or sugar?

A. It is quite easy to get the tariff before and after, and 2863
that will show exactly.

Q. Yes. I am endeavoring to ascertain what you cover when you say a reduction of ten to fifteen per cent had been made after the purchase of the Burlington.

A. The reduction amounted to ten or fifteen per cent; the reduction amounted on grain to practically ten per cent, almost exactly ten per cent, as nearly as it could be made, in

2864 the West, and to substantially the same in the East; while the reduction of merchandise varied in different localities, and on the whole was about fifteen per cent on merchandise.

Q. This reduction of ten per cent that was made on grain, from what points to what points did that reduction apply?

A. From points on the line of the railways to the terminal points, where the grain moved to market.

Q. Do you mean to say that from all the points where grain was raised on the Great Northern, to the Twin Cities, the rate was reduced ten per cent?

2865 A. Nearly that, and some places more than that.

Q. And on the Northern Pacific likewise?

A. I am more familiar with the reduction of rates on the Great Northern.

Q. Well, you said the rates were reduced, in response to Judge Young, who made that remark, and I am asking you now if these rates applied on the Northern Pacific?

A. I am more familiar with the rates on the Great Northern, but I think an examination of the tariffs will show that it was substantially the same on the Northern Pacific.

Q. Well, now, did these reductions apply from all points on
2866 the Great Northern to the Twin Cities, on grain?

A. Substantially so, on all points where grain is raised.

Q. Yes, of course, I am asking you a practical question now, and where it operated.

A. Yes, sir.

Q. At all points where grain was produced, had its origin, that reduction applied to the Twin Cities and also to the Pacific coast?

A. And to the head of Lake Superior.

Q. Yes, applied to all three: to the Twin Cities and the head of Lake Superior and to the Pacific coast?

2867 A. I understand that the reduction on the eastern end was not exactly ten per cent; in some cases it was more and in others not so much.

Q. Have you exercised a general supervision of tariffs over the Great Northern system during the past two or three years?

A. Not in a way of supervision. The changes that have

been made, if they are of large consequence, have been a mat- 2868
ter of conference or advisement.

Q. Is it true that about the 1st of January, 1900, a new classification went into effect on the lines of the Great Northern and Northern Pacific, and in fact on all the transcontinental lines west of the Mississippi river?

A. I could not testify as to when the classification went in. It is quite an easy matter to fix the date by getting the classification sheet.

Q. The change of classification, you may recall, Mr. Hill, on the 1st of January, 1900, occasioned a very great deal of dis- 2869
cussion throughout the United States; protests were filed with the Interstate Commerce Commission, and published in many of the newspapers of the land, regarding the official classification that applied east of the Mississippi river. At that time a new classification went into effect, applying upon the roads west of the Mississippi river, the Burlington and the Great Northern and the Northern Pacific. Do you recall that at all?

A. I do not. I know there was a great deal of discussion; I remember there has been from time to time very consid-
erable discussion on the matter of classification and attempts 2870
to call for a uniform classification throughout the country. I never could understand any reason for it. I have seen the discussions and I have seen arguments in favor of it, but the conditions—

Q. I am not referring to the question of uniform classification.

A. I was answering this in regard to the "discussion." as I understood your question.

Q. No, not the uniform classification. It was the complaints of manufacturers and shippers that by reason of this classi-
fication that went into effect on the 1st of January, 1900, in 2871
the territory of the Great Northern road and the Burlington and the Northern Pacific, the rates were advanced from fifteen to fifty per cent on more than 250 articles of general merchandise. Do you recall that?

A. I do not, and don't think that it applied in any such way. Most of that business is carried under commodity rates.

2872 Q. Well, I am speaking now of the class rates that were changed.

A. I think that the business is carried under commodity rates and not under the class rates; I don't think the class rates practically cut any figure in it.

Q. These articles bore the class rates, and the articles were changed from a lower class to a higher class by reason of the change of classification; the rate was changed on the article. You don't recall that?

A. I do not.

2873 Q. You don't know whether that is or is not true?

A. I don't know whether that is true or not.

Q. Now, to get back to the question of the reduction of rates. You say you don't remember whether sugar and coffee and tea and oil and iron and nails and wire are carried in class rates or commodity rates?

A. Sugar is carried in class rates, I believe. I do not charge myself with the classification.

Q. Was the rate on sugar reduced?

A. I could not tell you, sir.

Q. Was the rate on oil reduced?

2874 A. I wouldn't undertake to say.

Q. Or nails?

A. I wouldn't undertake to say.

Q. Or oil?

A. You can get all that information from the tariffs better than from my recollection.

Q. I am trying to ascertain what you covered by your general statement when you said rates had been reduced ten per cent; I am endeavoring to ascertain whether rates were reduced on these necessaries of life.

A. Rates were reduced on the business of the railway, the
2875 business carried by the railway, and the reduction can be substantiated more readily by the tariffs themselves than by any other means.

Q. I thought perhaps you had looked into the question; that when you said there had been a reduction of ten per cent, you would probably know on what articles the reduction applied.

A. The reduction of ten per cent on grain on the Pacific 2876
coast; the reduction was ten per cent.

Q. Yes; that was this summer you made that change?

A. Yes, sir; and that was the reduction I alluded to; the reduction on the eastern end of the road was an average of about ten per cent. It might be a little more. In some cases it was considerably more than ten per cent, and in some cases not so much. The rate, however, would average about ten per cent. Then, the merchandise rate, I think, would average fifteen per cent of the existing rates.

Q. But you can't give what articles of merchandise the re- 2877
duction was made upon?

A. No, sir, I could not. The figures in my mind came from my general knowledge as to the effect upon the revenues of the company, and so on, and in discussing the matter with the accounting department and the traffic officers that was the effect of the reductions.

Q. You spoke of a rate that you put in from some point on Lake Erie to Hong-Kong on nails and wire, of forty-five cents a hundred?

A. Yes, sir.

Q. What was your rate to the Pacific coast at that time on 2878
the same articles?

A. I don't know.

Q. Can you state, Mr. Hill, on how many articles the rate was reduced after the Burlington purchase?

A. The tariffs will give that information better than my recollection, and we will be very glad to furnish the tariffs.

Q. Yes; I am asking if you know.

A. I would not undertake to say, speaking from recollection.

Q. You only state generally that the rate was reduced on 2879
some articles, but you cannot state what they were, or the number?

A. I have stated, and tried to.

Q. You stated grain, I recall that. Now, on what others?

A. On merchandise.

Q. What do you mean by merchandise?

A. On all that comes under the class of merchandise. Now, lumber is not usually called merchandise, for it is carried in

2880 a classification by itself; and so is pig-iron; so is coal; so is salt.

Q. Did you make a reduction on those?

A. They were already very low.

Q. Did you make any reduction on those articles after the Burlington purchase?

A. I think not. I think those rates are lower here than they are in most of the states in the East, where they carry ten or fifteen times the tonnage—the density of traffic. I think the coal rate here is lower than it is on the Reading road, for instance, or on the Lackawanna.

2881

Q. How long has that rate been lower than on those roads?

A. Oh, several years.

Q. There has been a very bitter complaint in the East that the rate on coal on those roads is abnormally high.

A. I have often wondered why the gentlemen who are charged with the regulation of these matters did not take it up and help the public.

Q. Your astute counsel have had determined that question, I believe,—that the reasonableness of rates or the amount of rate was not a question that the public authorities could deal

2882 with; that would have to be left to the individual suitor. I think you got some such decision as that from the Supreme Court. Now, Mr. Hill, do you know what your gross earnings were per ton per mile of traffic, last year?

A. The year ending the 30th of June?

Q. Yes.

A. Yes, sir.

Q. What was it?

A. .859 of a cent.

Q. Do you know what the average earnings of the roads of the United States per ton per mile were in that same year?

2883 A. I have not seen the figures up to the 30th of June.

Q. It was .729. Yours was what?

A. .859.

Q. The average for the roads of the United States was—

A. .729.

Q. .729. What was yours for the year ending June 30, 1901?

A. I could not recall it. It would be something higher; .860 something, I should think.

Q. Do you know what it was on the Northern Pacific? 2884

A. The Northern Pacific would be higher; probably in the neighborhood of .900.

Q. Do you know what it was on the Atchison?

Mr. Grover. .988.

A. I think the Atchison would be nearly a cent. I know I looked this morning; opening my mail I found the report of the Rock Island; I found that was 1.04 for the year just closed.

Q. I examined the report of the Interstate Commerce Commission, their statistical report for the years 1900 and 1901, which is made on the sworn returns of your own road and of the other roads of the United States. 2885

A. Yes, sir, I have no doubt they are correct.

Q. And the average earnings for those two years were somewhat lower than yours, which brings me to ask you to explain wherein the Atchison rates are higher than your rates. You said yesterday that if you could have the same rates on your road that the Atchison gets on its, your earnings would be something over five millions in excess of what they now are on the same quantity of traffic carried.

A. If you will take the number of tons carried one mile by our road and multiply it by the average rate of the Atchison, 2886 I think you will find it will increase our income about five millions of dollars.

Q. But you didn't mean to have it understood that the rates of transportation on transcontinental traffic are higher on the Atchison than they are on the Great Northern or Northern Pacific?

A. In many cases they are.

Q. Are the classification rates not the same?

A. I don't know.

Q. Do you file with the Interstate Commerce Commission all of your rates? 2887

A. I think so. All interstate rates I think are filed with the Interstate Commerce Commission.

Q. The rates that are filed by both roads with the Interstate Commerce Commission are the same, the class rates.

A. Are they?

Q. They are.

2888 A. To common points?

Q. Well, to Pacific coast points and transcontinental and Asiatic traffic.

A. I think the rates on Asiatic traffic vary.

Q. They vary by water, but I am speaking now of the rail haul.

A. Take, for instance, the rate on lumber from the Pacific coast to Omaha or Kansas City, I know that that rate is higher than the rate to St. Paul or Duluth.

Q. Yes, but you say they don't carry any of that lumber.

2889 A. The Atchison?

Q. Yes.

A. They don't carry lumber from Puget Sound, but lumber does come from Oregon.

Q. From where?

A. From Oregon, to all the intermediate country.

Q. Does the Atchison participate in that traffic?

A. No, sir, not that I know of.

Q. No, I thought not. These rates that were put into effect in the early part of this year, went into operation on both the Northern Pacific and the Great Northern about the same time?

2890 A. And on other lines in the same country.

Q. What other lines?

A. I think the Soo road had to modify its rate.

Q. Yes, they had to meet it to get participating traffic.

A. And the Milwaukee & St. Paul and other roads.

Q. Now, were those reduced rates that were put into effect in the early part of this year on the Great Northern and Northern Pacific the result of a conference between the Northern Pacific and the Great Northern traffic officers?

A. I think that all rates or all changes in rates are preceded by a conference between the parties interested. I think that

2891 is the custom.

Q. The result of an agreement? They agreed on these reductions and put them in at the same time?

Mr. Young. No, he didn't say so.

Mr. Day. I am asking him if that is so.

Witness. Not necessarily an agreement. Very dangerous to make an agreement in regard to rates. They find each other's views, and if one road wants to make the rate and to

make a reduction in the rate and notifies the other, they are going to do it anyway, the discussion ends in their publishing a rate that is probably uniform. 2892

Q. Do you remember being at Chicago in January of this year when the subject of the combination between the Great Northern and the Northern Pacific was under consideration by the Interstate Commerce Commission?

A. I remember being called to Chicago to testify on the subject of community of interests, or something of that nature.

Q. Yes, community of interests. And consolidations and combinations of carriers. 2893

Mr. Grover. That was put into the title afterwards.

Witness. That was not in the notice that came to us there.

Mr. Day. You are in error in stating that, Mr. Grover. I do not regard it as of any special consequence excepting that you have publicly stated an error. The notice that went to you was a copy of the resolution of the Interstate Commerce Commission, and, among other things, it says: "And whereas, it appears to the commission that certain consolidations and combinations of carriers subject to the act, including the method of association known as the 'community of interest plan' should be made the subject of investigation." "Combination" was in it and was not put in afterwards. 2894

Mr. Griggs. Do you want this on the record?

Mr. Day. It is immaterial to me. I suppose the stenographer took it all, with Mr. Grover's remark, and then Mr. Hill said it was "community of interest," and of course it was, and the other thing as well.

Q. What I was referring to there was the testimony of Mr. Miller; Mr. D. H. Miller, who had been vice-president and traffic manager of the Great Northern.

Mr. Clough. D. Miller—not D. H. 2895

Mr. Day. You are right; Darius Miller.

Q. Mr. Miller there testified that in making up this schedule of rates that you speak of that went into effect early in this year, it was done under an agreement with the Northern Pacific and the Canadian Pacific, I think, and that the reductions which were made were made only in the class rates, and that coffee and iron and nails and oil and wire and sugar and

2896 tea were not covered by the class rates, that they were what he called commodity rates, and that there had been no reduction in the commodity rates. Do you remember that testimony?

A. I do not, sir; I don't know that I heard it.

Q. Mr. Hill, Judge Young put the question to you concerning reduction in rates following the acquisition by the Great Northern and Northern Pacific of the Burlington system, and the question was framed to give the impression that the reduction of rates was caused by the acquisition of the Bur-
2897 lington. Is that the way you wish to have it understood—that it resulted from that and as a consequence of that?

A. The increased traffic growing out of the acquisition of the Burlington, or the acquisition of the Burlington was in a measure responsible for a portion of that increased traffic. The increased traffic, creating a larger revenue from a larger business, made it not only possible but we thought it wise to reduce the rates. The rates have been reduced always on the basis of the growth of the company's business, and in all the years, several years past, our company has had its dividend, that is all its shareholders get, and as our business
2898 increases, the volume of our traffic increases and our revenue increases, we are able to reduce our rates, and hope to be able to continue to reduce them for the same reason.

Q. My question was whether you wished to be understood as stating that it was because of the acquisition of the Burlington system by the Great Northern and Northern Pacific that this reduction in rates that you mentioned took place?

A. I understood the question and tried to make it plain; I hope I have.

Q. I simply wanted to clear up my own mind by asking
2899 you definitely if that is the way you wish to be understood.

A. I hope I have made the answer plain.

Q. Did you cause a reduction of the rates applying on the Burlington system to be made at the same time?

A. I had no desire and made not attempt to—

Q. The reduction applied—

A. I made no attempt to deal with the rates on the Burlington in any way.

Q. The reduction applied only to the Great Northern and 2900
Northern Pacific?

A. Yes, sir.

Q. The roads in direct competition, going west?

A. In my testimony I alluded to the reduction on the Great Northern particularly, and also to the reduction on the Northern Pacific which corresponded with the Great Northern where they were at common points.

Q. You spoke yesterday, Mr. Hill, of the vast benefit that is to accrue to the people of this northwest territory, lying west of the Mississippi, from this acquisition of the Burlington by the Great Northern and Northern Pacific; that by 2901
reason of that acquisition you were going to give them coal here in the Twin Cities and in the manufacturing towns here in the West at lower rates than had been prevailing.

A. I would like the record read where I said that. I think that is not a fair statement of what I said.

Q. Well, then, I don't wish to be unfair; that was the impression it created on my mind, that you would be enabled by this acquisition to lay down coal here cheaper than it could otherwise be laid down and you could avert coal famine. Now, I wish to know whether any reduction in the coal rate 2902
from the Illinois coal territory to St. Paul or Minneapolis has resulted in the year and a half of your control of the Burlington system.

A. The Burlington has not been controlled for a year and a half, to begin with; and in the next place, I did not have, nor is my language susceptible of that meaning. I undertook to make it plain that the acquisition of the Burlington and the bringing of the interests of the Burlington into that of the Northern Pacific and Great Northern would make it possible to get coal for this country, and it was not possible to get a certain supply of coal in any other way except from Illinois. 2903

Q. Are the facilities for bringing coal over the Burlington road from Illinois greater by reason of your control of the road than they were when the Burlington was under an independent control?

A. The facilities and reasons for bringing it here are greater if we controlled the Burlington than if we did not. If we did not control the Burlington and they desired to send their coal

2904 to other places, we would fall very short of compelling them to bring it here; but I think—

Q. Does the transportation line direct where a commodity shall be shipped to, or is it the shipper, the consignor?

A. We could control that by buying our own mines, and be certain that we could bring it here.

Q. Oh, you could do it?

A. Yes, sir.

Q. Have you purchased any mines in Illinois?

A. We have to this winter. And I will answer that ques-
2905 tion if it is germane to this examination; we prefer not to give our business away and advertise it to the world unless it is necessary.

Q. Well, then, I certainly have no wish to intrude upon your private affairs. But as you assigned that as part of your argument and as a part of the reason why the northwest was to be benefited by your possession of the Burlington stock or Burlington road, and you mentioned coal fields—

A. Well, our interest—

Q. I will ask you this question, Mr. Hill.

A. Well?

2906 Q. Has the Northern Securities Company coal mines in Illinois now, or had it at the time of the inception of this suit?

A. No, it had not at the time of the inception of this suit.

Q. When did the Burlington road pass into the possession of the Northern Pacific and Great Northern?

A. I think a year ago in July.

Q. The purchase was made when, concluded when?

A. Oh, probably concluded in September.

Mr. Clough. Yes.

Witness. A year ago last month.

Q. When was the contract made for its purchase?

2907 A. It was made during March and April mainly, but the completion of it—the final completion—was I think in September.

Mr. Clough. That is right.

Q. You spoke of the increase of business that had followed the purchase of the Burlington system.

A. May I, before the coal question is dismissed, endeavor to clear that matter?

Mr. Day. I have no objection, Mr. Hill, to your making 2908
any statement you wish.

Witness. I do not want to be misunderstood, and from the questions I think I have been. The Great Northern Railway Company and the Northern Pacific Railway Company have an interest in this country and in people living here, and inasmuch as our winters are cold it would be difficult for them to live here without fuel, and it is a very serious matter —it is a very serious matter for the railways. We don't know now that we will be able to run our trains to the 1st day of February, with the lack of supply of 2909
coal, without bringing coal from Illinois, and we don't know but we will have to give up a portion of our supply of steam coal to keep people from freezing before spring,—and it is not due by any means to the anthracite strike, and I tried to make it plain yesterday that it was not; but it is due to the inability of the railroads between Lake Erie and the mines in West Virginia, Pennsylvania and Ohio to move the coal. They are unable to move the coal up to Lake Erie ports, and we are unable to get a supply. At this time we have not been able to get one-half of our purchases for the year, and navigation will close sometime next month. That is the importance of the 2910
control for us of access to the coal mines of Illinois, which are the nearest coal mines to this country, and the importance of that will be apparent more and more as time goes on.

Q. A question was put to you by Judge Young that left the impression upon my mind that traffic in carload lots, which came to your line in Burlington cars destined for the Pacific coast, was unloaded and reloaded into your cars before your acquisition of the Burlington road. Do you wish to be understood as making that statement?

A. I understood Judge Young to make that statement 2911
applying to all roads carrying traffic from the South, not limiting it to the Burlington.

Q. Did it apply to the Burlington road when traffic came in Burlington cars, carloads for the Pacific coast?

A. The same as it would to other railways.

Q. Was that the practice, that it should be loaded and reloaded into your cars, or did they go through in carload lots intact?

2912 A. They were generally transferred if they could be, because the mileage on (as we call it) a foreign car, a car of another company, going two thousand miles, was a very considerable sum; mileage of three-quarters of a cent a mile amounted to $15. $15 would transfer quite a number of cars. I mean $15 a car. That would pay for transferring a number of cars.

Q. You said yesterday that the reason for trans-shipment, or assigned it as the one that was operating in your mind, that the cars were not large enough.

2913 A. Many of the cars are not large enough. I think I alluded to shipments of cotton, cars from southern roads carrying a hundred or, in some cases, ninety bales of cotton, and our larger cars would carry 150 or 160 bales of cotton.

Q. What is the average capacity of your cars?

A. Well, it would be difficult to say without making a computation. We have a few cars of 30,000 pounds capacity—probably three or four hundred; then we have a number of cars of 40,000; we have a greater number of cars of 60,000, and we have a number of 80,000 and 100,000 pounds. All the cars we build are 80,000 or 100,000 pounds, and long cars.

2914 We have some box cars carrying 80,000 pounds, which are 44 feet long inside.

Q. How many cars have you, approximately, of 80,000 pounds capacity?

A. Oh, eight or nine thousand, I think.

Q. And how many of sixty thousand?

A. Probably eight thousand.

Q. When you referred to the small carrying capacity of cars, you meant the southern roads and not the Burlington?

A. I meant the roads south of here.

Q. Did you mean the Burlington?

2915 A. The Burlington has a larger proportion of small cars than we have on the Great Northern.

Q. A larger proportion of what?

A. Of small cars.

Q. But the Burlington has as many large cars as you have, has it not?

A. I don't think it has as large a proportion of large cars.

The Burlington has more cars than we have. It is an older 2916
and longer line.

Q. Now, to get back to the increase of traffic that was to come to you from the Burlington road by reason of your acquisition of it. Do you wish to be understood as stating that because the Northern Pacific and the Great Northern purchased the Burlington road, traffic was actually created by that fact? Or did you mean to say that you would get a larger portion of the Burlington's traffic by reason of your ownership of the Burlington?

A. Not by any means. The object was to make it possible 2917
to carry out a clearly-and well-defined plan. If we depended upon joint tariffs, if we depended upon lines of railroad coming here that had no interest in our road or we no interest in them—take, for instance, the St. Paul road, to illustrate, which has just been or is advertised as having been allied with the Union Pacific; the Chicago & Northwestern which comes here and has a contract with the Union Pacific; their lines reach away out to Omaha and into the Platte Valley; they have a direct interest in taking their business over their own lines and not bringing it here. Now, we wanted to be in a position where we were not subject to the good will or the 2918
changes of ownership of any railway; we wanted to be in a position where we could reach these centers, and to do that the Burlington gave more ground than any of the other lines, —practically, I think, as much as all of them. And it was to put us in a position where we would not be defeated in building up the traffic of these northern states and the northern line to the East.

Q. The question was so framed, Mr. Hill, that you were made to answer—it so appeared to me in reading it this morning and in listening to it yesterday—that by reason of the acquisition of the Burlington by the Northern Pacific and 2919
Great Northern, traffic was created. Now, you state, as I understand you, that by your control of that, you divert it so that you will get traffic that you formerly did not get, but some other route will lose, is that it?

Mr. Young. He didn't say so.

Witness. That is not the question or a fair statement of the question, as I understand it, and I think it has not any

2920 reference to the testimony as given; but, then, I will undertake to say that that is not as I understand it.

Q. I ask you now, then, do you state that the acquisition of the Burlington by the Northern Pacific and the Great Northern will create traffic that would not otherwise exist?

A. It has created traffic. The figures show that the traffic has increased very materially. Now, how much of that traffic would have been created or would have existed, it is very difficult for me or anybody else to say. But we know that the traffic has increased since the acquisition of the Burlington, to an enormous extent, and we know further that we are able,
2921 not to compete alone with railways, for that is a small matter in this business, but to compete in the matter of rates with the ships going from New Orleans or from Galveston, or the railways carrying it anywhere, or in connection with any other system of transportation. Now, we are able to make a rate that will take that business. And it was that rate I had reference to, and that policy and that ability that I tried to make plain yesterday.

Q. Yes. Then, your traffic has increased since the acquisition, and because it has increased since the acquisition you
2922 attribute it to the acquisition?

A. We can trace a great deal of it to that.

Q. Is it not true, Mr. Hill, that the railroads generally throughout the United States, all of them, have had their volume of traffic vastly increased in that same period of time?

A. I think that you will find upon examination that few of them have *doubled* their export business, and we have *more than doubled* our export business, and our general business has increased 33 per cent.

Q. What proportion of your entire business is export?

A. I couldn't say.

2923 Q. What percentage?

A. I couldn't say.

Q. Can you state what percentage of it is competitive, interstate?

A. I couldn't say; I have never seen the computation.

Q. Or you can't state what percentage of your entire traffic is local to your own rails?

A. No, sir; I have never made the computation. If I wanted 2924
the information it would not be very difficult to get.

Q. You say your export traffic has doubled. I thought perhaps I might get some notion of—

A. I happen to know the export traffic. My attention was called to it by the publication of the United States treasury figures, showing that there was an extraordinary increase in the export business from Puget Sound ports, much greater than that of any other part of this country. The department seemed to be quite rejoiced that they were doing so much business. 2925

Mr. Grover. We have all those figures.

Q. Mr. Hill, speaking of the Burlington, it was testified to in your testimony taken heretofore and engrafted into this case, that the Union Pacific interests (meaning Mr. Harriman and Mr. Schiff in particular, or one or the other) made an effort to purchase the Burlington in the fall, before you succeeded in negotiating its purchase. Is that correct?

A. Mr. Schiff told me that they had done so; in fact, Mr. Harriman told me they had.

Q. And that after you had negotiated or concluded the purchase of the Burlington, Mr. Schiff or Mr. Harriman came to 2926
you and wanted to participate in the purchase, to take a third interest,—or the Union Pacific.

A. That was before the purchase was completed.

Q. It was before; well, while you were negotiating?

A. Yes, sir.

Q. You declined?

A. Yes, sir.

Q. Was the Burlington system in competition with the Great Northern before the purchase of it by the Great Northern and Northern Pacific?

A. No, sir. 2927

Q. Was it in competition with the Northern Pacific?

A. No, sir.

Q. Was it in competition with the Union Pacific?

A. On some of its lines. It was in competition with the Union Pacific; on some lines I think it was a connection or run in connection—joint tariffs.

Q. You said yesterday that the purchase of the Northern

2928 Pacific by hostile interests, or a raid on the Northern Pacific, would have left the Great Northern in a helpless condition.

A. A successful raid on the Northern Pacific would have left the Great Northern in a helpless position or condition. Under the conditions it certainly would.

Q. Will you please state just what you meant by that?

A. I meant that inasmuch—

Q. By the raid and in the hands of hostile interests.

A. I meant that inasmuch as the Great Northern was jointly and severally responsible for over 200 millions of
2929 dollars, being the purchase price of the Burlington stock, that with the Northern Pacific owning a joint interest in the Burlington stock, one-half interest; with the Northern Pacific in the hands of a rival transcontinental line having its interests in San Francisco and from Omaha through the Platte Valley to San Francisco, that they would be in the position to make the Northern Pacific and the Burlington (as far as they could influence the Burlington) subservient to their southern interests, and they would be in a position to prevent them from building up or aiding in the development of the business that the Great Northern had worked long and hard
2930 to establish.

Q. Well, if, say, the Union Pacific had got physical control of the Northern Pacific, as it got actual control of a majority of its combined capital stock,—suppose it had gone on and got, as you feared it might, or anticipated it might, physical control of the Northern Pacific property, they could not have carried lumber any cheaper to the East or cotton any cheaper to the West than you could? It would not have crippled you in that respect, would it?

A. How would we get to the prairies of Nebraska and Kansas and Iowa and Illinois?

2931 Q. Just as you always have—by all the lines of travel that are open to you?

A. They are not.

Q. Six lines out of here?

A. Any one of those lines, or all of them, could at any moment withdraw their joint tariff from us. We could not control the business a day longer than they were willing we should, and we could not undertake to build up a great, perma-

nent interstate and international business, or any such business. I think it would be ridiculous—the statement of it. 2932

Q. Section 3 of the Act to Regulate Commerce would give you a remedy in that case?

A. But we have learned that the Act to Regulate Commerce is a very peculiar act in the way it is enforced.

Q. Has either of these lines, the Chicago & Northwestern, the Chicago, Milwaukee & St. Paul, or the Chicago Great Western, or the Chicago, Burlington & Quincy, prior to your acquisition of it, broken through relations with you so that you could not get through rates to this territory? 2933

A. The Milwaukee & St. Paul for years refused to give us a joint rate at any of their junction points between here and Sioux City, and we cross them five times.

Q. When was that?

A. Every time we have ever asked them.

Q. What percentage of the traffic that the Great Northern handles either from the Pacific coast, east, or the Twin Cities, west, is destined for the middle west, for Colorado, Utah or Nebraska points?

A. That the Great Northern handles?

Q. Yes, sir. 2934

A. The Colorado and Wyoming and that business is more over the Burlington from Billings.

Q. Yes, but the Great Northern does not intersect the Burlington at Billings.

A. I spoke of the business as it affected those roads, and the Northern Pacific was one of them. Now, the state of Iowa is reached by the Burlington from here, the state of Illinois and the states east of Illinois; this lumber business now begins to seek markets as far south as Newport News.

Q. You might extend that argument on down to the Atlantic. 2935

A. It does go to the Atlantic.

Q. But the question I direct you to is this: With your exceptional facilities of being able by reason, as you say, of your low grades and the lower rates at which you carry this transcontinental traffic today than any of the other southern lines can afford to carry it, as you say, how would the possession

2936 of the Northern Pacific prevent your continuing to do that business which has built up your road and your empire?

A. The possession of the Northern Pacific by whom? By the Union Pacific?

Q. Yes.

A. Because if the Union Pacific controlled the Northern Pacific and controlled the Burlington to the extent that the Northern Pacific half-interest would control it, we would be deprived of any access that we could control for a moment longer than the good will of another company; and we could
2937 not go on building up a business on any such condition. And let me add, further, if I may, that it would have almost destroyed the value of the Great Northern property or its shares for its shareholders. I would have recommended them to sell their line at once on the best terms they could get.

Q. Competition would have been so severe you could not have stood it.

A. It was not a question of competition. It was a question of physical inability to reach the market. We would be shut out from the markets.

Q. What did you mean when you used the word "raid" on
2938 the Northern Pacific stock?

A. Well, the phrase is one that probably I borrowed from the common expressions in the newspapers,—an attempt to buy the stock or the control of the stock in the open market.

Q. Now, Mr. Hill, they got what percentage of the capital stock of the Northern Pacific?

A. I think they had all together 78 millions of common and preferred.

Q. Out of a total of 155 millions?

A. Yes. They had a majority.

Q. And what percentage of the Burlington stock did the
2939 Northern Pacific and the Great Northern acquire?

A. Oh, 98 or somewhere in the neighborhood of very nearly the whole of it.

Q. You have stated that the Union Pacific interests endeavored to buy (they told you so) or to purchase the Burlington and they failed, and then after you had secured an option on it they came to you and endeavored to get you to let them have one-third of it, and you refused that?

A. Did I say one-third? 2940

Q. Well, what ever percentage it was; I will withdraw that, I am not sure about that. That was the impression I had.

A. My recollection is a half.

Q. A half, is it?

A. That is my recollection.

Q. Whatever it was. And that was declined. You said the Burlington system was not a competitor with the Great Northern or the Northern Pacific, but was a competitor of the Union Pacific?

A. Yes, sir.

Q. Now, when the Great Northern and Northern Pacific pur- 2941
chased the Burlington stock, was that a "raid?"

A. Not at all. It was done by the consent of the directors of the Burlington and by their advice to their shareholders, and could not have been done in any other way.

Q. When was it the Northern Pacific directors approved of your contract to purchase the Burlington?

A. I do not know. I do not know anything of when the Northern Pacific approved it. The Great Northern directors approved the purchase of the Burlington in April, I think, 1901.

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Q. How long was that after you had contracted to purchase it?

A. Oh, about that time.

Q. Had there been a corporate meeting, a directors' meeting, to consider that prior to your purchase?

A. I don't know. The matter had been discussed between the directors, and had been discussed—

Q. I am speaking of a corporate meeting; at a meeting of the directors, I mean, where the subject had been considered.

A. I could not say from recollection.

Q. What was your individual holding in the Northern 2943
Pacific?

A. At what time?

Q. On the 1st of April, say, 1901?

A. Oh, between seven and eight millions.

2944

RE-DIRECT EXAMINATION.

By Mr. Young:

Q. Mr. Hill, am I to understand you as saying that you made a contract for the purchase of the Burlington shares before a meeting of your directors?

A. Before a meeting?

Q. Before the meeting, in April, of your directors?

A. Why, I couldn't make such a contract. I could make a tentative arrangement that was subject to their approval.

2945 Q. And was that what you in fact made?

A. Yes, sir.

Q. And no contract was made and nothing to bind the Great Northern Company until it was passed on by the directors?

A. I had no authority and could not do it, and the Burlington people would not take my contract if I had made one. It would require the act of the corporation.

Q. You have been questioned as to what effect or what injury the acquisition of the Northern Pacific stock by interests hostile to the Great Northern or hostile to the development of this Northwestern country, would have on the Great Northern Company. Now, I want to ask you what effect would such an acquisition of the majority or of the control of the Northern Pacific by a corporation which had greater interests in other directions than it had in developing the country traversed by the Northern Pacific, and making that property valuable,—what effect would that have on the minority stockholders of that company, including yourself,—on their property, their stock?

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A. The value of the property would be destroyed. Its growth would be restricted. It would be controlled in the interests of another property or body for the reason that it would be restricted or might be restricted so as not to interfere with the growth of the other property. We were making great efforts, and very successful efforts, at that time to settle up all this northern section between the Great Lakes and Puget Sound, and bringing in an enormous number of people, many of these people coming from the line of the Union Pacific in

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Kansas and the Southwest, bringing them up here. And I 2948
remember one reason why they wanted to get a joint interest in the Burlington; they said we were getting too strong for them, we were going down into their country and taking people from there. That was one of the reasons they gave.

Q. Mr. Hill, will you state whether or not, so far as you know, there exists any agreement among the shareholders of the Northern Securities Company in regard to whether they would hold or sell their stock or what use they would make of it, whether in voting or otherwise?

A. There is no agreement of any kind between the share- 2949
holders, that I know of, or have heard of, and I do not know how any agreement would be effective unless it was made by a very large number or majority of the shareholders.

Mr. Young. That is all.

Mr. Richards. That is all.

The witness was excused.

JAS. J. HILL.

Subscribed and sworn to before me this 25th day of October, 1902.

FREDERICK G. INGERSOLL,
Special Examiner. 2950

Mr. Grover. We haven't any other witness here at this time. I think it would be better to adjourn.

The further hearing and taking of testimony in this case was adjourned until the morning of Wednesday, October 22, 1902, at 10:30.

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St. Paul, Minn., October 22, 1902.

The hearing was resumed at the same place at 10:40 a. m. All parties present.

FREDERICK WEYERHAEUSER, called as a witness on behalf of the defendants, being duly sworn by the examiner, testified as follows:

DIRECT EXAMINATION.

2952 By Mr. Young:

Q. Where do you reside, Mr. Weyerhaeuser?

A. In this city,—St. Paul.

Q. What relation have you to the Great Northern Railway Company? What official relation to the Great Northern Railway Company?

A. Business relation.

Q. What official relation have you to the Great Northern?

A. I am a director of the Great Northern.

Q. When did you become a director of the Great Northern?

A. About a year ago.

2953 Q. What is your business?

A. Manufacturing lumber and selling it; dealing in lumber, manufacturing and selling.

Q. For how long a time have you been engaged in that?

A. Forty-six years.

Q. In what territory?

A. In the northwest, the east and south. The forests we have now in the south are mainly in Arkansas and Louisiana, and the forests west in Washington, and we have mills in Washington, Idaho, Illinois, Arkansas, Wisconsin and Minnesota.

2954 Q. How extensive was your business the last year in quantity?

A. We shipped last month something like 120 millions. Probably during the year over a billion, say from a billion to a billion and a quarter.

Q. Your concern is the largest manufacturer of lumber in the United States, is it not?

A. I don't know. They say so.

Q. You don't know of any larger one? 2855

A. No, I do not. Now I am talking of mills I am interested in. I don't want to give the idea that I own those mills. I am interested in about twenty mills and two sash and door factories, etc.

Q. I am speaking of the concerns in which you are interested.

A. Yes, that is right.

Q. Are you acquainted with the lumber supply in the Mississippi Valley?

A. Yes, sir; that is where I have been operating for forty odd years. 2956

Q. How does the amount of standing timber in the Mississippi Valley, available for making lumber, compare with that in former years?

A. It is getting very short; the supply is getting very low.

Q. About how long do you think that you can continue lumbering at a profit in this valley?

A. I think five or six years will wipe out most of our mills, though the last tree will not be cut for some time to come in these states. I am speaking now mainly of Wisconsin and Minnesota and Michigan.

Q. How is it with your own mills in this valley? Are they increasing or diminishing? 2957

A. Diminishing. We get through sawing at Shell Lake this year and we are getting through at Haywood, so there are two mills less.

Q. And taking down those mills.

A. We used to operate three in Rock Island and one in Davenport, Iowa; we now have only two left in Rock Island.

Q. To what part of the country are you resorting for a supply of timber in the failure of this Mississippi Valley timber?

A. We have been buying in Idaho, Washington and Oregon. 2758

Q. What has been the extent of your purchases in Washington?

A. We own from 1,250,000 to 1,500,000 acres, in that state; about 200,000 in Oregon, and perhaps about the same in Idaho.

Q. Have you begun manufacturing lumber from any of that timber?

A. Yes, sir; we manufacture in Washington, and manufacture in Idaho.

2959 Q. Where is your principal market for the lumber which you manufacture on the west coast?

A. The northwestern states. I think probably we reach about 15 states and territories. We have shipped quite a little lumber from Washington to Jacksonville, Florida.

Q. But the great bulk of it is in the northwestern states?

A. Yes, sir.

Q. And what state furnishes the largest market?

A. I think Iowa; and eastern Kansas and Nebraska; Illinois is quite a good market, too.

2960 Q. And some, I suppose, in the Dakotas, and Minnesota?

A. Yes, we ship into Minnesota, Dakota, Idaho and other states.

Q. Over what railroads do you ship to those markets?

A. We ship pretty much all over the Northern Pacific, Great Northern and the Burlington and the different roads; we give them all some. Those are the principal roads.

Q. What part of Iowa do you ship the most lumber in respect to the lines of the Burlington road?

A. Over the entire line; there is hardly a little place that we are not shipping some to. In some places we ship a good
2961 deal; it depends on the size of the town.

Q. I meant to what portion of the state of Iowa, whether to the northern part or the part traversed by the Burlington lines, if you can say?

A. Well, we ship a good deal to Des Moines, Omaha and Kansas City; in fact, all over.

Q. What railroad in Iowa has the largest market for lumber along its line?

A. I always found the Burlington the best lumber line.

Q. In shipping lumber from Washington and other points on or near Puget Sound to points on the Burlington road,
2962 what advantage, if any, is it to be able to load your cars and have the lumber carried through on the same cars to its destination?

A. It is a great advantage.

Q. Will you explain why, how it is an advantage?

A. When cars are not very plenty, the roads will not let us transfer them from their road onto other roads, and in place of transferring the cars, they transfer the lumber; they do not

handle the lumber as carefully as our people do, and sometimes we have a big car load which they try to put into a small car, and they can't get it in, and there is often some left over, and the lumber is damaged more or less by reloading it and handling it. 2963

Q. And what difference does it make, if any, as to your ability to obtain cars at all times?

A. Well, we have to wait until we get foreign cars for foreign roads. If they haven't got the cars for the points the lumber is consigned to, we have to wait until we get the cars, otherwise they transfer the lumber in place of the cars.

Q. Mr. Weyerhaeuser, does the Burlington road reach any of the pineries, as they are called, where timber is kept? 2964

A. No, sir; the Burlington road does not.

Q. When lumber was obtainable in the Mississippi valley as heretofore, from what points were places on the Burlington road supplied?

A. From what points?

Q. From what points.

A. The Burlington road used to get the bulk of the lumber in Chicago and haul it from Chicago. Since Chicago has lost its prestige as a wholesale market, why, they have got to go north for it and west, largely west. 2965

Q. And at the present time, and especially in the future, where must the country along the Burlington road look for its supply of lumber?

A. To Idaho, Washington and Oregon.

No cross examination.

FREDERICK WEYERHAEUSER.

Subscribed and sworn to before the undersigned this 24th day of October, 1902.

FREDERICK G. INGERSOLL,
Special Examiner. 2966

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GEORGE B. HARRIS, called as a witness on behalf of the defendants, being duly sworn by the examiner, testified as follows:

DIRECT EXAMINATION.

By Mr. Grover.

Q. Mr. Harris, are you president of the Chicago, Burlington & Quincy Railway Company?

A. I am.

2968 Q. How long have you been connected with that company?

A. With that company or companies which are now part of it, or owned by it, for the last 36 years; most of the time for 36 years.

Q. How long have you been connected with it as president?

A. Since the formation of the Chicago, Burlington & Quincy Railway, about a year ago.

Q. Before that what?

A. Before that I was president of the company which preceded that.

Q. The Chicago,—Burlington Railroad Company?

2969 A. Yes, sir.

Q. And have been for how long?

A. Well, I had been, as vice-president and afterwards president, for about ten years.

Q. What is the mileage of the Burlington in the state of Illinois?

A. About 1,500 miles.

Q. In Iowa?

A. It is about 1,400 miles in Iowa.

Q. How much in Nebraska?

A. About 2,400 miles. About 1,100 miles in Missouri; 260

2970 in Kansas; 400 in Colorado, and I don't remember just now the Montana mileage; 200 and odd, I think; 215, I think, but I won't be certain; 38 miles in Minnesota and 223 in Wisconsin.

Mr. Richards. How much all together?

Witness. There are about 8,200 miles of main track, counting straight main track, and about 464 miles of double track.

Q. Will the acquisition by the Great Northern and the

Northern Pacific of the shares of the Burlington restrain trade 2971
and traffic between the states and foreign countries?

A. On the contrary, I think that it will promote business very greatly and develop latent resources and enable forest, mineral and other products and resources to be utilized which are now idle.

Q. Speak on that subject with respect to general merchandise and manufacturing industries and products.

A. I think that the practical extension of the Burlington road to the Pacific coast, by reason of its connection or union with these two lines (whatever you may call it) and the practical extension of those lines into the Mississippi and the Missouri valleys and throughout all the country occupied by the Burlington lines, by affording an opportunity to merchants and manufacturers to extend their markets, that they will do it, and that the opportunity to trade will be taken advantage of to promote business and commerce. I think in respect to one item that has been brought to my mind since Mr. Weyerhaeuser was on the stand—the lumber business; we have a little over 2,400 miles of track in Nebraska; there is not a tree on it except the trees and shrubs that have been planted there in hedges and in timber-claims; there is no merchant lumber; there is no lumber that is cut in Nebraska and sold on the market; and lumber is a prime necessity. It is a necessity, to assist in settling up that country. People must have roofs over their heads, and they must have cheap ones, too, because they cannot afford to buy expensive ones. And anything that tends to put in good and cheap lumber into that territory is beneficial; we have a larger mileage than any other road and I think is distinctly an advantage to that country, as well as to the manufacturers on the Pacific coast and to the transportation lines that distribute it. I think we felt that in settling up the country. I think the need of lumber is felt. I was in Nebraska, for instance, and drove over the country before any rails were laid; there were only 50 miles laid west of the Missouri river when I went there, and people said that Nebraska was an uninhabitable country; there was no timber, there was nothing; there was good grass, an elegant climate; and I thought and others thought that the country would be habitable and be filled with a productive

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2975 population. But lots of others thought we were simply boomers, as they do now, you know, about the development of these other western resources.

Q. What was the supply of fuel in Nebraska?

A. There is no fuel whatever in Nebraska, except I have known some of the Russian Mennonites, who came there, to burn grass, tied together with iron bales, as they did in the old country; and I remember we used to burn sunflowers there; I have seen a great deal of corn burned there, and since our lines have been built through there and we have developed coal west of that territory and Wyoming and brought it in
2976 from Iowa, why, coal is a pretty cheap fuel,—and from Colorado also.

Q. How about the lumber supply in the other states, in the other states through which the Burlington extends?

A. There is no lumber supply whatever on the Burlington lines, with the exception of hard wood, and only a limited quantity of that.

Q. From what section of the country must the lumber supply come to those dependent upon it along your line?

A. Lumber has got to come entirely from the Pacific coast;
2977 there is no question about that in my mind. We get some lumber from the south, yellow pine lumber. Lumber used to practically all come from Chicago, and we hauled out an enormous quantity of it. I remember when I was a boy on the Hannibal and St. Joe Railroad I used to see about 20 cars a day being hauled out of Hannibal, and I thought the time would come when that continual drain, 20 cars a day, would simply ruin the country. There were scarcely any trees in it. There were mills then at Hannibal and Quincy and they have since been established, and then again mostly abandoned, at other points on the road, at Quincy, Rock Island, Davenport,
2978 Clinton, Lyons, Dubuque, McGregor, LaCrosse, Winona and elsewhere, and some of the smaller ones; those are the principal points, I think.

Q. What advantage is there or may there be growing out of the Great Northern and Northern Pacific ownership, over what would be the case if dependence was made upon joint tariffs for the exchange of traffic between the lines?

A. Well, in my opinion, it tends to develop these latent resources, to justify merchants and manufacturers in adjusting

their affairs to do a continuous and a permanent business 2979
rather than one that may be cut off by anybody's volition from day to day, and they say, "That door has got to be closed." But ownership, common ownership, provides an open door and the means of access, ingress and egress, and people take advantage of it. Commerce flows in the line of the least resistance. It removes the obstruction.

Q. Speak in reference to agricultural products, if you will, and live stock.

A. Well, the Missouri valley, as is well known, and the Mississippi valley are great fields for the production of forage in all its forms; I think the best in the world, perhaps because 2980
I was raised there. It is a great corn country. All of the forms of stock feed is abundant, and it is probably the greatest place in the world to finish cattle, to bring up cattle and make good beef out of them. The cattle that are raised in the west very frequently come down there when the range is short of grass; they come down there to finish up on corn; come from all the western states, Oregon and Idaho and elsewhere, in great quantities.

Q. Now, of the ranges along the Northern Pacific and the Great Northern, in this connection.

A. Well, we have had a good many cattle down there to 2981
finish. Some years when there is a big corn crop they flow in more than in others, but it is a regular business, and it is promoted and continued by the opportunity to come and by the interest of the parties that they should come.

Q. The cattle are loaded on the ranges, on the lines of the Great Northern and Northern Pacific, and sent down there on the Burlington to feed and fit for market?

A. A great many of them are. We take our cattle up there in the spring, and they are the young cattle, they are raised up there to a certain age, and then they are brought back and 2982
finished on corn in the Mississippi and Missouri valleys.

Q. What is the market with respect to the sale of cattle and beef products on the Burlington?

A. I believe the Burlington rails reach every large packing point that I happen to think of now, except Sioux City. We reach Omaha, Nebraska City, St. Joseph, Kansas City, St. Louis, East St. Louis, Ottumwa, Chicago, and half-a-dozen

2983 other smaller points where cattle and hogs and sheep are packed in smaller quantities.

Q. Those places furnish, do they not, a large market for the cattle grown, fed or fattened on the lines of the Great Northern and Northern Pacific?

A. Yes.

Q. And in the ranges?

A. Yes.

Q. What effect will attend the transportation of lumber on to the Burlington and the territory tributary to it, as affording
2984 return traffic over the Great Northern and Northern Pacific, increasing the volume and the reduction of rates?

A. Well, it is obvious that a wagon which can go loaded both ways can afford to do business at a lower price than one which has to be hauled one way empty; and the lumber business, affording a constant supply of tonnage eastbound, enables the company to do west-bound tonnage and tempts us to do west-bound tonnage at the lowest price we can afford to in order to promote that business. We accomplish various things by doing that. We give the people of Nebraska and Iowa, where we have a great many lines, cheap lumber, which
2985 promotes trade there, promotes settlement. They build houses, make improvements, and it is an added inducement to people to settle there where we need settlement; and, indirectly, it helps us in other ways. Those people have got to wear shoes and clothes, and have tea and coffee.

Q. Speak with reference to coals and minerals on the line of the Burlington.

A. Well, with reference to coal, the Burlington company has in Illinois, as I say, about 1,500 miles, something more. I haven't been exact in these figures, but that is substantially correct. We reach a great many mines from the Streator
2986 district on the north to the district of which Centralia is the southernmost point in the south, and I don't know how many mines we reach in that district, but a great many; and some very large ones. A few years ago—a very short time ago, in fact—the coal supply on the Burlington lines in Illinois exceeded the demand to such an extent that the coal operators were beignning to be a little restive about it. They thought we ought to be able to hustle around and provide a market in

some way, do something about it. But it was somewhat difficult to do that independently. The soft coal does not stand a great many transfers; it is friable, deteriorates rapidly, and must be taken from the mine to as near the point of consumption as possible without car transfer. So this country up here, being without coal— 2987

Q. You mean by "up here" along the Great Northern and the Northern Pacific, Minnesota and Dakota?

A. Yes, this northern country and especially the lines of those two roads. We thought that that would afford us a permanent market for the large amount of coal that is to be had there at a moderate price. 2988

Q. And you would have an advantage, through shipment and exchange of cars, over the fluctuating conditions attendant upon a joint rate?

A. Well, in preparing for a very large business you could not provide cars, nor could the miners afford to work the mines and make the large expenditure that is necessary to do it in the most economical and efficient manner when the market was liable to be changed, or, as I said before, the door was liable to be shut any day by somebody saying, "Well, we think we will turn this current of commerce somewhere else; we would rather have it from some other place." The field, we think, is the largest, the cheapest. It will promote the mining of coal down there and the use of coal up here, and we can do that better than anybody else can. 2989

Q. With respect to ores smelted at points along the line of the Burlington?

A. Well, there are precious metals at various points on the Burlington road. The largest deposit of mineral on the Burlington road is in what we call the Black Hills country in South Dakota, in the western part of South Dakota, Deadwood, Hill City, Lead City, Custer, and all that country in there, it is all mineralized. It is all low-grade. There are very few great bonanzas in mines. But there is an enormous amount of highly refractory ore that costs a very large proportion of its entire value to reduce, and it is practically impossible to reduce that ore by using a barren flux or flux which carries no value. It must have an ore which is complementary and which also carries value to act as a flux to enable its treatment. Some ore 2990

2991 has been heretofore procured from the western country off the Northern Pacific to complement the refractory ores of the Black Hills, but it was practically impossible to procure the establishment of the necessary smelters down there. That business is all right today, but it might not be tomorrow. Somebody might say tomorrow, "Well, I guess we don't care to exchange cars; we don't care to pro-rate with you, you had better go some place else and get your wet ores." Well, the dry ores cannot be treated so advantageously; they can be treated by cyanide and chlorination and other processes, but
2992 they cannot be treated so advantageously as they can with ores that are complementary to them. The people with whom we talked about the establishment of mineral reduction works said that. They said, "We can't go in there and make an enormous expenditure and leave it liable to be changed at any time; we don't know just how long it will last." Partially for that reason we had negotiations under way for the purpose of making a contract for a definite term of years, for ten years, for instance, so as to in a measure satisfy those people until fortunately, as I thought, and others thought—

Q. A contract with whom?

2993 A. A contract with the Northern Pacific, for an absolute connection at that point so that neither party could close the door and that the merchant or manufacturer might be safe, for that term at least, in settling down there with his business.

Q. You refer to the junction with the Northern Pacific at Billings?

A. At Billings; I was speaking of that, because I had in mind the Black Hills ores.

Q. When was the line extended to Billings?

A. Well, I don't remember exactly; it was about 1892 or
2994 1893.

Q. What justified the building to Billings in the mind of the Company?

A. Well, it was very hard times then, and I was rather anxious to induce the directors of the Company to build a railroad. I rather liked to build them, and they sometimes didn't like to operate them, but I got them to do it occasionally. I met a gentleman who was then connected with the

Northern Pacific Railroad, and he said that Mr. Weyerhaeuser 2995
had told him that the lumber that would flow over a line built in that country, to connect at or about Billings (the exact point of connection not being fixed) would be a very valuable thing for the lumber merchants of the West, for the settlers in Nebraska, for the railroads, and perhaps incidentally that he could make a little something out of it himself. So I mentioned it to some of our directors and finally brought them together with some of the Northern Pacific people, and it was discussed. And that was one of the controlling considerations which led to the building of that branch up there; the 2996
idea being that, with the connection there, the Northern Pacific would practically be the western extension of the Burlington and the Burlington would be the eastern extension of the Northern Pacific to the field that it reached and especially the Missouri valley where it made a short and direct line.

Q. Now, the contract to which you refer related to making permanent an exchange at Billings between the Burlington and Northern Pacific in the handling of traffic?

A. A contract was to be as permanent and definite as possible in its terms, providing that the Northern Pacific and the Burlington should co-operate in doing all that could be done 2997
to promote the free and copious flow of traffic through that gateway.

Q. How long was this matter of a contract considered? How long prior to the purchase of the stock of the Burlington?

A. Well, I don't remember dates so very clearly, but it was a comparatively short time. The contract was under consideration and this other matter came up, and of course that furnished us so much better and so much more permanent and unbreakable an arrangement that the contract of course was abandoned; they never thought any more about that.

Q. Now, what advantage was thought would be derived to 2998
the Burlington shareholders, or those interested in the property, by the sale to the Great Northern and Northern Pacific instead of to other interests?

A. Well, there was more or less discussion about that, of course; and, in view of some other opportunities and possible opportunities, it was thought by the directors that it would be necessary for the Northern Pacific and the Great Northern

2999 to actively use all of the Burlington lines in order to utilize the investment; and if such a thing should happen as that the property should come back, that it would come back in first-class condition, that there was no part of it that the Northern Pacific or the Great Northern could afford to permit to fall into disuse. It would be to the interest of those companies (that would be the best bond that it would be done) to develop the territory, and they therefore thought that the paper that they would get and offer to their 14,000 stockholders—about 15,000 stockholders—would, on the whole, be a
3000 better piece of paper than they would be likely to get elsewhere.

Q. What points are the principal smelters on the Burlington, where are they located?

A. Well, the largest smelters on the Burlington road are at Denver, Omaha, Aurora and Chicago. The Chicago smelter, I believe, is not doing now as much as the others. There is one thing that I happen to think of now in respect to ore or minerals that I didn't mention: the drift of Illinois coal north, that we hope to be able to establish, we hope may be about equal (and very large in volume) to a drift of ore south,—iron
3001 ore from the deposits reached by the Great Northern and Northern Pacific, and that the union of interests makes it feasible to provide equipment to prepare for the business and to do it, and we already have assurance from some parties that they will engage in that business on a scale of considerable magnitude.

Q. At what point?

A. Well, in the Mississippi Valley, down in the vicinity of St. Louis.

Q. The ore you now speak of is the iron ore—

3002 A. The iron ore.

Q. Of the Mesaba ranges?

A. Yes.

Q. Going to the Mississippi Valley to be smelted, and coal returned in the cars?

A. Yes, sir.

Q. What effect would such a transfer and exchange in traffic have upon rates, stimulating the business?

A. Oh, the general trend of transportation prices, that is 3003
the price received by the carrier for services, is downward, and we must prepare to meet it and we are preparing to meet it. In fact that is a large part of what we have been doing for the last two or three years. And all this business (this ore business and the coal business and the lumber business and all other business) must be done at the very lowest price, and all barriers must be taken away. The lowest price and the best service sets the pace for everything and everybody else; they have to come to it or drop out.

Q. And the lowest price rates come from being able to load 3004
trains both ways?

A. To load both ways.

Q. With large train-loads and low grades?

A. That is obvious.

Q. What manufactured products or interests on the line of the Burlington are such as are demanded in interstate and Oriental trade?

A. Well, there are—in fact, in the first place all articles that are produced from iron and steel I believe are produced on the Burlington road, many of them in large quantities and some of them in small; implements, vehicles of all kinds, 3005
engines, boilers, fixtures, steam and water pipes and fittings. It would be very difficult to enumerate them. We have got one town I believe where there are about 400 factories. Now you would be surprised to go into the freight house and see the things that are produced in that town. I remember one thing: there is a man there that makes incubators. You go into the freight house at any time, and I guarantee you will find incubators going to every civilized nation in the world,—a small one here and there—big and little.

Q. Now there are large rail manufacturing plants, are there 3006
not?

A. Yes.

Q. Nails and wire?

A. Yes. The Missouri towns are all drifting into manufactures, and on a considerable scale too. The markets have moved west. With the movement of the markets westward a great many manufacturers have moved west. Manufacturers who were in the Hudson Valley a few years ago are

3007 now found in the Mississippi Valley and some of them in the Missouri Valley.

Q. You reach in fact the largest manufacturing points in the state of Illinois, do you not?

A. Illinois has a very large manufacturing interest, and I believe that we reach from eight-tenths to nine-tenths of the factories of the state. We have, or did have a short time ago, the largest mileage in the state of Illinois of any railroad in it. I am rather inclined to think that the Illinois Central at the present time has about as much or possibly a little more,
3008 but we have over 1,400 miles.

Q. One thing more I want to ask you now; that is in reference to cotton goods, raw manufactures and the export of it, as respects the Burlington.

A. Cotton goods of various kinds are manufactured in some considerable quantity and the manufacture is increasing. I speak now of the manufacture of the cloth into articles of various kinds, at St. Louis, Kansas City and St. Joseph especially, and there are other places where it is increasing considerably. The cloth is manufactured at Denver (cotton cloth) in large quantities and we are hoping to promote that trade
3009 very greatly and believe that the opportunity to trade without obstruction (in fact helping it) will promote that business, as it does all other branches of trade.

Q. Now at what points do you connect with rivers and lines leading to the south, giving you in that way access to the cotton fields?

A. Well, we connect at some points west of the Missouri river with the Missouri Pacific, Atchison, Topeka & Santa Fe; and at the Missouri river with all the lines that extend from the Missouri river to the Gulf; and at St. Louis with all the lines that extend to the Gulf and also to the Atlantic sea-
3010 board; and also have a connection with the river there and a very extensive river frontage. Our scheme has been laid out at St. Louis with a view to some extent of the river and its increasing importance.

Q. Well, you have connection with the river and rail lines reaching all the cotton-producing states?

A. Yes.

CROSS-EXAMINATION. 3011

By Mr. Day:

Q. Mr. Harris, when you were stating the mileage of the Burlington, I don't recall what mileage you gave that the Burlington system had in the state of Minnesota.

A. I think about 38 miles; about 40.

Q. And in the Dakotas?

A. In South Dakota—well, I don't remember; I ought to know, but there are so many things I ought to know and don't —you may call it 200 miles.

Q. And in North Dakota? 3012

A. No, we have no miles in North Dakota.

Q. And what in Montana?

A. Well, it is about 145 miles from Sheridan to Billings, and we built about 120 miles from Toluca down into the Big Horn Basin, and that is (a part of it) in Montana, and a part of it extends down into Wyoming. I should say—oh, you might call it 220 miles perhaps. That is approximately. I will give you all these figures exactly if you desire to have them put in the record.

Q. No, you have been giving approximations. 3013

A. Yes.

Q. I wanted to carry you on into these other states that I didn't know you had spoken of. Prior to January 1st of 1901, had it been discussed by the board of management of the Burlington road to extend the Burlington on farther into the Northwest?

A. No, there hadn't been any serious discussion of that for a long time, except to make some connections which were then considered and which are now being considered and may be or may not be done as a determination is reached hereafter.

Q. My question was whether it had been discusssed prior to 3014 January 1st?

A. I don't think it had been seriously discussed.

Q. By the management or board of directors?

A. I had to do with it I think individually—I don't claim to have had all to do with it, but I was in active charge of all the property of the company and the things that were done

3015 and not done were frequently, perhaps usually, on my recommendation.

Q. It had been in contemplation to do some building to the Northwest?

A. North of Billings you mean?

Q. Yes.

A. We had thought of building and we had made some surveys, and are still making some surveys, about a line running north of there to or for a connection with Great Falls. With that exception—

3016 Q. Now I am directing your attention to a period of time prior to January 1st, 1901.

A. Well, since what time before that?

Q. Prior to the negotiations for the purchase of the Burlington by the Northern Pacific and Great Northern.

A. Well, ten years before that (in round figures) we made reconnoissances through that country, but we had decided not to build. There hadn't been any recent serious consideration of building into that country.

Q. But I am asking you now whether it had been considered. Had it not been considered by the board of directors,

3017 and the subject discussed, looking to the building of the Burlington on to the north, to connect with the Great Northern there?

A. I don't remember that it had, Mr. Day. I don't think it was ever seriously discussed in the board or discussed at all for that matter. We had made reconnoissances all over that country, as we had all over every other country in the western country, but that was a matter of information. We have always been doing that, simply to have it in case we ever wanted it in the future, without any serious present intention.

3018 Q. When was the survey made in reference to Great Falls?

A. Well, we have been polishing it up quite recently.

Q. No, I am asking you when it was first made. I am speaking now of a period prior to the purchase of the Burlington road by the Great Northern and the Northern Pacific.

A. Well, sir, we made a reconnoissance across there but we did not make what we call a survey; we didn't finish it up, we didn't tie it together, but we sent a man across there with

an aneroid barometer and on horseback; he probably got a 3019
pretty good idea of that country; and followed it up with a little party just to make a reconnoissance, and I think that was—oh, that might have been about the time that we built to Billings. That was a little before the time we built to Billings. I remember it now. We graded a track across the Northern Pacific tracks at Billings.

Q. Now state what other preliminary surveys were made under the direction of the Burlington road looking to its extension into the Northwest territory, north or west of where it now has its line?

A. We never made any at all. 3020

Q. Was that under discussion or contemplation—extending it—by the board of directors?

A. It never was to my knowledge seriously discussed, and I don't think it would have been discussed unless I had known it.

Q. How long were you president of the Burlington road, the Chicago, Burlington & Quincy Railroad Company?

A. Oh, about a couple of years, or such a matter.

Q. Was it contemplated to extend the Burlington westerly over towards the Pacific coast, say from Denver northwest or 3021
west?

A. We made surveys; the Burlington Company made surveys from Denver in a westerly direction, oh, twenty years ago.

Q. Any surveys, preliminary or otherwise, subsequent to that?

A. Yes, we have looked the country over there at various times.

Q. Well, just tell now what has been done, what was in contemplation.

A. Well, there hasn't been anything done in recent years. 3022

Q. What was contemplated by the board of directors or the management of the Burlington road?

A. Nothing by the board of directors. The management was always exploring the country, sending people out to make preliminary surveys, so that in case the question ever should come up seriously the management would be able to say to the directors, "Why, these are the facts."

3023 Q. You explored this western and northwestern country by engineers or people competent to do it, in anticipation that your board might some time wish to take up the subject?

A. In case the time ever came when we desired to reach the question or the board asked for it we wanted to be able to say to them, "Gentlemen, here is what we know about it."

Q. To recur to the lumber question, the paucity of lumber in Kansas or Nebraska or portions of those states that the Burlington rails reached, before the merger in 1901, were Kansas and Nebraska points on the lines of your road supplied—its demands supplied—with lumber?

3024 A. Why, of course there was lumber there; people could not exist without it, but this gave another source of supply of superior lumber at a moderate price.

Q. What source of supply?

A. The northwestern country.

Q. Particularly what do you mean by that? I ask for information.

A. Well, that lumber could not get into that country before that connection was made.

Q. What lumber?

3025 A. Well, the Oregon and Washington,—the lumber west of the Cascade range.

Q. Does it go to Nebraska now?

A. Quite freely.

Q. What character of lumber is that?

A. Well, there are all kinds of lumber that go there.

Q. Well, what is it you bring from Washington and Oregon to Nebraska?

A. General merchant lumber, all kinds. I could not give you a schedule of the stuff that comes in there. I presume the lumber dealers could do that.

3026 Q. You are testifying to your knowledge of the subject and you are the witness. I want the basis of your own information, your own statement.

A. Well, I noticed very shortly after that connection was made that there were stocks of lumber along there, and I was informed that it was Oregon lumber; and I think I noticed an improvement in the way of houses and corrals and all that sort of thing; that was due, perhaps, to an additional supply

of lumber, and partly to better times. Nobody could figure 3027
it out and tell you exactly how much was due to each, but we thought some portion of it was due to that fact.

Q. How was that brought to Nebraska?

A. By Billings.

Q. By way of Billings?

A. Yes, sir.

Q. Did that come off the rails of the Great Northern?

A. It came off the rails of the Great Northern, a part of it off the Great Northern; that is, it didn't come to us from the Great Northern rails, but I have been informed that some of 3028
the lumber originated in the western country on the Great Northern and was transferred over to the Northern Pacific and brought down to Billings.

Q. Is that the short route from Oregon points to Nebraska, the points in Nebraska that your rails reach, to come by way of the Great Northern and Northern Pacific and Billings?

A. I think that the Northern Pacific and our line form a short route not only to Nebraska but to the Mississippi and the Missouri valleys.

Q. Well, my question was whether that was the shorter route from Oregon points, where this Oregon lumber came 3029
from, to Nebraska?

A. I think it is.

Q. By way of Billings?

A. Yes, sir.

Q. How much shorter is that than by coming by your western route?

A. That is by way of—

Q. The Oregon Short Line, say.

A. The Oregon Short Line and Denver?

Q. Yes.

A. Well, our connection there was by the D. & R. G., (Den- 3030
ver & Rio Grande), our principal connection, and the Billings connection was several hundred, perhaps 200 miles. I would prefer not to testify to that because I don't remember the exact distance.

Q. Shorter than the D. & R. G.—

A. Yes.

3031 Q. —Which you say was your principal connection?

A. Yes, sir.

Q. But was it shorter than the shortest route that was open to you by way of the Short Line?

A. I am quite positive it was shorter than the short route.

Q. Quite a substantial difference?

A. Yes, quite a substantial difference.

Q. Any difference in the rate?

A. I don't remember about the rates.

Q. You don't testify, then, that the lumber was laid down
3032 to the people of Nebraska at any lower rate by reason of this—

A. Yes, I do.

Q. Well, what was the difference in the rate?

A. I can't tell you what the difference was, but I do know there was a material difference in the rate, a very large difference in the rate, after we had made this arrangement for the through rate to Omaha. This stuff was brought from its origin to the Missouri river and all points west of there at a rate which was very much less than that lumber was ever laid down on our lines before that time.

3033 Q. When was this?

A. Just after the opening of the Billings line.

Q. You state that your published tariffs were lower, from the Pacific coast, say Portland, on Oregon lumber to Nebraska, by way of the Billings route, than your published rate by way of the other route?

A. No, I didn't say that.

Q. I am asking you if you do say that?

A. No, I don't. I don't remember what it was. I do remember that the published rate was reduced after the—at least the published rate that was established; I don't know it was
3034 reduced, because I don't think there was a rate in between those points before; but when the Billings line was established and the connection made at Billings, the rate on lumber from the Oregon district to the Nebraska territory reached by the Burlington road was introduced and it was lower than any previous rate.

Q. The rates, when they were established, were uniform by all the lines?

A. I can't say that, Mr. Day; I don't remember. 3035

Q. On the lines that were open to you.

A. I can't say that; I don't think they were. I think we were able to make lower prices, we certainly were to a very large part of our territory (and I think all of it) by the Billings line than we were otherwise.

Q. When was this route open to the Billings line?

A. I think about 1893.

Q. Oh, you are speaking of that point; is that when the reduction was made?

A. When the reduction was made. 3036

Q. Oh, at that time You are not speaking of the time of the merger?

A. Oh, no.

Q. The rates from points on the Pacific coast to points on the Burlington line in the state of Nebraska, the published rates, are they any different by your western connection (your Denver connection) than by your other connections?

A. I couldn't testify to that without examining the tariffs. I did have all those tariffs and rates in my head, but I haven't got them now.

Q. The facilities over the Burlington for getting coal to St. 3037 Paul and Minneapolis,—do you wish to be understood as stating they are greater today, by reason of the merger, than they were before?

A. I think they will be very decidedly greater.

Q. I am asking you what they are in fact.

A. What they are today?

Q. I am asking about facts, and not your speculations as to the future.

A. Well, there has been some change. We have been spending considerable money in reducing grades, putting in sidetracks to accommodate longer trains, and that work is par- 3038 tially done now.

Q. You have been doing that for years, extending—

A. Not on any such scale as we have been for the last—

Q. Do you wish to be understood as stating that coal that was brought by the Burlington to St. Paul and Minneapolis from the Illinois coal fields before the merger was unloaded and reloaded here?

3039 Mr. Young. One minute. I would like to know what is meant by "the merger". We have heard a great deal of that. I don't know that there is anything in the pleadings about that.

Mr. Day. Mr. Harris used that himself, or a similar term.

Mr. Young. I don't think he used that term. I think this is the first use of it.

Mr. Day. No, I beg your pardon. The witness knows precisely what I mean.

Mr. Richards. He used the term "union",—the union of
3040 these lines.

Mr. Griggs. The joint purchase of the Burlington. I think the criticism of Mr. Day's use of that term is just, because it does not convey any idea as to whether he means the joint purchase of the Burlington or the formation of the Northern Securities. I suggest you make the time definite by some other phrase.

Mr. Day. Well, the witness seemed to understand. He was responding to that term for some time before.

Witness. Oh, I supposed—I am kind of a mind-reader, and while I didn't know what the word meant, I thought I knew
3041 what you meant. (Laughing.)

Mr. Day. Well, I am perfectly satisfied with Mr. Harris' response to my question.

Witness. That is all right. I will tell you anything I know, my mind is perfectly open.

The following question was read to the witness. Do you wish to be understood as stating that coal that was brought by the Burlington to St. Paul and Minneapolis from the Illinois coal fields before the merger was unloaded and reloaded here?

3042 A. I don't know that it was all unloaded and reloaded here, but I do know that at times it was unloaded and reloaded here, and I think that some degree of common interest will prevent that and create an economy. That is my opinion about it.

Q. You are speaking as to the future.

A. And that we have already, to a very considerable extent, been preparing for that. We have purchased cars, additional ones; we have extended some sidings and are still extending

them and making arrangements so as to haul long trains without delay. 3043

Q. Coal that came by the Burlington road, destined for the Great Northern road, prior to the union or prior to the purchase of the Burlington, coming in carload lots, was bulk broken here?

A. There was no permanent rule about that. It depended on the conditions from day to day. One day there might be plenty of cars and the Burlington would say, "We will let our cars go through"; another day the northern lines might have a surplus of cars and they would say "You can load all our north-bound cars with coal." But there was no permanent arrangement for doing this today and tomorrow and all the days after that in the year, as we are doing it now. 3044

Q. The general rule was not to break bulk?

A. There were times when it was all broken, and when we would not let our cars go through and they would not give us cars to go south; when the Burlington wouldn't let their cars go north and the other ones wouldn't let their cars go south. There was no rule about it; it simply depended on the will or volition of the superintendents and the car men who judged the situation from day to day. 3045

Q. Who controlled their volition, their determined judgment?

A. The ultimate control was in the board of directors, and that sifted down through the president and manager and superintendents and trainmasters.

Q. Who controls it now?

A. Well, it is still in the board of directors, I guess.

Q. Yes, where is the change, then?

A. There is no change whatever as far as that is concerned. The roads are still absolutely controlled,—our road is still controlled by its board. 3046

Q. What outside force has entered into it?

A. What outside force? Do you mean what persons?

Q. Yes,—that has changed the policy or you would expect to change the policy. What has changed the policy?

A. Simply a change in interest, a union of interest.

Q. And how has it manifested itself?

3047 A. Well, it has manifested itself by our decision that the business is likely to be permanent enough so that we can buy engines and cars and make physical changes in the roadway to meet this business that seems probable.

Q. Who has given any instructions regarding those facilities?

A. The board of directors.

Q. The who?

A. The board of directors.

Q. Who else?

3048 A. Nobody.

Q. Have you had any instructions from the board of directors?

A. Any formal directions from the board of directors?

Q. Yes; different from what you had before?

A. Oh, no.

Q. Whom do you look to now, who is the directing man that tells you what to do or what shall occur?

A. Well, there hasn't anybody told me what to do. I have trusted in some degree to common sense, thinking perhaps that I had a little bit of it.

3049 Q. No doubt of that, Mr. Harris, I have no doubt of your ability as an operating railroad man and as a traffic man. But you now have two masters. Who directs your policy, the policy of the Burlington road?

A. The board of directors is charged with the duty and has the power of directing the president and all the officers.

Q. The board of directors of what road?

A. The Burlington & Quincy.

Q. The Burlington & Quincy Railway Company?

A. Yes.

Q. Who composes the board of directors of the Burlington
3050 & Quincy Railway?

A. Well, I will give you a list of them.

Q. Well, name some of them that you can think of.

A. Well, I am a member. Mr. Hill is a member. Mr. — let's see, have you got the list there? It is a very simple matter, but I don't—

Q. Who composed the executive committee of your board of directors?

A.Mr. George W Perkins and Mr. — I am on the board. 3051
Only been to a few meetings.

Q. Mr. Harriman a member of your committee?

A. Yes.

Q. Of the executive committee?

A. Yes.

Q. Whom do you consult with on the committee? From whom do you receive instructions regarding the management of the property or how these facilities that you have been speaking of are to occur in the future?

A. I have consulted with everybody. I have consulted 3052
freely with Mr. Hill.

Q. Yes. Now, who else?

A. I suppose, being a mind-reader, as I said before, that that was what you desired, and it is all right. I haven't received any instructions. I have been told to—the directors in a general way have made me president of the company and I am expected to go on and do whatever I think best. There has been no radical change of any kind or character, if that is what you desire, so far as I know.

Q. Well, have you received any instructions respecting any 3053
changes that are to be made that did not exist before, under the old management?

A. I can't recall any just now.

Q. What members of the board of directors have you discussed the policy of the Burlington road with?

A. Oh, when I have been in New York, the few times I have been there, with all of them. If you will just give me a list or if I could look it up—

Q. I am asking you respecting your recollection. I have no objection to your looking at the list.

A. Well, just for the minute I couldn't remember. I have 3054
talked with all of them.

Witness was handed a piece of paper by Mr. Young, on which was written the following: "Ex-Com., Harris, Hill, Clough, Perkins, Schiff, Harriman."

Q. Have you talked to them when they were sitting as a board?

A. As a board and individually.

3055 Q. How often has the board of directors of the Railway Company met since you have been president of the new company?

A. Oh, I couldn't tell you that, without examining the record.

Q. How often have you met with them?

A. Oh, I have been in New York I suppose four or five times.

Q. Have there been four or five meetings of the board of directors of the Railway Company since you have been presi-
3056 dent?

A. Well, now, I couldn't tell whether the meetings were formal meetings of the board or simply informal meetings with the members, but those things I haven't laid any great stress upon because a man as a member of the board would act in the same way as he had already expressed himself as an individual. I have never required that he should clothe himself with the authority of the board in discussing matters.

Q. Mr. Harris, sometime ago you were a witness and testifying regarding the Burlington Railway Company, a consider-
3957 able time after its organization. My recollection is you testified at that time that there had been no meeting of the board of directors of the Railway Company, certainly none at which you had been present. I would like to know now how many meetings of the board of directors of the Railway Company there have been, if any, since you became president.

A. Well, there have been meetings, but I can't tell you without consulting the record, I can't tell you the number.

Q. Well, do you state that you have or that you have not had any instructions from those whom you regard as your
3058 superiors in the management of the Burlington property, involving a change of the management of that property, since its acquisition by the Northern Pacific and Great Northern?

A. That is a pretty broad question, and I shall answer it broadly by saying that I don't remember to have received any orders or directions as to a change in the policy of the company. Questions of physical adjustment, and all that sort of thing, have been talked over.

Q. After the purchase of the Burlington, were the rates on 3059
lumber by way of Billings to Nebraska and Nebraska points (interior points) changed?

A. I don't remember whether there have or have not been any changes in the rates. The question with us was of maintaining the connection and of being able to increase the business and increase the supply of lumber, as well as getting it cheaper.

Q. I understand you to say that you don't know whether the rates have been lowered or raised?

A. I can't tell you that.

Q. All these routes from the Pacific coast to Nebraska that 3060
are open today were open before the merger were they not—before the union?

A. Well, there is a question as to what "open" means. If it is a permission to contribute business, why that is one thing. They are all open. If it means a reciprocity, which is the only condition under which business can be successfully done, there hasn't been any. Business cannot be done simply by saying "You may do it." There must be some reciprocity; there must be an exchange; there must be a tonnage in both directions; there must be a desire on the part of the buyer 3061
and the seller, as in any commercial transaction.

Q. At how many points did the Burlington system touch the Union Pacific system?

A. Well, I couldn't tell you that without looking at the map. There are a great many points.

Q. Can you give an approximate notion?

A. Well, there is Kansas City, Beatrice, Omaha, Grand Island, Kearney, and I don't know how many other places where there are small junctions or crossings; a good many places, mostly in Nebraska; some in Colorado.

Q. Prior to the purchase of the Burlington, was the Bur- 3062
lington by the way of Billings in competition for Pacific coast traffic with the other lines?

A. Why, the Burlington did all the Pacific coast business it could by the way of Billings, and to the extent that it got it away from other lines of course it was in competition with them. Yes, all lines that reach the Pacific coast, I suppose, competed for the same business we did by the way of Billings.

3063 Q. What proportion of your Pacific coast traffic (north Pacific coast traffic) went by way of Billings?

A. I can't tell you. Well, all the North Pacific coast business that we controlled at that time in the Missouri Valley, a large part of it in the Mississippi Valley, I should say south and east of Burlington, went by the way of Billings.

Q. As compared by your Denver route, (by way of Denver), which route took the most of your Pacific coast traffic —North Pacific coast traffic?

A. Well, of the North Pacific coast traffic I think—I have
3064 no doubt—without being able to testify exactly—that the bulk of the business went by the way of Billings. I say a very large majority of all of it, no question about it.

Q. Is Billings the terminus of the Burlington in the Northwest?

A. Yes.

Q. By what route did it then pass to the Pacific coast?

A. Over the Northern Pacific.

Q. Do you maintain any agents at Seattle or Portland or Tacoma?

A. Yes.

3065 Q. How many?

A. Well, we have an agent in Portland who has general charge and jurisdiction over all the other points, and we have an agent in Seattle and one in Tacoma and I think one in Spokane and I believe one in Butte. It was so a little time ago, and I don't think there have been any substantial changes; there may have been one or two put on or possibly one or two taken off, I don't know, I don't think of any; I don't think of any changes.

Q. You stated that the general trend of rates received by the carrier has been downward. Do you mean the published
3066 rates or—

A. Yes, I mean the published rates. The business is getting to be more and more so that it is conducted in public. There is less and less secret business all the time, and I hope the day will soon come (with your assistance and others who are interested in the subject) that there will be none at all. I don't want to see it. I want everything done right out in public—publicity for everything in

regard to all these carriers, as far as I am concerned. That 3067
is what I believe in.

Q. Could you give a list of the articles on which the published rates have been reduced?

A. I could not. There is a long classification. And in a general way, the amount that we received is decreasing per ton.

Q. You spoke of the class rates or classification. Is it not a fact that on the first of January, 1900, a new classification went into effect in the United States, north of the Ohio river, whereby more than 500 articles were taken out of lower 3068
classes and put into higher classes?

A. Well, I heard you say so yesterday and I am ashamed to say that is the first imformation I had on the subject. I don't know whether it was so or not. And in explanation of that I will say that I haven't been quite as close to that subject as I was a time ago. I don't know quite so much about rates and classifications as I did when I was living with them every day.

Q. Now, when you were testifying as to your opinion of the advantage of this union—the advantages of this union,—were you speculating as to the future or were you stating ad- 3069
vantages that have already accrued to the public?

A. Well, I think they have accrued in a small degree, but to no such extent as they are likely to accrue when we get through talking about it, when all these things pass away (as I think they will), when people are satisfied to settle down in business and when the question as to whether things that have been done and put together are going to stay together or going to be torn asunder; when merchants and manufacturers feel that they can settle down and do business today and tomorrow and forever without having the question raised by somebody. I have no question about it, 3070
but some others have. These manufacturers say "Well, we don't want to establish places for the reduction of minerals." For instance, in order to economically and profitably treat these minerals it requires two ores to do it, one of which must be procured from one line and the other from another, because it all depends on the chemical composition of the ores. "Why," they say, "we guess we will wait a while."

3071 Q. Where do those ores come from?

A. Well, the particular ores that I have in mind come from the Northern Pacific and the Burlington, and they are also found in the Great Northern territory.

Q. They had been coming together before, had they?

A. In a very small way, and we haven't been able to bring them together yet, for the reason I stated, in a large way.

Q. Do you wish to be understood as claiming or stating that the manufacturing towns and manufacturers on the Burlington system rely for their raw materials on traffic relations with the Great Northern and Northern Pacific, or your traffic
3072 relations with them?

A. I did not say so. I said I thought that the business would be very greatly extended.

Q. What that would be or might be.

A. That barriers would be broken down and that the ease with which business can be done will promote more business.

Q. You have always brought raw materials to the manufacturers on your line from other connecting lines, have you not?

A. Yes, sir.

Q. They have been well supplied, have they not?

3073 A. Fairly well, yes.

Q. The company is developed?

A. Yes, sir.

Q. The Burlington system has been pretty well managed in the past?

A. Well, I hope so.

Q. In order to continue the general prosperity or to advance the general prosperity of these manufacturers in the towns on the Burlington system, was it necessary or needful that the Burlington system should be owned by the Great Northern and Northern Pacific?

3074 A. I think that was the very best disposition that could have been made of the property for the interests of the merchants and the manufacturers and the industrial population and the agricultural population along the Burlington road; I think it gives them additional resources, aids in the development of latent resources, and represses none.

Q. But you are unable to state any circumstance or fact that has yet occurred that has contributed to their prosperity?

A. I have endeavored to state that there were cases where 3075
the conditions now under consideration—

Q. I am speaking of facts that have occurred, not what you hope may come in the future.

A. Well, may I ask if you will kindly restate your—

Mr. Day. The stenographer will read it to Mr. Harris.

The following question was read by the stenographer: "But you are unable to state any circumstance or fact that has yet occurred that has contributed to their prosperity?"

Witness. That is, a fact as to what?

Q. That has added or that has resulted in substantial ad- 3076
vantage, material advantage, to the manufacturing towns in the territory in Nebraska that you are speaking of, these manufacturing places.

A. I think in a general way—I can't put my finger on the exact amount or quantity of traffic, but I think commercial transactions have undoubtedly occurred that would not have taken place. I think the people who are trading and manufacturing are looking up the territory and are doing the business. I can't put my finger right on it and say "There is so many dollars, or so many pounds or so many tons of anything."

Q. All these avenues were open to them before? 3077

A. Well, as I said before, there is a difference between an avenue being opened and having permission, and having an interest in bringing something about.

Q. Well, you say there have been no instructions from the board of directors or from the management whereby you as president of the Burlington Railway changed the policy of the Burlington Railway Company?

A. They didn't have to instruct me. It is an obvious fact that where a community of interest of that kind exists everybody will be disposed to aid it to the very greatest extent.

Q. That a man will use his property to make out the most 3078
of it?

A. He naturally will; he naturally looks after his own.

Q. And the Northern Securities Company will manage the Great Northern and the Northern Pacific, which are its property, so as to make the most for the Northern Securities Company, following that line of argument?

3079 A. Well, I couldn't testify to that. We have had no directions from the Northern Securities Company yet.

RE-DIRECT EXAMINATION.

By Mr. Young:

Q. I think you stated you have been president of the Chicago, Burlington & Quincy Railway Company for how long?

A. Well, I don't remember now. It is about—

Q. Two or three years, I believe?

A. A couple of years, somewhere along there, more or less;
3080 it is a short time.

Q. Immediately before that time what position did you hold in the Chicago, Burlington & Quincy Company, and what particular branch of the business of the road was in your charge?

A. I was vice president; I was second vice president of the Chicago, Burlington & Quincy Railroad, having general charge of the traffic, operation and maintenance of the existing properties and construction of such new lines as were undertaken. General charge of all the lines and property of the company in respect to traffic, operation, construction and maintenance.

3081 Q. For how many years were you vice president?

A. Well, I left here, I should say about ten years ago; previous to that time I was president of the Burlington & Northern here in St. Paul.

Q. You say you were president of the Chicago, Burlington & Northern Railway Company?

A. Yes.

Q. That is a part of the Chicago, Burlington & Quincy system, is it not?

A. It is now.

3082 Q. And that is a road extending from Minneapolis and St. Paul down the Mississippi river and connecting with your lines, to St. Louis and Chicago?

A. Connecting with the old C., B. & Q.

Q. That is the line over which your coal would naturally come if brought by the "Q" from Illinois?

A. Yes.

Q. And that is the line over which your iron ore, or anything

else which came from Northern Minnesota or came through 3083
St. Paul, would go on the "Q" line?

A. Naturally.

Q. What special advantage has this Mississippi river line of yours for carrying great volumes of traffic at especially low rates?

A. Well, it is a low grade line; it has no grade in either direction for some 300 miles in excess of about 16 feet to the mile; and it is light in curvature, having no curve (except in one place) in excess of three degrees. And it is a line, by the way, that we can produce a line from here to St. Louis at a 3084
very moderate expense; and that is one of the things now under way, on the same basis. That is to say, not to exceed 16 feet to the mile in either direction in grade and considerably under three degrees in curvature,—one and a half probably, or one.

Q. You say "Produce a line to St. Louis." Do you mean to put existing lines to St. Louis in that condition?

A. By economical and slight changes in existing lines; we readjust it. I should have said readjust it, instead of produced, because we already have the line.

Q. How long trainload can you haul with a single loco- 3085
motive on this Mississippi river line that you have spoken of?

A. I think we can hitch up to haul regularly, day in and day out, in the vicinity of 3,000 tons to the train, of the right kind of freight; heavy freight, coal, ore, pig iron or similar articles.

Q. You were asked whether the factories and mills on the Burlington road had been supplied with their raw material, prior to the purchase of the Burlington stock, by these other companies. I will ask you whether you ever carried them any iron ore from Lake Superior.

A. I don't think we ever did. I don't think we ever had any 3086
iron ore. I don't think we ever transported but one lot, and that was taken as a sample lot some years ago. I may be wrong about that, but that is the only recollection I have of any ore over the line.

Q. You were inquired of by plaintiff's counsel less with reference to Washington lumber (as I understood it) than Oregon lumber, and as to whether (I think it was) the Oregon Short

3087 Line would bring it to some other point. Whereabouts in Oregon are the lumber forests situated?

A. Well, about that I would say, and I would like with the permission of Mr. Day now to say that in speaking of that lumber I spoke of all the lumber west of the Cascade Range, the Pacific slope lumber. I had in mind no particular mill or no particular forest and I supposed that was the scope of the inquiry.

Mr. Day. I so understood you.

Witness. I meant that western lumber.

3088 Mr. Day. The witness had used the words "Washington and Oregon lumber" and I used that to draw his attention to that route, the Oregon route, the Short Line route. I understood him precisely as he has testified.

Q. Mr. Harris, whereabouts in Oregon is that lumber situated so far as you know,—the standing timber, in any quantity; in what part of the state?

A. Well, I would rather refer you to Mr. Weyerhaeuser as to that. I know in a general way about that lumber, about the quality and character and the extent of the supply; but when you come down to details, I have only been there two or

3089 three times and I would rather not attempt to testify.

Q. Do you know whether there is any lumber in the central or southern part of Oregon (any standing timber or merchantable timber for lumber)?

A. Well, I should certainly say not. I don't know of any.

Q. You have been over that country?

A. I have been over the Short Line, and I guess I have been over all the lines of railroad.

Q. Well, is there any merchantable lumber on the Short Line?

A. I don't remember any; I don't remember seeing any.

3090

RE-CROSS EXAMINATION.

By Mr. Day:

Q. When did you cease to act as president of the Burlington & Northern?

A. I don't remember the date. It was the time the Burlington & Quincy bought it, I think. I won't be certain that my connection with the corporation ceased at that time.

Q. About when was that, Mr. Harris? 3091

A. Well, I think that I left here about twelve years ago, and that was at the time when the Burlington & Quincy took possession of the C., B. & N. I was, by the way, president of the Burlington & Northern Corporation, and I may be now for all I know. My reply, Mr. Day, I would like to explain meant that what I had in mind was the date when the change took place, when I ceased to be an active officer of the Burlington & Northern Company as an active corporation and became an active officer of the Burlington & Quincy.

Q. You are, as far as you know, yet president of that? 3092

A. Well, I may be.

Q. Now, when you became vice president of the Chicago, Burlington & Quincy system, you were the traffic manager, you had charge of the traffic of the entire system; that was a part of your jurisdiction?

A. My title was not that of traffic manager; I was vice president and was in general charge of operation, traffic and maintenance.

Q. The Burlington & Northern from that time until now continued to be a part of the Burlington system? 3093

A. Yes; it was practically a part, and the exact corporate change I wouldn't want to—I suppose what you meant—

Q. I am asking for the substance of things.

A. Yes; I didn't want to mislead you at all.

Q. You stated to Judge Young that that was the route by which you brought the coal from the Illinois fields to Minneapolis and St. Paul. What, roughly speaking, was the volume of that sort of traffic?

A. Well, at times it was pretty heavy, and at times it was pretty light; depending on the volition of the consumers up here, and that was one of the things that leads me to think 3094 that with a continuing interest to bring it there we will be able to handle that large tonnage.

Q. The tonnage was larger at certain seasons than others?

A. Yes; and it was larger at times because the dealers said or the roads said—the Northern Pacific said "We will burn some coal we have got up here at the head of the lakes,"

3095 or "Buy coal from somebody else." Or the Great Northern said so, or the dealers bought from somewhere else.

Q. Well, during the season or the times when coal was moving in large volume, about how many carloads a day did you bring into St. Paul?

A. I can't tell you now, Mr. Day.

Q. Many?

A. Oh, I remember in a general way that for a while our coal tonnage was heavy, but there have been so many figures that they have completely disappeared from my mind.

3096 Q. Was any considerable portion of it destined for points on the Northern Pacific and Great Northern in the state of Minnesota?

A. I remember at one time we brought a very considerable quantity of coal for one, and perhaps both, of those companies.

Q. Well, Mr. Harris, I want to ask you, in view of your knowledge of the situation, if coal brought by the Chicago, Burlington & Northern destined for points in Minnesota on the Great Northern and Northern Pacific roads was broken bulk here?

A. A great deal of it was.

3097 Q. What were the facilities, how was it done?

A. Well, that was not done by us, and therefore I can't describe it in detail. The coal was transferred by the dealers and we required them to do it because we wouldn't let the cars go through.

Q. The dealers, where the coal was billed through from your road to points in Minnesota, unloaded it here?

A. Coal was very largely handled by the dealers; the local dealers north of here as a rule bought their coal of dealers located in St. Paul and Minneapolis.

Q. I am speaking now of the coal that was billed through 3098 from points in Illinois to points in Minnesota beyond St. Paul and Minneapolis.

A. Yes; that is the same coal. At times that coal was transferred.

Q. How was it transferred?

A. Transferred by the dealers.

Q. What were the methods, what were the facilities?

A. Well, I suppose they had transfer tracks and shov- 3099
eled it out.

Q. Isn't it a fact that where coal was transferred, destined for points in Minnesota, that those were exceptable instances?

A. I can't say about that, Mr. Day. It is very difficult to testify definitely about those things that happened so long ago. There was a good deal of it that was transferred and there was a good deal that went through, but I can't tell you the exact quantity. I can't give you a correct idea about it because I haven't got it myself.

GEO. B. HARRIS.

3100

Subscribed and sworn to before the undersigned, this 23rd day of October, 1902.

FREDERICK G. INGERSOLL, Special Examiner.

The further taking of testimony was thereupon adjourned by the Examiner until the morning of Thursday, Oct. 23, 1902, at 10 o'clock.

3101 St. Paul, Minn., October 23, 1902.

The hearing was resumed at the same place at 10:30 a. m. All parties present.

It is stipulated by counsel for the respective parties to this cause that the reading of the testimony to each witness by the examiner is waived; that each witness shall read over his testimony and thereafter sign the same in the presence of the examiner.

W. P. CLOUGH, recalled as a witness on behalf of the de-
3102 fendants, testified as follows:

Examined by Mr. Grover:

Q. What official connection did you have with the Great Northern Railway Company?

A. I was the first vice-president from the time the name was changed from the Minneapolis & St. Cloud Railroad Company to the Great Northern, sometime in the latter part of the year 1889, until a little more than a year ago, when I resigned all of my official connection with the Great Northern Company, about a year ago.

3103 Q. Previous to your becoming vice-president of the Great Northern, what official connection did you have with the St. Paul, Minneapolis & Manitoba Company?

A. From 1887 on until some time last fall I was second vice-president of the St. Paul, Minneapolis & Manitoba.

Q. You may state in this connection your official relation to the Northern Securities Company.

A. I am a director, a member of the executive committee, fourth vice-president and general counsel.

Q. And your official relation to the Northern Pacific?

A. Since December 11, 1901, I have been a director and a
3104 member of the executive committee of the Northern Pacific Railway Company.

Q. What official relation have you at the present time with the Great Northern Railway Company?

A. None whatever.

Q. That relation ceased about a year ago?

A. About a year ago.

Q. During your relation with the Great Northern Railway

Company, was the subject of organizing what we call a holding company, or making use of one, mentioned in your presence and mine and discussed by Mr. Hill, Mr. Kennedy, Mr. James and other Great Northern shareholders? 3005

A. Yes, sir, those suggestions and discussions, to a certain extent, began years ago. I couldn't in my memory now fix the precise date when that began, but certainly as long back as five years ago. Mr. Kennedy, particularly, who was getting along in years himself, began the suggestions, I think; I think they came from him perhaps originally,—that certain of the shareholders of the Great Northern Company who had originally gone into the properties in the '70's, and all of whom 3106 were getting old, should make an arrangement to put their shares in these properties (the Manitoba and Great Northern properties—it had gone from Manitoba shares into Great Northern shares) into a company for which they should receive the stock of that company.

Q. State the purpose or declared object of organizing or making use of such company.

A. The gentlemen who were to be considered in that connection, and whose co-operation was desired and intended were about eight or ten men who had originally gone into 3107 the St. Paul & Pacific Securities, along about 1875, '6 and '7, when the lines were in a state of bankruptcy. They had retained their interests in the property and increased them (their investments) as time had gone by, with the result that they had made very large gains; and the securities they held and had acquired from time to time up to within two or three years ago amounted to very large sums; and it was the desire of those gentlemen, in the event of any of them passing away (and it was believed that all of them would pass away in a comparatively short period of time), that as they had co-operated together and acted in view of the mutual and common 3108 interest in the past, that their stock should be put in a position so that the stock of those parties in the future would stand about in the same or similar relation to each other that they had in the past; that the value of the securities should be preserved, as far as possible, by a continuation of the policy of building up the property of the company, and in event of a sale of the holdings of any of them that those of the

3109 rest of them should be treated in the same way and be subject to the same conditions. That was the general idea.

Q. Was the matter mentioned or discussed during the early winter of 1891?

A. Of 1891?

Q. 1901?

A. 1901, yes, sir. I went to New York, arrived there on the 15th day of March (either the 15th or 16th), 1901, and have remained there practically all the time since. Mr. Kennedy was about to take a trip to Europe, and he again revived the suggestion in regard to the formation of what he called a
3110 holding company, to take the Great Northern shares of himself and his old associates that I have mentioned.

Q. You mean Mr. John S. Kennedy?

A. Mr. John S. Kennedy, yes, sir; the gentleman who has testified before in this case. And he suggested, as time was advancing with himself and his old associates, that the matter should not be long delayed. He went away very soon, and as time permitted the subject was taken up, from time to time, and working upon the proposition was continuous until the formation of the company, the final filing of its articles in No-
3111 vember following—November, 1901.

Q. Did you take part in the drawing of the articles?

A. Yes, sir.

Q. Take charge of the matter?

A. Mr. Kennedy, I think, talked to me on the subject quite as much as Mr. Hill did. Very soon after Mr. Kennedy went away the question was more closely considered, and it was thought desirable, if a company of that kind were formed, that it should have the stability that a charter beyond the power of legislative amendment would give, and such a charter should be acquired for it if possible. It was known that
3112 the territory of Minnesota, before the admission of the territory into the Union, had granted a great many charters for financial and other companies, and it was thought possible that some of those old charters could yet be found on foot that would contain the powers that would be considered necessary for the purpose, and that would at the same time be legislative contracts with the state of Minnesota so that they would be beyond the power of amendment. An examination

into that subject was set on foot, and Mr. Grover, who was 3113
on the ground here, was entrusted with the subject of looking that matter up. That occupied, necessarily, quite a considerable time, and I believe we didn't get the report of Mr. Grover (I am stating from recollection now) until some time in May. By that time Mr. D. Willis James, another of the gentlemen whom I have spoken of as being one of the early investors in these properties, had returned from California, and renewed suggestions of a character similar to those he had made before. Mr. Samuel Thorne came back about that time. He was another of them and he concurred in that view. Lord 3114
Mount Stephen and Lord Strathcona, who were two others, had directly and indirectly sent communications from England of a similar character. So that it was regarded as settled that as soon as the matter conveniently could be reached the holding company should be formed. The result of the inquiries into the territorial charters in Minnesota was, as I remember now, that nothing of a nature deemed entirely satisfactory could be found; and the idea of getting hold of an old special charter was dropped. The question then came of the formation of such a company under the general incorporation acts of some state that contained legislation permitting such 3115
corporations to be formed, and that was a matter of discussion for a considerable period. There were several states suggested as having appropriate legislation on that subject, and among them I remember were West Virginia, New Jersey and New York. That inquiry necessarily occupied considerable time, especially in view of the fact that I was very busy in connection with the carrying through of the purchase of the Burlington stock; I had been from March. The negotiations for the purchase of that stock began almost immediately after I arrived in New York, in March, and the completion of those negotiations, the making of the contracts for the purchase of 3116
the stock, the preparation of the mortgage and the bonds and the signing of the bonds, and the other necessary labor was very great from March, all the way through until along in September, when the bonds had been signed and the completion of the purchase of the stock had been made. But as time could be gotten the questions that came up in connection with this company were given attention; and I remember that be-

3117 fore the subject of the selection of a particular state was decided—long before that—

Mr. Beck. What particular state did you say?

Witness. The selection of the particular state.

Mr. Beck. I just wanted to see if I understood.

Witness. The selection of the state, yes, under which the company should be incorporated. Long before that was determined, at the suggestion of Mr. Kennedy, I had sketched out the substance of a statement of the powers of a corporation such as was contemplated. Another hindrance was the fact that the parties who were to be interested in this new
3118 corporation were very much scattered. Mr. Kennedy, who was the most active of all except Mr. Hill, and quite as active as Mr. Hill, was not in very robust health. He went to Europe, I think, about the first of April, somewhere along there, and did not return until June. About the time he got back to New York the weather became very hot, which affected his health considerably, so that he left almost immediately for Bar Harbor, and consultation with him was very difficult. But this draft was made, as I remember (the first draft), after his return; I am quite sure it was after his return in June from
3119 Europe and before his departure from Bar Harbor, some little time after that. It was not determined at this time either the state under which the incorporation should be made or the amount of the capital stock.

Mr. Beck. Would you mind, Col., telling what year you are speaking of now?

Witness. Last year, 1901. I thought I had made that clear. Beginning at March, and lasting through that year. As Mr. Kennedy and Mr. Thorne and Mr. James (they were the gentlemen who were principally consulted) could be seen, the matters of the state where the incorporation should be
3120 made and the amount of the capital stock were discussed, and also (in a general way) the powers. The sketch of the articles of incorporation that I have mentioned left blank the name of the incorporation, the state under whose laws it was to be incorporated, and the capital stock. After discussion over the subject of powers with Mr. Kennedy, at various times, and with Mr. James as there was opportunity to see them, changes were made in that draft. I think between June and October

there were probably two or three different sketches made, 3121
and the matter of capital stock and of the state where the incorporation should be and its name were not finally decided until these various gentlemen had gotten back from their summer places and there had been an opportunity to have a more extended consultation with them. But some time along in the month of October, as I remember it, most of the matters had been decided except the state where the incorporation should be made. That was about the last thing to be decided. In the preoccupations of all of us we did not reach that until along in November. As soon as parties could be consulted 3122
who were immediately interested, the state of New Jersey was decided upon, and steps were immediately taken for the incorporation of the company, which followed by the filing of the articles on the 13th of November.

Q. State, as near as you have in mind, the number of shareholders of the Northern Securities Company.

A. At this time?

Q. At this time, and when this petition was filed in this proceeding.

A. When this petition was filed there were about 1,300 shareholders; there are now about 1,800,—of the Northern 3123
Securities Company.

Q. You refer to the shareholders who have registered their stock and appear on the records?

A. Yes, that is what I have reference to. The only knowledge the officers of the company have is the stock transfer books, and there appear on the stock transfer books now about 1,800 names. When this suit was begun, there appeared about 1,300 names.

Q. Had you knowledge of the fact of transfers of the Great Northern and Northern Pacific to the Northern Securities Company? 3124

A. Yes, sir, I knew about that; it was all done under my supervision.

Q. You had general charge of the New York office of the Northern Securities Company?

A. As far as it is entrusted to the officials; the business affairs of the Northern Securities Company are, under its char-

3125 ter and by-laws, controlled by its board of directors and its executive committee.

Q. You were in the office and had charge of the office?

A. Yes, sir.

Q. Now, state whether the transfers were individual, absolute, without reservation, and without solicitation from the Northern Securities Company—fully?

A. To answer the first question, every purchase of stock that has been made by the Northern Securities Company (whatever stock it may be) has been by direct individual transactions and negotiations with the owner of that stock except
3126 in the one instance that I have referred to in my previous testimony of the purchase of the Harriman and Pierce stock, where J. P. Morgan and Company negotiated the purchase and the purchase was assigned to the Northern Securities Company.

Q. Now, were the transfers absolute?

A. They were absolute and unconditional in every case.

Q. Were they solicited by the Northern Securities Company?

A. No, sir; in no case. The Northern Securities Company,
3127 some time in November, I have forgotten the precise date, I think it was the 22nd, issued a circular to each individual stockholder of the Great Northern Railway Company, of which a copy has been introduced.

Q. Were you present in the office of the Northern Securities Company at the times when holders of shares came there to make transfers or to make inquiries?

A. Yes, sir; I was there constantly in attendance at all times during practically every business day from the time of the organization of the Company until, I might say, last Friday. I believe I was absent during the summer occasionally Saturdays, but practically every business day since its organization
3128 until last Friday, when I left for St. Paul, I was in the office during the business day and practically all the business hours.

Q. Now, were a considerable number of transfers made there by parties appearing personally or by their representatives?

A. Yes, sir, quite a good many people brought their stock in personally; many others sent it by mail.

Q. What information or suggestions were made to them 3129
respecting the transfers?

A. Why, *there was nothing special; the transaction would* be that the individual would present his Great Northern stock, or Northern Pacific stock, as it might be, and ask to sell it to the Company and to receive in pay the stock of the Company. When litigation against the Company was threatened, I think in every instance that fact was communicated to every person bringing his Great Northern and Northern Pacific stock to the Securities Company to sell it. And after a little time, after litigation had been begun by the state of Minne- 3130
sota in the Supreme Court of the United States (that was, if I remember right, early in the present year, about the first of January, 1902), the Company had a rubber stamp made, of which I haven't a copy of the impression here (I forgot to bring it), but it was to the effect that the person who offered his stock to the Securities Company for sale had been informed by the officers of the Company of the pendency of the litigation, and that was stamped upon each application. In order to keep our records straight, we had a blank form of offers to the Company, and that was stamped upon the application. 3131

Q. What considerations led to the fixing of the capital of the Northern Securities Company at $400,000,000?

A. In the early part of the active consideration of the formation of this Company it was expected that the holding Company would acquire the shares of eight or nine of the old investors, as I call them, amounting, in the aggregate, to a little over $30,000,000, perhaps 31 or 32 millions of dollars; and, at that time, when the question of capital stock was suggested, it was suggested at a comparatively small figure, but after the so-called raid of the Union Pacific interests on Northern Pacific stock, which culminated some time along 3132
about the 8th or 9th of May or a little after that, it was expected to take into the company the interests—the Northern Pacific interests—or the holdings, rather, of Northern Pacific stock of those parties and of a few other gentlemen who were friendly with them. The Northern Pacific holdings amounted to a little over $40,000,000 of the common stock. So that along up until the end of July the stock suggested

3133 (the capital stock of the Northern Securities Company) was about 150 to 200 millions of dollars. I might mention in this connection that it was also expected, very soon after the matter commenced to take form last season in New York,—it was also expected that the Securities Company would acquire the stock of other companies, industrial concerns in the country where the railroads operated, that were of the character that the railroad companies themselves could not well hold, such as coal mines and iron mines and properties of that character; and there was always intended to be left a very considerable
3134 margin above what was needed for the railroad stocks to take care of these outside stocks. And the discussion and suggestions of the amount of the capital stock, along in June or July or up to early July, rather, were around from 150 to 225 millions of dollars, one gentleman suggesting one thing and another, another; and it ran along that way until I think after Mr. Morgan got back from Europe. If I remember rightly he got back about the Fourth of July, and some time after he got back he was, I believe, asked whether he would sell his Northern Pacific stock to a company of that character. I think he had five or six—or his firm owned or had in their possession
3135 five or six millions of the Northern Pacific capital stock. Some time after his return, he expressed his willingness to sell his stock to a company of that character, but upon the condition that all other holders of Northern Pacific stock (common stock) should have like privileges with him, if they desired to exercise them. I might say at this time it was known, became generally known, that a plan for the retirement of the Northern Pacific preferred stock and its replacement by new common stock, that had been conceived early in the year, would be quite surely carried out on the following January; and, when it was carried out, there would be 155 millions of stock
3136 of one class of the Northern Pacific, and Mr. Morgan was very strenuous that when this stock was all out, if he sold his stock to the Northern Securities Company, that each of the other holders of the common stock, if he wanted to do so, should have the privilege of selling to the Northern Securities, at the same rate. He was extremely insistent on that. Some of the eight or nine or ten Great Northern stockholders who were consulted in this matter had quite early taken a similar

view in regard to Great Northern stock. They suggested that 3137
it had been the settled policy of the Great Northern management that whatever benefits of any kind should be open to the holder of any of the Great Northern stocks should be opened upon equal terms to all the others. There was not very much progress made with that proposition until after Mr. Morgan's return, and his insistence upon that privilege (a similar privilege for the Northern Pacific stockholders in relation to their stock) and then it was very generally considered by these gentlemen that the arrangements for the holding company, as it was commonly called at that time, 3138
should be made large enough so as to let in, if desired, all of the holders of the Great Northern stock as well as of the Northern Pacific. That matter was discussed from time to time, and it was believed by myself and Mr. Hill and Mr. Kennedy and some of the others who had watched things very closely, that there was very little probability of anything nearly like the whole of the stockholders, of the Great Northern at least, coming in, because that was a well established stock in the market. It had been on the market for ten years and had a high market value and was thoroughly well known. It was held entirely by investors. There never has been any 3139
speculative movement in Great Northern stock, and it was thought, that being held that way, the holders of a well-known and well-established stock would be loath to sell it and take in pay the stock of a new and comparatively unknown company. But finally it was said, and that was the argument which prevailed in fixing the amount at what it was,—it was finally suggested by somebody and strenuously insisted (I think it came from Mr. Morgan perhaps first) that if the capital stock of the Northern Securities Company were fixed at any sum very largely below what would be required to purchase the capital stock of the Northern Pacific and Great 3140
Northern companies, it would have an appearance upon its face as of an intention on the part of the gentlemen promoting this company to exclude some of the other stockholders from the benefits, whatever they might be, in the new organization. The amount that would be required to purchase the two stocks was computed, in a rough way, and it came to something in the neighborhood of 400,000,000 of dollars. It

3141 was also desired, as I said before, that the new company should have reserved to it a considerable amount of stock available for the acquisition of other properties, some of which it has since acquired, and 400 millions was fixed as a round number covering all of those different ideas. That was the way the 400 millions came to be fixed. It was very largely a matter of appearance in the minds of some of the few gentlemen who expected to sell their stock to it.

Q. Is there any agreement or understanding, on the part of the Northern Securities Company, that in any way restrains its right to sell or dispose of the stock it has purchased or
3142 make such disposition of it as it may?

A. None, whatever. The holdings of the Northern Securities, of all of its securities, railroad and other, are absolute and unconditional and free from any restrictions of any kind, either expressed or implied.

Q. During your connection with the Manitoba Company and the Great Northern, did you give attention to the matter of traffic, the making of rates?

A. Very much, from the time I went on the Manitoba Company until I ceased my connection with the Great Northern,
3143 and, in fact, ever since,—very especial attention.

Q. You know the location of the lines of the Great Northern and Northern Pacific?

A. Yes, sir, I know them.

Q. The Burlington and other lines in the Northwest and west of the Mississippi and Missouri rivers?

A. Yes, sir.

Q. (Map shown witness.) This is a map showing railway lines,—Northwestern, Great Northern, Northern Pacific, Burlington, Canadian Pacific, Chicago, Milwaukee & St. Paul, Soo Line, Chicago & Northwestern, Union Pacific, Oregon Railway
3144 & Navigation Company, Oregon Short Line, Minneapolis & St. Louis, Great Falls & Canada Railway. The lines of the different railways named are shown on the map as represented by the colors in the index.

A. I may say I have carefully examined this map before seeing it now, and the different railway systems are laid down on the map with approximate correctness, so far as could be done upon maps of that scale.

Q. And the lines are represented in the colors as shown in the index? 3145

A. Yes, sir.

Q. The scale is 40 miles to one inch?

A. Yes, sir. That very small scale makes it impossible to use the precision in laying the lines down that could be used on a map of larger scale.

Q. The map also shows the population of the towns under which the figures are entered?

A. They are intended to be as shown by the census of the year 1900. Those were the instructions for putting it down. 3146
I haven't looked this over.

Mr. Grover. I propose to put upon the map figures taken from the census of 1890 and 1900 showing the population of some of the states, also showing the wealth of the states in 1890 and in 1900. I didn't have them accurately. We ask leave to insert those on the map, and I offer the map in evidence subject to that reservation.

The map was marked for identification defendants' Exhibit 4.

Q. At what points or stations in the state of North Dakota do the lines of the Great Northern and the Northern Pacific 3147
meet or form junctions?

A. If you will let me look at this map to give you the proper order and read them off.

Q. And in this connection you may answer as to Montana and Washington.

A. (Referring to map.) As I understood you, North Dakota, Montana and Washington?

Q. Yes, sir.

A. In North Dakota: Wahpeton, Fargo, Grand Forks, Casselton. That is a mere—

Q. I will ask you later about the business. 3148

A. Leeds.

Q. And Grafton?

A. Yes, sir. I was coming to that, and will suggest here that the name ought to be put down; I see that the draftsman has omitted it. I will mark it with a pencil so we will be sure to remember it.

3149 Q. You may state about the population, and the business and development of the stations at the points named.

A. They are all small, comparativevly new towns, having only an agricultural interest; no particular development of any other industries. Wahpeton, by the census of 1900, had 2,228 people; Fargo, by that census, had 9,589 people; Grand Forks, 7,652; Grafton is not here, it will be put on; it is a small farming village.

Q. Grafton and Leeds?

A. Leeds is a mere junction point, connection; there is practically nothing at Leeds.

3150 Q. Speak of Montana.

A. In Montana there is practically nothing but Helena and Great Falls.

Q. Helena and Butte?

A. Helena and Butte, I mean. There is a place called Boulder, where they meet; the name is not down here; it is a small mining town, I will put that down also. The only places of importance are Helena and Butte in the state of Montana.

Q. In Washington?

A. Shall I give the population of Helena and Butte?

3151 Q. Yes, you may.

A. Butte, by the census of 1900, had 30,470, and Helena, 10,770. In Washington the points of any consequence, common points, are Spokane, Seattle, Everett. The Northern Pacific also gets now into the Bellingham Bay towns. I will put it down here; that is not mentioned.

Q. That is within 60 days?

A. Oh, yes, that is just now.

Q. Well, if you have it before you, give the population.

A. Yes, it is a small place; the population is not here.

Q. The population of Spokane?

3152 A. Oh, of Spokane; 36,848.

Q. Seattle?

A. 80,671; Everett, 7,838. My recollection is that the Bellingham Bay towns have seven or eight thousand. That is about right, isn't it, Mr. Mellen?

Mr. Mellen. Yes, sir.

Witness. I have forgotten precisely what they are.

Q. Now, Mr. Clough, the interstate and international traffic

of the Great Northern and Northern Pacific, either, of course, originates on their own line or on the line of other carriers? 3153

A. Yes, sir; the business they do is local business, that is, local to their own lines, and exchanging with other carriers to and from.

Q. Where it begins or ends on the lines of other carriers it is handled under what is known as a joint tariff?

A. In respect to the great majority, the great bulk of that class of business; both in quantity and in earnings.

Q. What do you mean by joint tariff?

A. I mean a tariff where several carriers having connecting routes, make a through route between one point and another, unite together in a rate, in a single rate through from the point of the origin of traffic to its destination. 3154

Q. In short, it rests upon an agreement made between the Great Northern and Northern Pacific and connecting lines fixing the rate?

A. There can be no joint tariff, in any proper sense of the word, except by agreement of all of the carriers concerned in the tariff and putting it out.

Q. Mr. Clough, I show you paper marked "No. 4-A, Transcontinental Freight Bureau, West-Bound Tariff, naming Class and Commodity Rates, effective July 1, 1902," and inquire if that paper shows the railway companies with whom the Great Northern and Northern Pacific had a joint tariff, between what points it applied and the number of railway companies parties to it. 3155

A. This is an illustration in general form and nature of joint tariffs, and shows upon its face the parties intending to join in the tariff; the names of the railroads on the first page might be called the parties of the first part to the tariff, in a sense. Here are eighteen roads. Shall I read them?

Q. Yes. 3156

A. Atchison, Topeka & Santa Fe Railway; Burlington & Missouri River Railroad in Nebraska, (that is a part of the Chicago, Burlington & Quincy Railway); Canadian Pacific Railway; Chicago, Rock Island & Pacific Railway; Colorado Midland Railway; Colorado & Southern Railway; Denver & Rio Grande Railroad; Great Northern Railway; Minneapolis, St. Paul & Sault Ste. Marie Railway Company; Missouri, Kansas

3157 & Texas Railway; Missouri Pacific Railway; Northern Pacific Railway; Oregon Railroad & Navigation Co.; Oregon Short Line Railroad; Rio Grande Western Railway; St. Louis & San Francisco Railroad; St. Louis, Iron Mountain & Southern Railway; Union Pacific Railroad. I might say that these eighteen roads are roads operating in the territory west of the Missouri river and between there and the Pacific coast. The parties of the second part, so to speak, are about 120 roads in the part of the country eastward of the Missouri river and connecting with the lines mentioned on the first page of this leaf, and all together furnishing through routes between prac-
3158 tically all important traffic centers of the country east of the Missouri river and all the country west of the Missouri. Is it desired that I should read the names of all these roads?

Q. No.

A. There are about 120 of them.

Q. What is the reason, occasion and necessity for entering into such joint tariff on the part of the Great Northern and the Northern Pacific?

A. Why, it greatly facilitates the movement of traffic. In the first place, many of these routes that are named here, or
3159 rather, I should say, in many instances, connect important traffic centers in the eastern part of the country with important points in the western part of the country. It is necessary for the traffic to pass over from three to six and maybe ten lines of road, possibly; and if each road had its own separate billing and handled the business locally, it would greatly obstruct the movement of traffic. It would be more expensive for the carrier, as a rule. It would be a great deal higher priced for the shipper because the sum of the local rates is generally considerable in advance of the through rate.

Q. That is, the through joint rate?

3160 A. Yes, sir; the through joint rate. So, in order to permit business to move, it may be said, in large volumes, such arrangements as are provided for in tariffs of this class are entered into; and it is that class of arrangement, I think, that marks the railway system of the United States as extremely superior to those of other countries. It makes a single route out of so many individual routes, combining them into one for a continuous passage.

The defendants offer in evidence defendants' Exhibit 5, being a "No. 4-A Transcontinental Freight Bureau West-bound Tariff, naming Class and Commodity Rates, effective July 1, 1902." 3161

Q. Now, that exhibit shows the parties to the joint tariff?

A. To that joint tariff. There are other joint tariffs, but it shows the parties to that joint tariff.

Q. This is the sheet or page to the tariff, but it does not, of course, contain the rates.

A. It shows what the routes are and the companies parties to that particular joint tariff.

Q. And that tariff is filed with the Interstate Commerce Commission? 3162

A. Yes, sir, it is filed there. All interstate tariffs have to be.

Q. This is a tariff of 1902?

A. 1902, effective July 1, of this last year.

Q. State whether tariffs of like character have been in force during the years you were connected with the Great Northern.

A. Similar tariffs, yes, sir, for many years past. They are more complete, I think, from year to year, but this method of making a tariff is very old; it has been in force for a great many years. 3163

Q. I show the witness two papers, one headed "Great Northern Railway Line," showing per cent of earnings, marked defendants' Exhibit 6, and another headed "Northern Pacific Railway Company, Statement of Freight and Passenger Earnings for Fiscal Year ended June 30, 1901," marked defendants' Exhibit 7. What do Exhibits 6 and 7 show?

Mr. Day. We will object to the first page of the Great Northern exhibit (being Exhibit 6), unless it is first ascertained that Col. Clough is competent; we can't permit that to go in as true without the testimony of some witness who knows it to be true. 3164

Mr. Grover. I didn't mean to offer them now; I present them for identification, to get them marked.

Q. What do those exhibits show?

A. The first page is in the nature of—

Q. Of which exhibit?

A. This is Ex. 6. The first page of Ex. 6 is in the nature of

3165 an index or resume of the matter that appears upon the following three pages; the entire exhibit is intended to show the distribution of the interstate traffic for the year 1901 upon the lines of the Northern Pacific Railway Company.

Q. The Great Northern, you mean?

A. The Great Northern Railway Company between that competitive with the Northern Pacific Railway and that non-competitive with the Northern Pacific Railway.

Q. Now, speak as to Ex. 7.

A. Page 1 of Ex. 7 is intended to be an index or resume of the matters appearing upon the next three pages of the ex-
3166 hibit, and the exhibit is intended to show the distribution of the interstate traffic for the year 1901 upon the lines of the Northern Pacific Railway Company, between that competitive with the Great Northern Railway Company and that non-competitive.

Q. State whether the figures on the two exhibits are accurate or what means you have taken to determine their accuracy, the inquiries made.

Mr. Grover. Of course, if you desire, I will bring up the accountants.

3167 Witness. I will state, if you desire, how these are made. The figures on the last three sheets of each of these exhibits are compiled by the accounting department of each company, that is, the Northern Pacific and Great Northern, from their records and statistics, made through the year 1900 and 1901. These years end June 30, 1901, and according to the custom of railways the year is named according to the year in which the ending occurs. These are compiled in the accounting department of the respective roads in the regular way, from statistics of the departments made through the year, as represented here, as the way-bills come in and the traffic is moved.
3168 They were instructed to be made correctly. They are as correct as any statistics kept by railroad companies can be, and each is certified by the chief accounting officer of the company; that of the Northern Pacific by Henry A. Gray, comptroller; that of the Great Northern by J. G. Drew, comptroller.

Q. The figures are made up from each way-bill showing the respective shipments?

A. If I may be allowed to state how all traffic statistics of railroads are kept. It is done usually in this way, and by

these companies in the method that I mentioned; the station 3169
agent at the station where a shipment is made, or where tickets are sold, especially where shipments of freight are made (I will explain that first), makes out a way-bill for the freight that is shipped, stating the name of the consignor, the name of the consignee and the place of destination, the amount and quantity of traffic shipped, the rate, and a number of other little items of that character. The station agent at the shipping point sends regularly, under the rules of the company, to the chief accounting officer, or department, rather, an abstract of the figures in that way-bill. When the traffic arrives
at the station of destination with the way-bill, the station 3170
agent at that station, to insure correctness, transmits to the accounting department an abstract of it also, and when these abstracts come in from the two ends of the route, the accounting department checks one against the other, and that is the ultimate basis of all the accounts of the railway company,—the way-bill. When these abstracts come in men are set at work recording the substance of them in records under each station, and from month to month; so that for each month in every year each railroad company has in its office all of the figures relating to each shipment that has been made during
that month. These figures contained here are abstracted from 3171
those records. There are a great many people in that method of doing business directly concerned with such statistics, and I presume it would be no exaggeration to say to show from the original sources of information about railroad statistics of that character it would probably be necessary to call about 1,500 or 2,000 witnesses. But these are of the same class as all other railway traffic statistics and are intended to be perfectly reliable. The earnings account of the company depends upon them, upon their corectness.

Q. The work is tabulated from day to day and condensed?

A. Yes, sir. 3172

Q. Reduced to the figures from which these exhibits are made?

A. Yes, sir.

Q. You asked that they be made correctly?

A. Yes, sir; I personally attended to it since I have been here. There were very many men, of course, necessarily engaged in this work; I think in each company about fifteen

3173 men were employed in making these figures. But that is the method by which such great figures have to be gotten together; they can't be in any other way.

Q. Now, for the purpose of showing rates which can be controlled by the joint action of the Great Northern and the Northern Pacific alone as competitive rates, I call your attention to Ex. 6 and ask you to state the percentage and the amount in dollars.

A. I will refer to the second page of Ex. 6, to the third page of Ex. 6 and to the fourth page of Ex. 6, which is a consolidation (the fourth page) of the figures on the second and third
3174 pages.

Q. Will you for convenience let the stenographer mark those pages?

A. Well, I will re-mark them. These exhibits, on account of the shortness of time, were copied by typewriters in different places, so that they are not paged consecutively. One typewriter made the last three and another typewriter made the other. Now, referring to page two of Ex. 6: The total freight earnings of the Great Northern Railway line, which includes Great Northern, Eastern Railway of Minnesota, Mon-
3175 tana Central, Willmar & Sioux Falls, and Duluth, Watertown & Pacific Railways, for the year ended June 30, 1901, were $21,623,653.95. The above earnings consist of the following: Local to the several states through which the line passes, (that is, traffic which both begins and ends in its transit in the same state) earnings $7,013,050.96. I may say that these tables are made up on the basis of earnings, because if they were made up on the basis of weights and quantities of traffic the figures would be so large that the work of making the tables would be very much increased. The earnings will show the proportions of traffic approximately, as well as the quantites. In-
3176 terstate traffic $14,610,602.99. The Interstate freight earnings were made up as follows:—

Mr. Day. Now, Mr. Grover, we haven't had the opportunity to examine these papers to ascertain (if we can, if it is within our power) their correctness and their accuracy. They may be. I have no reason to doubt they have been made up as Col. Clough says, but what he is now about to read, subsequent to the first statement, is inference or conclusions from facts. We wish to reserve our objection to the paper, but some time

hereafter we may withdraw the objection, but at this time we 3177
object to the competency—not the relevancy, but to the competency—of this form of proof.

Mr. Grover. Well, of course, when we get through with Col. Clough, if you persist in it, think it best, we will bring our accounting departments.

Mr. Day. Perhaps Col. Clough later, on cross-examination, can tell us what he knows about this.

Witness. I think I have told you all I know about it and the comptroller knows just as much as I do.

The Examiner. Well, the objection will be noted, and it 3178
may be withdrawn later, if necessary.

Witness. The original source of information about any traffic statistics, including those that are in the sworn reports to the Interstate Commerce Commission, are made in the manner in which I have stated. There is no individual you could call that would have any personal knowledge of it; that is, it would not be practicable to call anybody.

The following part of the answer of the witness was read: "The Interstate freight earnings were made up as follows:"

Witness. First. Interstate business forwarded from and to towns where the Northern Pacific also has stations, but which 3179
towns can also be reached by other lines of railway, amount to $974,999.17. The percentage of the entire interstate earnings for the year, 6.67. Second. Interstate business forwarded from and to towns reached by Northern Pacific and Great Northern railways only, earnings $380,117.53; percentage of total interstate freight earnings for the year, 2.60. Third. Interstate business originating or terminating on connecting lines carried by junctions common to Northern Pacific and Great Northern railways and which was destined to or forwarded from towns on the Great Northern Railway where the Northern Pacific Railway also has stations that are
reached by other lines of railway, earnings for the year $2,249,- 3180
642.91; per cent of entire interstate freight earnings for the year, 15.40. Fourth. Interstate business originating or terminating on connecting lines carried via junctions common to both Northern Pacific and Great Northern railways and which was destined to or forwarded from towns reached by Northern and Great Northern railways only, earnings for the year, $79,805.69; percentage of the entire interstate freight

3181 earnings for the year, .55. Fifth. Interstate business not included in above four subdivisions, $10,926,037.69; percentage of the whole interstate earnings for the year, 74.78. That is of the freight.

Q. Now, I don't believe it is necessary to read them all. Can't you just make a general summary? I want a little explanation about it now. Is the Northern Pacific, Ex. No. 7, made on the same basis and does it show the same—

A. It is made on the same basis and made in the same way, and the information that is contained here comes, as I have explained at the beginning, from the way-bill that was issued
3182 by the station agent when the traffic was started.

Q. When it is to a connecting line or from a connecting line, where do you get your information?

A. The information is the same way because if a shipment is to a connecting line the station agent on the home line forwards his abstract to the accounting department, and the station agent or officers of the receiving company send their report back to check against it to the office of the home company; so that the information is obtained—it has to be. It is the entire basis of all the financial figures in regard to the operation earnings of the railways. They have to come from
3183 abstracts of the way-bills from the two ends of the route.

Q. At what stations reached by the Great Northern and Northern Pacific are other lines—junctions?

A. At Fargo, North Dakota. Well, I will say, commencing in order, at Wahpeton, North Dakota, there is the Milwaukee & St. Paul; at Fargo, North Dakota, the Milwaukee & St. Paul is present also; at Butte, the Union Pacific system is present; at Spokane, the Union Pacific system is present; at Seattle and at Everett the Canadian Pacific and Union Pacific, by means of water lines, do business in and out all of the prominent points on the Sound.

3184 Q. What effect do those connections have upon the rate-making power of the Great Northern and the Northern Pacific?

A. I beg pardon?

Q. What effect do those connections have, these various lines?

A. You mean the presence of a third party?

Q. Yes. 3185

A. Whenever there is a third carrier, connecting points that are connected also by Northern Pacific and Great Northern, the rates between the points connected could not be raised by the Northern Pacific and the Great Northern acting by themselves, because if they should raise the rates the traffic would go to the other line having the lower rate, if that is what you mean.

Mr. Grover. I will offer Exs. 6 and 7 in evidence.

Mr. Day. We stated our position, Mr. Grover. The cross-examination of Col. Clough may clear up any doubts we have.

Defendants' Exs. 6 and 7 received subject to the objection. 3186

Witness. I might say here, in addition to what I said before, that the first page on these exhibits is my own work, and it is intended to be an index or a compilation to show at a glance the results that it seemed to me are the inferences necessary to be drawn from the sheets following. But if I am not correct, of course the sheets will speak for themselves. They are all put in together, simply for convenience.

Q. I forgot to ask you, I will ask you now, the amount of holdings in the Northern Securities Company of the gentlemen named by Mr. Hill as associates, Mr. Kennedy, Lord Mount Stephen and Lord Strathcona, J. W. Sterling, Willis James, Mr. Thorne, Mr. Johnson Livingston, Mr. Lamont, Mr. Payne, Mr. Tuck, Mr. Clark and Mr. Baker. 3187

A. Do you mean in the Great Northern?

Q. In the Northern Securities Company; the Great Northern also, if you can.

A. I had prepared a memorandum showing the exact figures of those holdings in the two companies, but by accident I left it behind in New York, but I remember in a general way.

Q. State the percentage.

A. In the Great Northern Company the holdings of those gentlemen never exceeded thirty-three millions of dollars, I would place it as an extreme figure, that is my recollection, out of about 125 millions. Their holdings in the Northern Securities is almost exactly in the same proportion; about thirty per cent—between thirty and thirty-five per cent. 3188

3189

CROSS-EXAMINATION.

By Mr. Beck:

Q. Of course, Col. Clough, you do not mean to say that the associates that have just been named by Mr. Grover are the only stockholders of the Northern Securities Company or of the Great Northern Company who act in association and sympathy with Mr. Hill?

A. So far as that is concerned, I might perhaps be permitted to make an explanation; since the Great Northern took
3190 over the lines of the Manitoba Company, on February 1, 1890, I am more especially familiar with the conditions. I also was with those of the Manitoba Company which has now practically passed away. There never has been between the stockholders of the Great Northern Company any agreement about any common use of their stock; neither has there ever been any solicitation by the president of the company of support from the individual stockholders. All that has ever been done has been to disseminate among the stockholders of the Great Northern periodical information as to the state of the business of the company and its progress and the usual formal
3191 request that is sent out in all companies, or announcement, rather, of the approach of an annual stockholders' meeting for the election of directors, the request for proxies and the blank form of a proxy for the individual holder to sign and transmit as he should see fit. There has been no solicitation other than that. That has resulted in proxies for the annual meetings of the Great Northern coming in I think in no year less than eighty per cent and sometimes eighty-five and ninety per cent of the total stock. That is the only association or co-operation there has ever been, except as it has been possible to personally consult a number of the larger stockholders whom Mr. Hill
3192 refers to. If that answers your question?

Q. No, it doesn't, quite.

A. Perhaps I didn't understand it.

Q. Well, I will acquit you of any desire not to answer. It is not exactly what I am after. The suggestion of Mr. Grover's question was that Mr. Hill's holdings with the friends that are in his group, both with respect to the Northern Securities Company and the Great Northern Company, were rela-

tively small. Now, I want to ask you, whether, as a matter 3193
of fact, taking the Great Northern Railway first—whether there has ever been any lack of unanimity in supporting Mr. Hill's policy?

A. Never has been, if that is what you mean.

Q. They have agreed with the unanimity of a stage chorus as to what Mr. Hill desired?

A. I have stated the result. As a common thing from 75 to 80 per cent of the stockholders sent their proxies for the re-election, it may be said, of the old administration.

Q. So, as a matter of fact, there has been, in your recollec- 3194
tion, no contest over the control of the Great Northern by Mr. Hill and his immediate group of friends?

A. Well, I don't think that Mr. Hill or his immediate group of friends have ever had control of the Great Northern.

Q. I am not speaking now of the legal control as to their respective stock holdings, but the practical control of the road. Has Mr. Hill's and his associates' control of the Northern Pacific road been seriously disputed within your recollection?

Mr. Grover. You mean the Great Northern?

Mr. Beck. The Great Northern, yes.

A. The Great Northern road has always been controlled by 3195
its stockholders and the majority, acting individually; and, as I have said before, when the time for the annual election came around, from 75 to 80 per cent of the total stockholders sent in their proxies favorable to the re-election of Mr. Hill as president.

Q. And in support of the policy which he advocated?

A. Well, naturally that would follow.

Q. And, therefore, when their holdings were carried over into the Northern Securities Company, Mr. Hill had back of him the same influences with respect to the stock holdings of the stock thus transferred?

A. The Northern Securities Company has not yet held an 3196
annual meeting, but it is very likely that when the annual meeting is held and the stockholders of the Northern Securities send in their proxies, those will be favorable to the re-election of Mr. Hill as president of the Northern Securities Company. I presume so; that is what we expect.

Q. Yes. Now, Col. Clough, Mr. Hill has had a continuous

3197 policy with respect to the railway situation in the Northwest, running back a number of years?

A. Running back for 30 years, practically.

Q. And step by step, developments have progressed to carry out and effectuate that policy?

A. Yes, sir; as rapidly as the conditions of the company and the ability to get money would permit. The road has grown from 400 (or so) miles in about 1877 or 1878 to nearly 6,000 miles (that is, the system under one control) at the present time.

Q. Now, of course, you recall the fact that a part of that
3198 policy was, prior to the year 1896, the direct acquisition of the Northern Pacific by the Great Northern?

A. No, sir.

Q. Well, what was the attempt which was made to make a practical merger of the two systems which the supreme court declared to be invalid?

A. Well, I don't remember any time when any practical merger of the two roads was ever suggested.

Q. Well, do you recall the fact that the supreme court was of opinion that there was an illegal attempt to consolidate
3199 the Great Northern and the Northern Pacific?

A. No, I don't know that. I was familiar with all of those transactions, and as I remember it (subject to correction) there was an arrangement that Mr. Hill had made by which stockholders of the Great Northern Company should acquire a certain amount (I think it was one-half) of the stock of the Northern Pacific Railway Company to be reorganized. As I remember, it was held by the supreme court that that was practically a holding of one-half of the stock by the Great Northern Railway Company, and the laws of the state of Minnesota forbid one railway company to hold even one share of another rail-
3200 way company which had a parallel and competing line, and it was held that the one-half of stock which the shareholders of the Great Northern were to acquire was practically the acquirement of Northern Pacific stock by the Great Northern Railway Company, and that the Great Northern Railway Company could not hold one share of the stock in the Northern Pacific. It was never contemplated to merge the two companies at any time, that I ever heard of.

Q. Now, without in any way discussing the nicety of terms as to merger, of which there is perhaps a technical and a general meaning, I want to ask you whether we are to understand you to say that the attempt of the Great Northern Railway to acquire one-half of the capital stock of the Northern Pacific, in return guaranteeing its bonds, was not an attempt to control the Northern Pacific road? 3201

A. By the Great Northern?

Q. Yes.

A. No, sir, it was not.

Q. What was the purpose of acquiring one-half of the capital stock of the Northern Pacific road? 3202

A. The purpose (which we conceived was entirely misunderstood by the court) was what it purported to be on its face; that the stockholders of the Great Northern Company, as individuals, should acquire, in addition to their own holdings, the holdings of the other company.

Q. In order to have a common interest in its operation?

A. In order that the stockholders, as individuals, might be interested in both companies.

Q. You mean the stockholders of the Great Northern should have an interest in the operation of the Northern Pacific? 3203

A. In the stock.

Q. And to that extent the incentive and inducement for competition between the two would be eliminated?

A. It was never thought of. The subject of competition between the two roads was never thought of, never entered their minds; at least I never heard it spoken of.

Q. Do we understand you to say that in your opinion there was thus no attempt on the part of the Great Northern to get control of the Northern Pacific?

A. Not any attempt to put the control of the Northern Pacific in the Great Northern Railway Company. 3204

Q. Is it not a fact that much less than 50 per cent of the stock will, for ordinary purposes, give control?

A. Well, I didn't know it and—

Q. Is it not a fact that Mr. Hill, with his group of friends, with their relatively small holdings in the Great Northern to which reference has been made, have found that sufficient to control the Great Northern Railway?

3205 A. It was not the holdings in the stock that Mr. Hill and his friends had that induced the great majority of the stockholders to send their proxies favorable to his re-election. It was the favor with which the policy of Mr. Hill and his associates had met for years that induced all the other stockholders as a body, practically, to support that policy and to favor its continuation. It wasn't any holding that these other gentlemen had at all. That had nothing to do with it.

Q. You think, then, that the fact that a strong group of very rich men, controlling 35 million dollars of the common stock
3206 of the Great Nrthern Railway, had nothing to do with their effectual control of the operations of the road?

A. Absolutely nothing. I know from my own knowledge it had nothing to do with it. It was merely the support that the majority of the stockholders gave on account of their favoring the policy of Mr. Hill.

Q. You think there was no gravitation on the part of the small stockholders towards the holders of large individual blocks of stock—

A. Not in this case, not a bit of it.

Q. Who were already in control?

3207 A. No, sir.

Q. Well, whatever be the opinion of counsel of the Great Northern road as to the objects of the attempt to buy the Northern Pacific on foreclosure, the fact remains that it was decided by the supreme court that that was an attempt to get the control of the Northern Pacific road; and it is a fact also, is it not, that the supreme court held that if that were valid, a control of all the railroads of the United States would be equally valid?

A. Does counsel wish me to express my views as to what the supreme court decided, or will he be contented by having
3208 me refer to the decision itself as to what it did decide?

Q. Well, perhaps the decision will speak for itself.

A. I can give my views; it would require some time.

Q. Now, what year was it, as near as you can recall, that the formation of this securities holding company was first discussed?

A. It must have been at least five years ago when Mr.

Kennedy was out here from New York. He was not in very 3209
good health, and he was getting along in years; his holdings of Great Northern securities were very large, and he desired that they should have the same treatment, in the event of his passing away, as the treatment of his own associates; either that they should be held, or if they were sold his estate would get the benefit of the same price. That was largely what he was after.

Q. I am coming to that in a few moments. I only want to first fix the time. How do you fix the time that it was about five years ago?

A. That is an indefinite period; it was a long time; it may 3210
have been seven or eight.

Q. Do you recall the fact that it was, therefore, about the time that the supreme court declared invalid the attempt to control the Northern Pacific?

A. No; I connect it with the last time that I recollect Mr. Kennedy having gone over the line of the Great Northern Railway, which I think was about five years ago, it might have been six. He was out here and spent some time, and went over the lines of the Great Northern road; and when he came back—he stayed here some time—and when he went 3211
East he had a special car; I happened to be going East at the same time and I sat in his car all the evening after leaving St. Paul until bedtime, in going to Chicago, and he discussed the matter there, brought it up again.

Q. It was Mr. Kennedy's suggestion, then, originally?

A. I don't know who mentioned it first. It is back so far that I wouldn't undertake to say, but Mr. Kennedy's mentioning it at that time, on the occasion of his visit and when I went down to Chicago with him, that is very clear in my mind as a first beginning of clear recollection on the subject. Before that time my recollection is hazy, but I remember Mr. 3212
Kennedy's visit and my going down with him in the car and his bringing up the subject at that time.

Q. And that you locate as five or at least not more than six years ago?

A. Why, I think it was about five years ago; that is my recollection. I don't think he has been over the Great Northern road since that time; I have no recollection of it.

3213 Q. Now, the Great Northern Railway itself was a holding corporation?

A. A leasing corporation and a holding, both. It leased from the St. Paul, Minneapolis & Manitoba about 38 hundred miles of road. The rest of the system, practically all, is owned by other companies which have been promoted by the Great Northern, and the Great Northern interest is represented by stocks and bonds of those companies.

Q. Well, then, is the Great Northern directly an operating company?

3214 A. Yes, sir; it directly operates about four or five thousand miles of road, between four and five thousand; probably its direct operation would represent about 42 hundred or 43 hundred miles.

Q. And to the extent of the balance it is a holding corporation?

A. It is a holding corporation and a directing corporation, yes, sir.

Q. Now, I understand you to say that four or five years ago, therefore, Mr. Hill and Mr. Kennedy and the other gentlemen immediately allied with him reached the conclusion that it
3215 was desirable to form this holding corporation?

A. Well, not *this* holding corporation.

Q. I don't mean with any particular name, but I say a holding corporation.

A. That by Mr. Hill, Mr. Kennedy, Mr. D. Willis James, Mr. Thorne, and indirectly from Lord Strathcona and Lord Mount Stephen—their representative was over here occasionally—it came from them indirectly. They were of the opinion, as they had acted together so long and their holdings were so large and they were getting along in years, that it would be better if something could be done so that their holdings of stock
3216 could be treated in the same way and have the same treatment, either by holding or by selling.

Q. The age, then, of the respective stockholders and the fact that in the natural course of life they would not live so very long, was the main inducement to this attempt to form a holding corporation.

A. That was what they stated, that is what they said. And

their holdings were so very large, to secure for their estates 3217
a fair treatment of their stock.

Q. The original idea was a close corporation of a limited number of individuals?

A. That was the purpose, yes, sir, as expressed by those gentlemen.

Q. In order to effectuate a common control of certain holdings of stock?

A. Simply that certain holdings of stock should stand together as long as they were held by these various gentlemen; or, if they were sold, so that they sold all together and 3218
be subject practically to the same price.

Q. But if that was the purpose, Col. Clough, why did not the eleven gentlemen who held these stocks put their stocks in the hands of a common trustee, so that they could not sell without the consent of the trustee?

A. They didn't want to tie things up as tight as that. They were willing to take the chances of the fair treatment of their holdings in a corporation the stock of which should be issued to them and be held by their estates. In other words, they were willing that the stock of the suggested corporation—the majority of it—should determine all those things. 3219

Q. But, in the matter of holding them together, how was the formation of a new corporation any more effectually to prevent a sale of the stock than the holdings in the Great Northern Railway?

A. It was only this: that the selling or keeping of these stocks, in whole or in part, would be determined by a majority of the stock that represented these shares. They were willing—in other words, each of these gentlemen was willing that the handling of his stock should be in the hands of what would represent a majority of all the holdings in the new company, but they didn't desire to tie up the new company 3220
at all. They didn't think that that would be considerate or politic, to put it in the hands of a trustee. They were willing to trust to a corporation, that would act through a majority of its stock, the future of their holdings. They were willing to do so, so they said.

Q. Do I understand that it was contemplated in the formation of this proposed securities holding company that its

3221 respective stockholders could not sell their respective holdings except with the consent of the majority of the corporation?

A. The purpose was that they would absolutely sell their holdings in Great Northern stock to a new company to be formed.

Q. I am not referring to the sale of the Great Northern stock; I am referring to whether or not your idea was to tie together this group of interests, if it was contemplated that no one in the new holding corporation could sell his stock?

3222 A. Oh, on the contrary.

Q. Without the consent of the others?

A. On the contrary. That was to be entirely free, and in each estate which should hold it in the place of the Great Northern stock it should be held absolutely by each individual holder independently of the other holders, and he should be at liberty to sell if he should see fit. But it was believed that the interest—the mutual interest—of all the stockholders in having their securities kept as valuable as possible, would secure a policy for the management of the stocks that would be the best for all. They were willing, in other words, to rely

3223 upon that; that is all they could rely upon.

Q. There was, then, no more ability, by creating a new corporation to hold the stock in the hands of the same person or his family, than in the old corporation?

A. None at all, none at all, not the slightest.

Q. And Lord Strathcona's heirs could sell quite as well in the holding company as in the Great Northern Company?

A. They would be entirely free to sell their stock, yes, sir.

Q. Therefore, the only real purpose of the holding corporation was to compel a certain unity of action by a majority of the holding corporation deciding what was to be done.

3224 A. It was so that all of the stock which, not by agreement, but by a sense of mutual interest, had kept together in building up this property and making its value, as far as could be provided in the way that I mentioned, should be held together.

Q. Now, that was the only idea of the holding corporation?

A. That, as I heard it expressed by the gentlemen; I am merely expressing their ideas.

Q. Certainly.

A. Not my own. 3225

Q. I understand that you never heard Mr. Hill or Lord Strathcona or Mr. Kennedy or any of the other gentlemen associated with Mr. Hill express any other opinion as to their motive for forming a holding corporation than the desire to make a close corporation of their common interests?

A. In the beginning, until the enlargement came that I mentioned.

Q. When was the enlargement?

A. The enlargement came through the suggestion, that I have mentioned, by Mr. Morgan and some of the Great Northern stockholders, that the other holders of stock of the Northern Pacific and of the Great Northern, respectively, should have an opportunity, if they chose, to sell their stock to a holding company upon the same terms. 3226

Q. At what time, in what year was that?

A. That was last year, and I think I have stated it; I believe the first suggestions of that kind came along in May or June of last year.

Q. In May or June.

A. Yes.

Q. But I understood you to say that the definite suggestion didn't come until Mr. Morgan made it? 3227

A. It didn't assume form; it did not assume form.

Q. And he was in Europe during the summer of 1901?

A. Until the 4th of July.

Q. And it was, then, after the 4th of July that the first definite proposition was made to change the character of the holding corporation by making it more than a mere group of individual stockholders of the Great Northern?

A. I think it must have been; that is my recollection. Of course I can't attempt to fix the precise dates, but I think the insistence of Mr. Morgan, after he got back in July, caused the crystallization and formation of the general idea that the corporation probably should be made—ought to be made broad enough so that no stockholder of either the Northern Pacific or Great Northern could feel that he had been excluded from the advantages of any arrangement that the other stockholders had entered into with regard to their stock. 3228

Q. Well, I am entirely right, then, in the suggestion that

3229 until Mr. Morgan made the suggestion that there ought to be some combination, through a holding corporation, of the Northern Pacific and the Great Northern, the only idea that was in the mind of Mr. Hill or his associates was to pool their stock together in the Great Northern in a security company.

A. I never heard any suggestion for combining the Northern Pacific and the Great Northern. I have never heard it yet, from any of the gentlemen interested in the Northern Securities Company or the Northern Pacific or Great Northern. I think as early as May, if you desire to know—I think as early
3230 as May, I am sure as early as May, the idea as it first started of a holding corporation was enlarged to include the holding of Northern Pacific as well as Great Northern—holdings of these gentlemen. I think that came in some time along about the 1st of May or somewhere in that neighborhood.

Q. Before or after the great panic in the New York Stock Exchange?

A. Well, I am inclined to think about the same time.

Q. About the same time?

A. As I have explained, these gentlemen were constantly going and coming to and from New York and the country,
3231 and they never were gotten together or in a position where all of them could be consulted until along in the latter part of the year, along in the fall, when everybody got back from the summering places and from Europe, etc., and that retarded the development of the matter and the final filing of the articles for several months.

Q. Well, now, what was there that for nearly four years, or quite four years, had delayed the formation of this holding corporation?

A. Nothing except simply they didn't get at it; they were all very busy men; some of them in Europe, some in New
3232 York, Mr. Hill here, and they never got all together.

Q. You have stated that these gentlemen were of the opinion that it was a matter of great importance that their stocks should be placed in this way in a common pool; what was the delay of four years in making the corporation?

A. Well, I think I stated that the first mention that I heard of it was by Mr. Kennedy; that makes a distinct impression on my mind now, why Mr. Kennedy didn't take that matter

up with Lord Strathcona, Lord Mount Stephen (they lived in 3233
Europe, they came here very infrequently). Why he didn't take it up and push it through more early with Mr. James of course I don't know. He is a man of very large affairs and very busy, and has many other things besides his holdings in this property, but I presume—it is a mere matter of inference—why those gentlemen delayed was because of the infrequency with which they got together. I should presume so.

Q. Very well. Now, you have stated in your testimony in chief, that a part of the time that was thus lost (at least a part of the time in which the formation of this company was 3234
postponed) was due to the fact that Mr. Grover was seeking for some charter with special privileges; to quote your exact language, "A charter which would put the holding corporation beyond legislative control." I want to ask you, if the only purpose of the holding company was to make a pool between ten or eleven gentlemen, what necessity there was to seek for a charter beyond legislative control.

A. I don't know that I used that exact language—"legislative control."

Q. I took it down, Colonel.

A. What I meant to say, if I did say that, was an amend- 3235
ment of the charter that might radically change the purposes and objects of the corporation. That is what I referred to.

Q. How under any charter could the legislature affect the mere right of Mr. Hill and several other gentlemen to hold their stock?

A. Many of the states in this country have constitutional provisions and some of the others, perhaps, have statutory provisions that all incorporations made under the general laws of the state shall be subject to amendment or repeal by the legislature. It was to avoid any violent interference by legislative authority with the great properties that the com- 3236
pany expected to have, because it would at least amount to probably 75 millions in value and might amount to hundreds of millions.

Q. Oh, yes, but you have testified that this group of gentlemen who originally contemplated no more than their own association did not hold more than thirty-five millions, it being a minority of the Great Northern Railway Company stock.

3237 Now, therefore, I ask you what necessity there was, if this was the innocent purpose of the holding corporation—what necessity there was for such a prolonged search after a charter beyond legislative control.

A. Great Northern stock then was worth in the market, during the summer of 1901, the early part of it, around 180, a little about it; it had been worth more than that. So that the 33 (or odd) millions that these gentlemen had in value represented pretty nearly seventy or eighty millions of dollars; and that was quite a sum. And naturally a gentleman own-
3238 ing a large amount of property would not want to put it into a corporation if he felt that the charter might be taken away from it or might be radically amended, or if the legislature should assume to determine how the property of that company should be managed and controlled. That was the idea. It would be very large in any event. The value would be in the neighborhood of or quite 70 millions of dollars at the lowest.

Q. Then, do I understand that the purpose of putting it beyond the possibility of legislative control was to prevent any legislation that would affect the operations of the Great
3239 Northern Railway?

A. No, sir, not in the slightest degree; just of the stock.

Q. That particular stock was not intended to operate the Great Northern Railway?

A. Not the slightest, not a thought of it.

Q. And it being a minority of the total capital stock of the Great Northern, it could not operate the Great Northern Railway?

A. No, not at all, and it didn't refer to the operations of the railway.

Q. Its one purpose was to put the stock in a common pool
3240 and to collect its dividends and disburse them; that is right, isn't it?

A. It was to own. It wasn't to be a pool at all. It was to be an absolute owner of the stock. It would naturally collect the revenues on the securities that it would own. That would be natural, of course. It would collect the revenues on whatever securities it owned; if it owned Great Northern stock, and the Great Northern Railway Company continued to pay

dividends, it would collect those dividends; and if it had any 3241
surplus after its expenses were taken care of, it naturally would pay a dividend on its own stock, to the stockholders; but there was no pooling of the stock.

Q. What else was the holding corporation to do except to collect and disburse dividends?

A. It was to own. That is, the idea was that it should own the stock the same as any other stockholder. That was the idea; that would be the natural inference of course.

Q. Well, then, I want to press my question again: What reason there was for a prolonged search for a charter that 3242
would be beyond legislative control.

A. You do not express my view when you use the words "legislative control" correctly. What I meant was, a violent and radical change; any violent or radical change or repeal of the charter, or any legislative interference as to the manner of its holding of the property.

Q. Do I understand you to say then it was your opinion that unless some charter was found of a particular kind that the legislature could deprive these stockholders of property rights?

A. In many states they can. In the state of Minnesota it 3243
is questionable.

Q. Do you think that could be done under the constitution of the United States?

A. Well, under the decisions of the Supreme Court, the limitations of the legislature upon vested rights are very uncertain now—have become so.

Q. When did Minnesota first adopt a state constitution?

A. I think in 1858.

Q. Was this search for a charter prior to 1858?

A. Prior to 1858.

Q. And you preferred, therefore, to have a Minnesota char- 3244
ter prior to your existing constitution?

A. Yes, sir, if we could find it, that would have the necessary powers for carrying on this business and be properly constituted for it, for the reason that under our constitution all charters antedating the admission of the state into the Union became fixed legislative contracts, and those charters have been very much sought after by railroad companies and other

3245 companies since the state came into the Union—very much; regarded as very valuable.

A recess was here taken until 2 o'clock P. M.

AFTERNOON SESSION.

The hearing of testimony was resumed at 2 o'clock P. M.

W. P. CLOUGH, was recalled, and his cross-examination
3246 resumed, as follows, by Mr. Beck.

Q. Col. Clough, when was the necessity for some special charter first discussed?

Mr. Grover. The question assumes what has not been proven.

Mr. Beck. Then, I will say the desirability of some special charter.

A. Oh, very early,—when the subject first began to be mentioned.

Q. Do you mean five years before the formation of the
3247 Northern Securities?

A. Oh, I presume so. It was mentioned by way of suggestion pretty nearly as early as the suggestion of the formation of a holding company. Let me say, by way of explanation, that that is a question we meet very much up here,—because since the formation of the constitution, in 1858, the formation of corporations is under a general law that is subject to extensive alterations by the legislature; and for that reason a large number of special charters that were passed when Minnesota was a territory have been very much sought
3248 after and extensively used by railroads that have since been built, by financial institutions of various kinds and business corporations. They have been regarded valuable because of the supposed or presumed protection against violent legislative changes. And when any question of a railroad or a large business concern comes up here, for years that has been thought that has come early in the minds of those who would be entrusted with the organization. So it came

up this time, just as it would with any other large important 3249
enterprise.

Q. Had the charter of the Great Northern Railway Company been acquired prior to the adoption of the constitution?

A. Yes, sir.

Q. And does that apply also to the present charter under which the Northern Pacific operates?

A. The present charter of the Northern Pacific is a Wisconsin charter,—a special charter granted many years ago; I have forgotten the exact date, but granted many years ago by the state of Wisconsin. That is since the reorganization 3250
of the Northern Pacific. Before the Northern Pacific was reorganized there was a charter granted by the government containing conditions that before it was used in any state the consent of the local legislature should be obtained. In 1896 the property was sold under foreclosure and acquired by the present Northern Pacific Railway Company, which is a Wisconsin corporation under a special charter granted many years ago. I don't remember the number of years, but it is an old charter.

Q. Then, the matter of the procuring of a special charter had been in discussion for some years prior to the actual 3251
formation of the Northern Securities Company?

A. The two subjects naturally arose in close association with each other.

Q. When did Mr. Kennedy go to Europe in 1901?

A. My recollection is now (and I state it from mere recollection) that it was sometime early in the month of April.

Q. Do you recall when he returned?

A. Well, it was sometime in June, if I remember correctly, when the warm summer weather was about beginning; but I can't pretend to give dates, I didn't charge my mind with 3252
it.

Q. When did Mr. Grover commence his search for a special charter?

A. Why, I think that he and I, and probably in connection with Mr. Hill, had been talking about that question on the previous occasions when it had been suggested, as it had come up through the years from time to time. I think all of us had

directed our attention toward the question of the probable existence of some inviolable charter.

Q. But that is not my question. I am not speaking about the desirability of special charters for general purposes, but when was the search first made for a special charter for this holding company that was contemplated?

A. In the event of its formation?

Q. Yes.

A. Oh, I think years ago. I mean not necessarily a thorough search, but I think to some extent. The old enactments were glanced through with a view of seeing if there was anything that would meet the desires and purposes of such a corporation.

Q. Well, why then, in your testimony this morning, did you state, in answer to a question, that it was very soon after Mr. Kennedy went away that the question was more closely considered and it was thought desirable, if a company of that kind were formed, that it should have the stability—that a charter beyond the power of legislative amendment should be acquired for it if possible?

A. I did not mean to be understood that it was then thought of for the first time. It was then thought of, but it had been thought of previously. And then began a systematic search and investigation of the question, such as had not been given to it before.

Q. And what time was that? You say you defined it as after Mr. Kennedy's return?

A. No, it was after Mr. Kennedy went to Europe.

Q. Yes, you are right; after Mr. Kennedy went away,—and that you say was in April, 1901?

A. I think it was April or May, sometime along that time.

Q. It was about the time, therefore, of the contest for the control of the Northern Pacific by the Union Pacific interests and the Morgan interests so-called.

A. No, it was long before any public developments of that character; at least long before anything of that nature was known or suspected or even deemed probable, and it had no reference to any operation of that character—not the slightest.

Q. How do you know that if you can't recall when it was 3257
that Mr. Kennedy went away?

A. Well, I feel quite sure, from the fact that I went to New York myself and arrived there about the middle of March and that he left within a few days after that, that he must have left around the first of April.

Q. Now, do I understand you to say that in this discussion of the necessity or the desirability of a special charter, that it had reference solely to the formation of a Great Northern holding company?

A. In its origin, in its beginning?

Q. No, I mean to say at the time, now, that Mr. Grover 3258
commenced his search for a special charter. At that time was simply the Great Northern under discussion?

A. So far as I can recall, in the very beginnings it was confined to the Great Northern. The precise dates when the proposition or the suggestion was made that the same gentlemen who contemplated selling their Great Northern stock to the Northern Securities Company might also well sell their Northern Pacific, I can't remember just the time when that was first suggested; in fact I don't pretend to be precise upon any of these dates, because all of these matters came up 3259
in conversations as the gentlemen interested would come into the office or we would meet them elsewhere. And let me say that there was no meeting or conference at any time. The gentlemen whose interests were expected to go into the holding company, as I have explained, were scattered; some were in Europe, some were in California and others were in other places. So that it was impossible to have any meeting, and that was one thing, in fact the principal thing, that delayed the formation of the Northern Securities Company and the filing of the articles until so late in the fall,—that it was impossible to get the gentlemen interested together for any 3260
consultation; it had to be taken up in detail and as the gentlemen could be met and as they were met casually. So when any particular proposition came up or was suggested it would be impossible to fix the date.

Q. Well, you don't mean to say there were no meetings for the purpose of forming the Northern Securities Company, in

3261 which the Northern Pacific interests participated as well as you, subsequent to the great May panic?

A. No, sir, there never were any meetings at all.

Q. Never at any time?

A. Never at any time.

Q. Do you recall Mr. Morgan's testimony as to meetings?

A. Mr. Morgan's testimony I heard. Mr. Morgan testified about a meeting of exclusively Northern Pacific shareholders to try to make some arrangement that would restore confidence in the money markets of the world, but that had abso-
3262 lutely no reference to the matter of the Northern Securities Company in any way. Absolutely irrelevant to that.

Q. Then, the meetings to which Mr. Morgan, Mr. Steele, Mr. Schiff and others have testified had no reference at all to the formation of the Northern Securities Company?

A. Nothing at all. And let me say again there never was a meeting held in reference to the formation of the Northern Securities Company.

Q. Never was a meeting held?

A. Never was a meeting held, no, sir. It was just merely carried along; it had to be by casual meetings of the different
3263 gentlemen who were interested.

Q. Its formation, then, was the fortuitous concourse of atoms to which scientists refer?

A. That is a matter for the counsel to satisfy his own mind upon the facts.

Q. If there was no meeting at all, but a certain number of individuals by coincidence amalgamated, then it would be just simply the accidental meeting of so many minds.

A. I have stated the facts as to how the company was organized, and all these other things are for the gentleman to draw his own inferences.

3264 Q. I am going to ask you again (without in any respect, in this or any other question, wishing to be offensive to you) to reiterate your statement that at no time prior to the organization of the Northern Securities Company was there ever a meeting held on the part of any of the parties in interest to effectuate its formation?

A. Nothing that could be called a meeting.

Q. Well, what do you call a meeting?

A. I will explain this. There never was any time when 3265
even as many as four gentlemen were called together on any one occasion to consider the subject of the formation of the Northern Securities Company.

Q. But you don't dispute at all that there were meetings of Mr. Morgan and Mr. Hill, for example, of Mr. Hill and Mr. Schiff, or Mr. Hill and Mr. Harriman, or Mr. Harriman and Mr. Kennedy, all of which had a common purpose in view, namely, to form the Northern Securities Company?

A. No, sir; I deny that there ever was any such meeting. That is, as far as I know or had any reason to believe.

Q. Now, what was the objection that you have stated that 3266
Mr. Grover reported? I quote your words exactly: "An examination into that subject"—namely the special charter—"was set on foot. Mr. Grover, who was on the ground here, was entrusted with the subject of looking that matter up. That occupied necessarily quite a considerable time, and I believe we did not get the report of Mr. Grover (I am stating from recollection now) until sometime in May." Was that report in writing?

A. My recollection is (it goes back to a considerable period) that Mr. Grover wrote a letter to Mr. Hill at some length 3267
upon the subject, and I think also that I saw Mr. Grover personally one or more times in that interval; I am not sure about that, but I think I did,—in which it was also gone over personally, but I won't speak about the personal interviews because my recollection is not clear upon that subject. But I do remember the letter on the subject.

Mr. Beck. Counsel for the Government, then, calls upon the defendants to produce the letter addressed by Mr. Grover to Mr. Hill.

Witness. Well, I have no recollection of where it was, and the date of it I couldn't tell. 3268

Mr. Beck. Well, of course we don't expect you to have it about you. We simply note the call for the letter.

Witness. Yes.

Q. Now, you have stated in substance, as I recollect it—

Witness. Of course I may be wrong in my recollection that it was a letter. I have a recollection of something in writing. That is all I can say.

3269 Q. What were the objections of Mr. Grover found to such special charters as he did discover? In what were they defective?

A. If I remember correctly, Mr. Grover produced the copies of perhaps something that he found, I am not sure about that, and it appeared upon the reading of the substance of the act of the territorial legislature that it would be at least doubtful as to whether the powers were sufficient to enable it to buy and hold and manage stock—

Q. And to own stock?

A. And to own stock, yes. That is all we were looking for
3270 —was just simply something that would have the requisite power.

Q. And it was impossible to find any special charter prior to the adoption of the constitution of Minnesota that would enable you to carry out your plans?

A. That is, that was not already in use for some other financial institution. I am simply speaking so far as we could see from looking over the records.

Q. Did I understand you to say that some exploration was made into West Virginia for a charter?

A. No, I didn't say so.

3271 Q. Well, I ask you the question because my recollection is vague.

A. No, sir.

Q. Well, I think you did say that an investigation or an examination was made of other states for special charters.

A. If you will allow me to restate what I think I said, that when we gave up the idea of finding the special charter in the state of Minnesota, it was then suggested (I don't remember by whom; by some of the gentlemen, perhaps by myself) that the incorporation be under the laws of some state having general laws for the incorporation of companies with requisite
3272 powers to deal in securities; and as I remember, those three states that I named were suggested.

Q. Which three states were those?

A. They were New York, New Jersey and West Virginia—as having legislation of that character.

Q. Well, was there an examination made as to whether there was any adaptable special charter in either New York or West Virginia?

A. Not the slightest; there never was any inquiry about either of them, or any suggestion. 3273

Q. Therefore, having exhausted the Minnesota field, you had recourse to that last resort of noble corporations—the state of New Jersey?

A. Well, that was the state that was finally selected.

Q. Now, is it not a fact that the state of New Jersey was selected because of the plenary powers given to corporations to do anything?

A. My recollection is (going back to last summer) that the laws of New Jersey were not dissimilar from those of New York, that they were quite similar, but there was this difference: the laws of the state of New York, which had evidently been passed with a view of enlarging her legislation to put it on a parity with New Jersey, were of very recent origin and had not been construed by her courts, whereas the statutes of the state of New Jersey upon that subject had been in force for quite a good many years and the law was regarded to be thoroughly well settled. That was the main difference, I think. 3274

Q. You therefore thought that the fullest powers, as judicially determined, could be found in a New Jersey charter?

A. We wanted to be certain that when we went into business with a concern that might possibly have three or four hundred millions of dollars of property, there would not be any doubt at all about what that corporation would be authorized to do. 3275

Q. Ah, but you have said, Col. Clough, that at the time you were discussing this question of a special charter your capitalization was not contemplated to be beyond 35 millions.

A. Not at that time.

Mr. Grover. No. Wait a moment.

Mr. Beck. Well, the witness is very intelligent and can protect himself. 3276

Witness. Mr. Grover, if you will let me I will set the counsel right. He has evidently forgotten. Now, firstly, if it is of any importance at all, I said in my testimony in chief, I think, that the amount of Great Northern stock which it was expected the new corporation would buy was that of these gentlemen who held thirty or thirty-five millions—*of Great*

3277 *Northern stock.* I think I stated upon cross-examination the fact that that stock—Great Northern stock—was worth at least 180 and at times had been as high as 200. So that the value of the stock contemplated in the beginning was in the neighborhood of 70 millions of dollars, and that would be the value of the property, around 70 millions of dollars, that the corporation, with the most limited holdings that were ever suggested, would have. So it would be a big corporation in any event and would own a great amount of property, and for that reason we wanted to know exactly what the rights and powers of the corporation were.

3278 Q. Then, it is correct that at the time when you were discussing the sufficiency or insufficiency of the Minnesota charter, the matter of capitalization of 400 millions was not contemplated or under discussion?

A. At the time we had arrived at the point where we satisfied our minds that it was not probable that there was any special Minnesota charter that we could procure that contained the necessary powers, I don't think at that time any definite sum of capitalization had been arrived at. I am very sure that came later. We had not in our minds fixed what the capital would be, but from the great value of the property 3279 which was intended to be purchased by the new company it was known in any event it would be very large and it would be a very large corporation. That is about what we had arrived at in that particular.

Q. Col. Clough, how long before the actual formation of the Northern Securities Company was it that you did determine upon the New Jersey charter?

A. It was a very few days; I don't think it could have been more than five or six days before the articles were filed; it was probably just about five or six days. There were the two states, New York and New Jersey, with very similar legisla- 3280 tion, and it was a question really between those two which should be selected, and we could not make the selection without consulting a number of the gentlemen who were to be largely interested, who were around in various parts of the country and did not get back. That is what detained it.

Q. At whose suggestion was it that the Northern Pacific stockholders began to be consulted with reference to this amalgamation?

A. Well, with the exception of the Northern Pacific stock- 3281
holders who also were Great Northern stockholders, I don't think they ever were consulted, at least prior to the organization of the Securities Company, unless it might have been to this extent, to ask of Mr. Morgan whether, in the event of the formation of a corporation of that character, he would be willing to sell to it his then holdings of Northern Pacific stock. Other than that I do not believe that any Northern Pacific stockholder was ever consulted about it.

Q. Was Mr. D. Willis James a stockholder in the Great Northern?

A. Great Northern and Northern Pacific both. 3282

Q. Northern Pacific also?

A. Yes, sir.

Q. When was it that he expressed his opinion or made some suggestion with regard to the form of the charter?

A. Why, I don't know that I can attach that to any particular dates. My recollection is that after I went to New York in the spring of 1901, Mr. James was in California, where he is in the habit of spending his winters, for a month or more; and when he came back—he has always been a large stockholder in the Great Northern, from the beginning, and a man 3283
of high business position and prominence in New York, of excellent judgment; I think I met him very often, I think I discussed all the questions that arose very frequently with him; probably met him more frequently than any of the other gentlemen.

Q. And what was the suggestion that he made with regard to the form of the charter, or character of the charter?

A. Why, I don't recollect, so far as the form of the charter was concerned.

Q. Well, I understood you to say this morning (and I may have misunderstood you) that after Mr. James came back from 3284
California he had some suggestion to make with regard to this matter of the character or form of the charter.

A. No, I don't remember that I said anything of the kind except in a general way, that the desire was to have a corporation that beyond any question would have the right to own and hold the stock. But I do not think Mr. James ever made any special suggestions as to the language of any special char-

3285 ter or of any articles of incorporation. I remember showing him the draft of the articles, which I originally made, for his examination, and it contained the substance of what afterwards went into the articles of incorporation. There was practically no change in the substance of it from the beginning. Slight changes of phraseology from time to time. He appeared to be satisfied.

Q. He made no suggestion with regard to the form or the character of the corporation, that you recall?

A. Well, that is a broad question, and I don't know pre-
3286 cisely what you mean by "the form or character of the corporation."

Q. Well, as to what state you should get the charter from, or as to what its powers should be.

A. Mr. James, of course, was consulted upon those questions. He was consulted upon all the questions, but I can't remember any language that he used in the course of any conversation I had with him. Mr. James came frequently to the office of the Great Northern Railway Company where I had a room, and I also saw him frequently in his own office because I had other business with him that brought us in
3287 contact very frequently. Most of the conversations with him, as well as with Mr. Kennedy and Mr. Thorne and the others, would be brought up whenever the parties happened to meet together, generally twos and threes, not larger than that, upon other matters. These were all men of very large affairs and very numerous business engagements and their time was very much occupied, so that it was difficult to get them together.

Q. Well, now, Col.,—

A. But if you will allow me to finish that.

Q. Certainly.

3288 A. When the decision was finally made upon the state in which the articles should be filed, I think that was mostly left to myself. I had not made up my own mind, I couldn't, the matter was of such large importance, I wanted to make full inquiries, and I did as much as I had time to, and I think it was left very largely to my own judgment more than to any other one.

Q. What power was it that this holding corporation was to exercise that justified this prolonged investigation in regard

to the character of various charters and which finally determined you to use a New Jersey charter which had been judicially tested? 3289

A. It was to have beyond any question the power to purchase, own and hold and dispose of corporate securities on a large scale.

Q. And that was the only power that made you doubtful as to whether a charter of one state or a charter of another state would be ample for its purpose?

A. Yes, sir, that was the main proposition.

Q. Now, isn't it a fact that the character and form of this charter first became a burning question after it was determined to amalgamate or put into a common holding corporation the Northern Pacific and the Great Northern Railway interests? 3290

A. Well, firstly, the form of this corporation never became a burning question at any time.

Q. Well, it seems to have been a subject of prolonged consideration.

Mr. Griggs. Yes, on cross-examination.

Mr. Beck. Well, it seems to have been preliminary to the formation of this corporation.

Witness. That came, as I have explained before, mainly from the difficulty of getting the views of the seven or eight or ten gentlemen who were to be largely interested in this corporation. They were so scattered that it was impossible to see more than one or two at a time, and that is what did more to prolong the final determination of details here and the placing of them on paper and putting them on file than anything else. 3291

Q. But these gentlemen were not making a search after the charter?

A. I didn't know that I had testified they were. 3292

Q. No.

A. No, I wasn't aware of that.

Q. Therefore, their absence from the city or their inability to get together had nothing to do with it, except the final meeting when you passed upon it and determined it, which you said was a few days.

A. There never was any final meeting. There never was

3293 any preliminary meeting, or any intermediate meeting or any final meeting.

Q. How, then, was it determined to take out a New Jersey charter, if you never held any meeting?

A. When I decided in my own mind that the advantages were in favor of the laws of the state of New Jersey, as they were well understood, as I saw the gentlemen I imparted my views to them and they acquiesced. That is the way it was done.

Q. Tell me this, what advantage had a New Jersey charter in the matter of the acquisition or holding of stock over a
3294 charter of the state of Minnesota?

A. I have stated to you my views on that subjcet; that the laws of New Jersey are very clear and well understood upon that subject. A great many corporations of that kind have been incorporated under the laws of New Jersey. Her statutes on the subject have been well understood and have been construed, and there is very little doubt or uncertainty as to them, whereas the state of Minnesota is new in that class of corporations. There are no large business corporations incorporated under the laws of the state of Minnesota; she never has had any. There has been no occasion to put powers that
3295 are given by her general statutes to such organizations under judicial question.

Q. Then, I will ask what advantage had the New Jersey charter, when you decided upon it, over a New York charter?

A. I stated that also a little while ago,—that my impression was that as the laws of the state of New York, which had been passed for the purpose of placing New York and New Jersey on a parity, were of very recent origin and had not yet been put to judicial determination and I did not know what view the New York courts might entertain, and the concern was to be so large, we wanted to know exactly what the pow-
3296 ers of the company were.

Q. Well, at all events I am right in saying that a final decision as to the state in which you were to incorporate the holding corporation was not reached until after the holders of the Northern Pacific Railway Company's stock and the holders of the Great Northern Railway Company's stock had agreed to put their stock in a common corporation.

A. I don't think that I so stated.

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Q. Well, is it a fact or not?

A. I will state, as I said before, that the ultimate and final determination to incorporate under the laws of the state of New Jersey was not reached until a very few days before the articles of incorporation were filed, and after that they were prepared and filed just as soon as they could be.

Q. I repeat the question: Before you reached the conclusion to take out a New Jersey charter, Mr. Morgan's interests and the Great Northern interests had agreed to place their holdings in a common corporation?

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A. Before that was done, as I have stated before, the gentlemen who were stockholders of the Great Northern and who also held stock of the Northern Pacific, and Mr. Morgan himself (the holdings of Great Northern being, I think it was, about 33 millions and of the Northern Pacific about 42 millions all together, somewhere in that neighborhood, about 40 or 42) had decided that they would sell their stocks to the new company when created. Now, it was after that decision relating to those stocks and, as I said, only a few days before the articles of incorporation were actually filed, that the conclusion was ultimately reached to incorporate under the laws of the state of New Jersey.

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Q. Well, that is what I was trying to get at.

A. Yes, sir.

Q. Now, you have stated that the holders of Great Northern and Northern Pacific stock, other than the immediate associates of Mr. James J. Hill, were not solicited in any way to put their stock holdings into the Northern Securities Company.

A. Even James J. Hill was not solicited to put his stock of either Northern Pacific or Great Northern into the Northern Securities.

3300

Q. I am not asking whether Mr. James J. Hill was solicited, because the solicitor rarely requires to be solicited, but what I am asking you is whether I understood you to say that there was never any solicitation on the part of stockholders other than James J. Hill and his group of allied interests to put their respective holdings into the Northern Securities Company.

A. I want to answer that just as I did before, that nobody (including Mr. James J. Hill) was ever solicited by the North-

3301 ern Securities Company to sell any part of his stock (either Northern Pacific or Great Northern) to the Northern Securities Company.

Q. Did not Mr. James J. Hill, by letter dated November 30, 1901, in reply to inquiries that had been addressed by stockholders to the Northern Securities Company, say as follows: "The offer contained in the circular came from the request of the large holders of Great Northern, above mentioned, who desired that all other holders might have the same opportunities as themselves in association with them, and upon the same terms. The writer is of opinion that the offer of the Se-
3302 curities Company is one that Great Northern shareholders can accept with profit and advantage to themselves"?

A. What is the question?

Q. The question is whether Mr. Hill did not address such a letter to those making inquiry of the Northern Securities Company as to whether they should put their respective holdings into the Northern Securities Company.

A. Well, now, if you will allow me to state—I think Mr. Hill has already stated, but I will repeat it: The Northern Securities Company, on the 22nd of November, as I remem-
3303 ber, issued a circular, which has been introduced in evidence, and you have it before you.

Q. Yes, that is the letter.

A. That circular of November 22nd was issued—

Q. Well, if you will pardon me, Col. Clough; I don't want to interrupt you—

A. Now, excuse me. I just want to get to this. I am all through.

Q. I am not speaking of the circular of November 22nd. I am speaking of the circular of November 30th.

A. There was no circular of November 30th,—that is what
3304 I am trying to explain to you.

Q. All right. Now, explain that.

A. There was a circular issued November 22nd, which has been introduced in evidence and which you have before you. That was an offer by the Northern Securities Company to purchase such stock as should be tendered to it within a limited period, about sixty days. After that circular had been received by parties comparatively near by (that is, living in

this country), a number of them wrote to Mr. Hill letters of 3305
inquiry about the circular and the Securities Company. Mr. Hill was about to leave for the West; he was very much pressed for time, and it was thought very probable that other letters of inquiry would be received at the office, addressed to him, during his absence. It was desired not to burden him with sending all of those letters of inquiry out to Minnesota, for him to make detailed answers to. So, before he got ready to leave New York he drew up the form of a letter, which is the form you have, dated November 30th, to be sent to such stockholders of the Great Northern as should address 3306
him at the New York office letters of inquiry during his absence.

Q. To the New York office of what?

A. To the New York office of James J. Hill.

Q. As a matter of fact were not those circulars sent out by the Northern Securities Company?

A. No, sir; none of them ever sent by the Northern Securities Company.

Q. Were not the inquiries that were addressed to James J. Hill, to the New York office, sent to the Northern Securities Company for attention, as he was the president of that body? 3307

A. No, sir, not one of them. I am sure none of them were.

Q. Having read to you the statement of Mr. James J. Hill, the president of the Northern Securities Company, in which he advises a sale of the respective holdings of Northern Pacific—

Mr. Griggs. Well, that is the trouble, you are misstating the language. He didn't advise anything of the kind. If you will make your question so as to say "after reading that portion of the circular" all right, but I object to your putting into the question the legal effect as you conceive it.

Mr. Beck. I am very sure that if Col. Clough thinks the 3308
question is unfair to him, he can say so.

Mr. Griggs. Well, he isn't the only person interested.

Mr. Beck. It is only a question of the interpretation of the language. If there is any man, woman or child on earth who would not, after reading that letter, take it as advice to sell his stock, I am very much mistaken.

Q. Having had read to you the letter of Mr. James J. Hill,

3309 do I still understand you to say that no one connected with the Northern Securities Company in an official capacity advised holders of Great Northern Railway stock to sell their holdings to the Northern Securities Company?

A. That was not the question you asked me before. I will answer the question you ask now by this statement. You have before you the circular of the Northern Securities Company of November 22nd.

Q. No, I haven't,—yes, that is right.

A. Yes, you have.

3310 Q. No, I haven't.

A. Well, it is in evidence. You have the form of a letter which was sent to individual stockholders upon inquiry. Both documents will speak for their own contents, and any one can draw his own inference. If you desire my inference, it is, as I said before (which is a fact) that the Northern Securities Company has never solicited any person to sell to it any stock of any kind, either Northern Pacific or Great Northern.

Q. Well, then, I understand you now to state that you mean that the Northern Securities Company as a corporation never solicited any stock?

3311 A. Not only that, but I do not think any officer of the Northern Securities Company has ever done so. I don't regard that draft of letter, the personal letter of Mr. Hill, as a solicitation. However, that is a pure matter of inference. My judgment is worth no more than that of anybody else on that subject. But that is the view I take of it. It will speak for itself, whatever it is.

Q. Col. Clough, do I understand you to say that the only purpose of forming the Northern Securities Company, either in its inception or as finally planned by comparison of views with Mr. Morgan and other interests, was to place the hold-

3312 ings of the Great Northern and the Northern Pacific in a position of security?

A. Firstly, I want to repeat what I said before. There was no comparison of views with Mr. Morgan about the Northern Securities Company except to the extent that he was asked if he would sell his stock to a corporation of that kind. Secondly, the sale of the stock (Northern Pacific and Great Northern stock) to the Northern Securities Company was undoubt-

edly made by each individual seller because each thought it 3313
would be a good and profitable thing for him to do. That is all I know about it. I don't know what his motives were.

Q. Well, I am not asking for the motives of 1,800 or 1,300 stockholders.

A. No. I don't know what their motives were, but I suppose they thought it was a good thing to do.

Q. It has been repeatedly stated here by you and other witnesses that the only purpose was in order to place certain stock holdings of Mr. Hill and associates beyond—to give them stability by pooling them in a common corporation. Now, I 3314
want to ask whether that was the only reason that prompted the formation of the Northern Securities Company—

A. Yes, sir.

Q. —on the part of those who were responsible for it?

A. The purpose, as I said, in its origin—the only thought that I have ever heard expressed in its origin, in regard to the Northern Securities Company, related to keeping together all the stock of the gentlemen I have named as being those who were consulted. So far as the other stockholders were concerned, comprising the great majority of the stocks of both the Northern Pacific and Great Northern, and comprising 3315
the great majority of the stockholders of the Northern Securities Company,—those gentlemen were given an opportunity to come in because the other gentlemen who had promoted this company thought that it was only right and fair to give every stockholder in the same class with them the same opportunity for whatever advantages (if there were any) which would arise out of the sale of their stock to the Northern Securities Company.

Q. There was, then, no intention at all after the great struggle for control of the Northern Pacific, to promote peace in the financial world by the formation of the Northern Securi 3316
ties Company?

A. No, sir.

Q. None at all?

A. No, sir.

Q. Therefore, the fact that Mr. Harriman sold his 78 millions to the Northern Securities Company, and Mr. Morgan put in his large holdings of Northern Pacific, and that Mr

3317 Hill and his associates put in their large holdings of Great Northern, had nothing to do at all with the community of interest plan of which so much has been said?

A. So far as I know, it had not.

Q. Do you also say it had nothing at all to do with—

A. Now, if you will excuse me one minute and let me finish my answer. I don't know what may have been in the mind of any individual stockholder when he offered to sell his stock to the Northern Securities Company. I assume he thought it would be an advantageous thing for him to do it. But
3318 about the elements that were in his mind as making up that advantage of course I have no means of knowledge.

Q. I don't ask concerning a number of insignificant people that drifted with the current; I am speaking of the really big men in this thing, with whom you were associating and conferring in New York. Now, do you mean to say in your testimony in this cause that the creation of peace in the railway world had nothing to do with the formation of the Northern Securities Company?

A. I don't think it had anything at all.

Q. Do you also say that the increase in this indirect way
3319 of the capitalization of the constituent companies had nothing to do with the formation of the Northern Securities Company?

A. Now, if you will allow me to answer that. You speak of an increase in capitalization. Let me ask you what you mean by that? Do you mean that there have been issued Northern Securities Company shares for the purchase of Great Northern and Northern Pacific to an aggregate amount of more than the shares in the two railway companies?

Q. Oh, no, I am not referring to that at all. I will tell you what I am referring to. What was the capitalization of the
3320 Great Northern Railway Company, for instance, in the year 1898?

A. You mean in the year 1891.

Q. No, I mean in the year 1898.

A. If you will permit me to state I think I can help you.

Q. Yes.

A. When the Great Northern leased the Manitoba Company in 1890, February 1, the capital stock of the Great Northern

Company was 20 millions of dollars. It was increased at 3321
various times from that time until along about 1900 (my recollection is) or 1901, possibly might have been 1901.

Mr. Grover. It was before 1901.

Witness. It had been increased before 1901. My recollection is that the last increase took effect in 1901, increased to 125 millions of authorized capital, of which 123 and odd millions (that is, millions and odd hundred thousand) are now outstanding. Now, if you wish to know about those increases: Each one of those increases was sold to existing stockholders of the Great Northern at par for cash or its equivalent, and 3322
represented 105 millions of dollars of additional cash investment. The increase was 105 millions, and that was for 105 millions of dollars of cash or its equivalent in bonds, at par, which were worth that on the market,—worth par or more.

Q. In the year 1898 what was your common stock?

A. The common stock of which?

Q. Of the Great Northern Railway?

A. The Great Northern Railway has never issued since 1890 more than one class of stock. Let me say that all the stock of the Great Northern goes under the name of preferred stock. That came about in this way. In 1890, when the Great North- 3323
ern was about to take over the St. Paul, Minneapolis & Manitoba—

Q. Well, Colonel, unless you desire this, I don't want to cumber up the record.

A. There is only one class of stock, if that is what you want to know.

Q. I don't care about the reason for it. What was, then, the so-called preferred stock in 1898?

A. This paper you show me here states what it was. I won't vouch for the correctness of the figures upon it. Along about 1898, I don't remember the exact year, it had reached 3324
a hundred millions of dollars in round numbers.

Q. In 1898?

A. Yes, sir. Oh, no, not in 1898. About 1900, before the last increase.

Q. Well, I am asking about 1898.

A. Well, as I have mentioned, it was first 20 millions, and

3325 then it was increased and the new stock sold for cash or its equivalent in securities.

Q. First, I want to get what was the stock in 1898.

A. Well, I don't want to state from your paper. I don't know whether this is a correct compilation, but I will give it to you exactly.

Q. Can you tell me approximately? Was it over 30 millions in 1898?

A. I think it was, but I will give you exactly what it was; I will get it.

3326 Q. Do you know what the mileage was in that year?

A. If you call for it I will give you the stock and mileage of each year since 1890.

Mr. Richards. I wish you would, Colonel.

Witness. I will give you the mileage of the system for any years you want, and the capital stock.

Subsequently the witness forwarded to the Examiner such statement, which by consent of all parties is received in evidence and marked defendants' Exhibit 8.

Q. Eliminating the Burlington, how much has the mileage of the Great Northern road increased since 1898?

3327 A. New road has been built every year, and in addition to that great amounts have been laid out in the improvement of the property and additional equipment.

Q. Tell me whether this paper is approximately correct, and if you feel the slightest hesitation about vouching for it, approximately, I will abandon that line of questions?

A. Let me answer this, which I think will cut it short. There never has been an increase in the stock of the Great Northern road from the beginning that was not sold at par and for cash or its equivalent in securities, and every dollar went into the property; and, in addition to that, many millions

3328 of dollars out of the earnings of the property. Whether it went for lengthening the road or for the betterment of the existing line and for the increase of equipment, it all went into the property and is in it today, and much more than the cash from the increase of the stock—very much more.

Q. The holdings of the Northern Securities Company, so far as they represent the Great Northern stock holdings, aggregate 225 millions par, do they not?

A. I beg pardon? 3329

Q. 225 millions. I say the holdings of the Northern Securities Company stock which represent the transfers of the Great Northern stock, aggregate 225 millions.

A. No, sir.

Q. How much was that?

A. A little over 90 millions—about 95 millions of Great Northern stock have been bought and paid for by the Securities Company, at 180.

Q. About 171?

A. About 171 millions Securities Company stock have been issued to pay for Great Northern stock. 3330

Q. Well, if all the Great Northern was in it, you would get about 225?

A. Yes, sir; if it were all in.

Q. The corporate securities that now represent the Great Northern property, assuming that all the Great Northern stock was put in the Northern Securities Company, would represent a capitalization of 225 millions as against a capitalization of about 25 millions five years ago?

A. That is not quite correct.

Q. Well, wherein is it incorrect? 3331

A. It is incorrect in this: In the first place, the Northern Securities Company is not buying Great Northern stock, and it would depend on the price at which Great Northern stock would be bought. If you will look at the circular of November 20, 1901, you will notice that the offer to buy the stock was for a limited period; and while a few lots of stock of the Great Northern have been bought since, that is since the expiration of that period,—the Northern Securities Company is not buying Great Northern stock at 180, and all of the Securities Company stock that can be counted on as representing Great Northern stock is 171 millions. The remaining 30 3332 millions of Great Northern going into Northern Securities would depend entirely upon the price that the Northern Securities Company would pay for it.

Q. Well, then, there are securities of the Northern Securities Company amounting at least to 170 millions which represent a portion only of stocks which five years ago were capitalized at 25 millions?

3333 A. No, sir. The property which is capitalized at 125 millions is not the same property which was capitalized at a smaller sum before. The property which is capitalized at 125 millions has had 100 or 105 millions out of increased Great Northern stock—and a large amount additional out of the current revenues of the company put into it, and what is represented by the Great Northern stock to-day and this year is the result of all of these expenditures, what were made before 1900 and what have been made since.

Q. Are you able to tell how your mileage has grown from 1898 to 1901?

3334 A. It has grown very considerably. It has grown probably five or six hundred miles.

Q. Yes, five or six hundred miles.

A. But the great amount of expenditure has been made in the improvements and betterments of existing lines and additions to the equipment and things of that kind.

Q. What is the mileage of the Great Northern now?

A. In the system?

Q. Yes.

A. The mileage in the system of railways is about six thousand miles.

3335 Q. Are you including the Burlington?

A. No, sir; I include only the Great Northern system under various companies. In addition to that it includes a fleet of steamers on the Great Lakes,—two passenger boats and six freight boats, and various investments of that character. The investments of the Great Northern are not confined to railways.

Q. And you think in the last five years the mileage has increased about 500 miles?

A. Oh, I think more than that, perhaps, in acquisitions.

3336 Q. Well, not over a thousand?

A. I will give it to you precisely.

Q. Now, Colonel, do I understand you to say, as far as you know, that none of the astute gentlemen who formed the Northern Securities Company contemplated the undoubted monopoly, that was made possible, of the railway transportation of the Northwest?

A. What do you mean by that?

Q. Well, I will tell you what I mean. The Northern 3337
Securities Company owns a majority of the stock of the Great Northern? Is that right?

A. It does.

Q. It owns a majority of the stock of the Northern Pacific?

A. It does.

Q. It has a voting committee?

A. No, I beg your pardon, it has not.

Q. Has it two voting committees?

A. It has given proxies; it has given proxies for the stock of the Northern Pacific Railway Company, and another set of proxies for the stock of the Great Northern Railway Company. 3338

Q. And they are vested in committees?

A. It is not a committee; they are proxies.

Q. They are proxies?

A. Yes, sir.

Q. Now, therefore, through these two bodies of men that are appointed by the board of directors—are they not?

A. They were selected by the board of directors, yes, sir.

Q. The majority of the Northern Pacific and the Great Northern stock can be voted at pleasure?

A. At whose pleasure?

Q. I say at the pleasure of those holding the proxies? 3339

A. Why, I presume so.

Q. Yes.

A. For certain purposes—if you will allow me to state.

Q. Well, do the proxies that have been given contain any limitation as to the purposes for which they are devoted?

A. The charters do—the charters of the Northern Pacific and the Great Northern Railway Company.

Q. But the charter of the Northern Securities Company does not contain any limitation on the power to vote under proxy?

A. Not the slightest. The limitations on the powers of the 3340
proxies are contained in the charters and by-laws of the respective railway companies, and they cannot cast any vote for any person or any measure otherwise than as the charters of the two companies provide. That is one limitation.

Q. Now, therefore, is it beyond the power of those within the Northern Securities Company who hold those proxies to

3341 have the same board of directors for the Great Northern and for the Northern Pacific?

A. Within the power of whom?

Q. I say within the power of those who hold proxies for a majority of the Northern Pacific and a majority of the Great Northern to select the same board of directors for both corporations?

A. They have exactly the same power as the proxies for the stock of any other two corporations.

Q. Well, won't you answer my question direct?

A. I am answering it directly. I am going to answer it.
3342 They have precisely the same power that proxies for the stock of the Northern Pacific and Great Northern always had, and as proxies for the stock of the Milwaukee & St. Paul and the Chicago Northwestern always had. I don't know of anything except the laws of the country that prevent the proxies for the stock of one railroad company electing the same people directors and officers (as far as the stock can elect officers) of any other railroad corporation. There never has been anything in either the Northern Pacific or the Great Northern since their foundation, except the laws of the country, that prevented the stockholders of the two companies electing the
3343 same board of directors. There isn't anything else now. There is just as much to prevent it now as there ever was; and there is no more. They stand just the same as they always did.

Q. Then, it is a fact that those who hold a majority of the stock of both corporations can vest both of these great railway systems under one board of directors?

A. The separate stockholders of each company—the separate proxies, if you please (put it that way), of Northern Pacific and Great Northern stock have the same powers and no more powers than have always existed in the majority
3344 of the stockholders of both companies, subject to the laws of the country, to elect whoever they please to be on the board of directors.

Q. And that, I have understood you to say, contemplates the possibility of those in the Northern Securities who hold the proxies, to put both these railway systems under a common board of directors?

A. On the contrary.

Q. Under the same board of directors as its personnel? I 3345
am going to have a direct answer to my question.

A. Yes, you are going to get a direct answer, and you have it. Recently you changed your question. Excuse me, but it makes it somewhat more difficult to answer, because the question jumps around so much and doesn't stay in a place. In the first place, in your last form of question you assumed that somebody contemplated that the proxies for the Northern Pacific and Great Northern stock were going to elect the—

Q. I didn't say anything about that.

A. I understood you so. No, sir, there is no such contem- 3346
plation.

Q. I am now speaking of the possible exercise of a power; and what I want to get is the simple, naked fact whether, in your judgment, those who hold the proxies in the Northern Securities Company for the stock of that corporation which represents a majority of the stock holdings of the Great Northern and the Northern Pacific, could elect the same board of directors in its personnel for both corporations.

A. No, sir. And I will tell you why. I was not permitted to finish my answer before or I would have done so then. I spoke of the limitations in the charters and in the laws of the country. There is a provision, I think (if I remember cor- 3347
rectly), in the laws of the State of Minnesota, and many other states where these two railways are operating, that would forbid the officers and directors of one company being officers and directors in the other. Consequently, since the adoption of those laws it has not been in the power of the holders of the stock of the Northern Pacific and Great Northern to elect the same men to be directors of the company or officers of the company. But the formation of the Northern Securities Company has not added anything to nor taken anything away from that power. It stands just as it did before under the pro- 3348
hibition of the laws of the various states in which these roads are.

Q. This is the fact, that a majority of the stockholders of the Northern Securities Company can control a majority of the Northern Pacific and the Great Northern Railway systems?

A. Well, now, I can admit that.

Q. Can't they vote the stock?

3349 A. They can vote the stock of the Northern Securities Company to elect a board of directors—of the Northern Securities Company.

Q. Yes.

A. And the Northern Securities Company can designate proxies to vote the stocks of the Northern Pacific and the Great Northern Railway Companies. But those proxies can only exercise their powers when they come into the meetings of these two companies, in accordance with the charters and by-laws of the respective companies and the laws of the land. Now, when the proxies of the Northern Securities Company
3350 come into these meetings, the laws of the land say that they must elect separate and independent boards, and entirely distinct boards of directors for each company, and that they cannot elect the same men. That prohibition stands just as it always has.

Q. Even if the two boards of directors are different in their personnel, respectively, they both are subject to the common control of the Northern Securities Company?

A. No, sir, they are not subject to any control of the Northern Securities Company.

Q. They can be voted out or in at the pleasure of the North-
3351 ern Securities Company.

A. When the next election comes and their successors are to be elected, the proxies of the Northern Securities Company again will be confronted with precisely the same conditions as they were the year before, until the laws of this row of states up here are repealed or the charters of the companies changed. If another one is to be elected it will be somebody else than a director of the other company.

Q. I am asking you whether each of the boards of directors of these two great railway systems (assuming now that they are different in their personnel) is not yet subject to the power
3352 that created them, namely, the Northern Securities Company?

A. No, sir.

Q. In what respect are they not?

A. They cannot be voted out or in at pleasure because under the by-laws and charter the directors hold their places for a fixed term, which is one year.

Q. Notwithstanding a stockholders' meeting vote them out?

A. No, sir; they hold absolutely for one year; and after

the election is made the tenure of office, during the term of office, is entirely independent of every stockholder—absolutely. 3353

Q. You do not seriously dispute, Col. Clough, the moral control of those who elect the directors over the directors?

A. Well, you are talking about a certain indefinite state of things that has no palpable weight at all.

Q. Now, be that as it may, be it legal or moral control, I want to ask you now whether you mean to suggest that when the Northern Securities Company was formed by the responsible interests that formed it, the suggestion of this common control was never even discussed or considered? 3354

A. No, sir, I never heard it mentioned.

Q. Never heard it mentioned?

A. No, sir, never heard it mentioned. That is, the subject of a common control or the subject of any power outside of the board of directors and officers of the separate corporations managing each company for all there was in it. It never was mentioned, I am sure it wasn't.

Mr. Beck. It wasn't necessary to mention it.

Examined by Mr. Richards:

Q. Col. Clough, just to utilize all the time and to get into the record something which you furnished to me. You agreed at the time of your examination in New York to give me the date when the first batch of Great Northern Railway stock paid for by the Northern Securities Company but not transferred upon the books of the Great Northern Company, was acquired? 3355

A. Yes, sir, and I wrote you a letter giving it.

Q. Yes, I have that letter, and it states on December 11, 1901.

A. Yes, sir; I have the same data here from which I wrote the letter; that is right. 3356

Q. And at the same time you stated that you would give me on that date the amount of holdings by the Northern Securities Company of Great Northern stock standing in its name?

A. Which was also included in the letter.

Q. And that amount, as stated in this letter, was 490,833 shares.

A. That is correct.

3357 Q. That is corect?

A. That is correct, yes, sir.

Q. Let me ask you now whether this date, December 11, 1901, was the date when a certain suit was filed against the Northern Securities Company?

A. Oh, no. The Minnesota suit was filed some time in January following. January 6th was the first litigation in which the Northern Securities Company was party. That had no relation to any litigation, but was for the purpose I mentioned in my testimony before.

3358 Mr. Grover. Does that letter state the number of shareholders of the Northern Pacific outstanding?

Witness. No.

Mr. Richards. No.

Q. Let me ask you, Col. Clough, whether it was not about that time that the governors of certain states in the Northwest met to consider the question of how the organization of the Northern Securities Company affected certain public interests here and certain laws.

A. They may have done so. I didn't charge my mind with any dates relating to that subject.

3359 Examined by Mr. Day:

Q. Col. Clough, regarding the rates you spoke of this morning, these rate sheets and tabulated statements.

A. Yes.

Q. When was it that you went to New York—left St. Paul and severed your direct relations with the Great Northern?

A. I went to New York on other business in March, 1901. I mean on other business relating to the company than the Burlington purchase. I had occasion to go there frequently. And after I got there these various matters came up and I
3360 was detained, and have been living there ever since, practically all the time.

Q. When did you cease to be vice-president of the Great Northern?

A. It was some time in the fall of 1901 when I found out that it was necessary for me to spend all of my time in New York. Then I resigned because I could not fill the place; it required a man on the ground here.

Q. Now, when you were vice-president of the Great North-

ern and taking an active interest in the affairs of the company, were you familiar with the rates and the way they were made out? 3361

A. Yes, sir, I was very familiar with all of the business of the company.

Q. And in making up this statement you know that the data are preserved by your company for the making of it?

A. As I said this morning (and I can explain more at length), all I know about the correctness of these figures is the same that pertains to all statistics of railway companies. They have to be made by so many different people that they are like the census of the United States. There is no one individual, or no twenty individuals, or no fifty, or no hundred who can be called to speak of their own knowledge. The Great Northern Railway Company, like the Northern Pacific, has a fixed set of rules for the keeping of its accounts and the reporting of its business. 3362

Q. Well, Col. Clough, you went over that I think to that extent this morning.

A. Yes.

Q. My question was this: whether data were preserved by the Great Northern and Northern Pacific companies showing how traffic was divided, the percentages? 3363

A. I am going to explain to you just how this was made, exactly. The way-bills, as I explained, are the basis of all accountings in regard to earnings, etc. Each way-bill states separately its point of shipment and its point of destination. Abstracts of each separate way-bill are sent to the central accounting department, and those are preserved; and as they come in statistical men are set to work to make record of those.

Mr. Richards. You explained all that before, Col. Clough.

Mr. Day. I don't want you to go over that again.

Witness. Well, I don't know what you mean, then. 3364

Q. My question was this—

A. Now I know. It is the necessity of the business of the company to make and keep these records because it is the basis of all their financial accounting, and it is through these documents that they are able to report their gross earnings; and they are returned and this work is done; it has to be done;

3365 it is a necessity; the roads couldn't do their business unless it were done.

Q. Now, what I had in my mind was this: whether this was made directly from a tabulation of what these way-bills contain—at this specific time?

A. Yes, sir.

Q. Or was it made from month to month or week to week during the period it covered?

A. These tables were made from records, one for each month, which is a tabulation of the way-bills of that month.

3366 Q. Did you direct this to be made up?

A. I did, sir, and was in both offices several times while the process was going on, to be sure it was correct.

Q. Whom did you direct to have it made up by the Great Northern?

A. I went to the Comptroller, who is the chief accounting officer.

Q. And the Northern Pacific?

A. The Northern Pacific, the Comptroller, Mr. Gray, who was the chief accounting officer; and each of those gentlemen, when it was requested, called in the heads of the freight

3367 and passenger accounting departments and instructed them to do it; and each one at once (as the time was short) placed each book for each month in the hands of a separate clerk and he went to compiling the freight. The passenger statistics were put in the hands of as many clerks as could work on them. There is no other way of doing it. The figures contained in these sheets that have been presented here, Exs. 6 and 7, for each company, the work of making these particular sheets and taking them from the statistics occupied altogether (officers and clerks) about sixteen or seventeen men in each company.

3368 Q. Now, when did you cease to have anything to do with the traffic and the rates, the way rates were made up on the Great Northern system?

A. When I ceased connection with the Great Northern system, I ceased to know directly about that. But being in the offices and seeing the method in which business is done, I discovered that there is no material change.

Q. Now, this tariff sheet that is marked Defendants' Exhibit 5, what is that? 3369

A. That is what it purports to be on its face.

Q. Will you state briefly what it is?

A. Yes, sir. It is the west-bound joint tariff on class and commodity rates effective July 1, 1902, between the roads operating in the country west of the Missouri river and the roads generally in the country operating east.

Q. Those are the rates that apply in that territory on the traffic mentioned in the tariff?

A. Yes, sir, they are the rates on traffic from points east of the Missouri river to the territory west of there. This is the west-bound. 3370

Q. And that is issued by a traffic association and is the uniform tariff that applies on all those lines in that territory.

A. Well, it is called a bureau now; it is a bureau of information, that is what it is.

Q. Yes, sir.

A. That issues the book for all. It does the printing, to save expense in printing, as the tariffs are identical. It gets a whole lot of them printed.

Q. Now, then, the question I am asking you is this: that contains the rates that apply upon all of those lines? 3371

A. Yes, sir.

Q. They are uniform?

A. They are uniform, yes, sir.

Q. Now, you have in this territory, the territory which is called west of the Missouri river, an Official Classification?

A. Yes, sir, called the Western Classification.

Q. What is the title of that?

A. That is called the Western Classification.

Q. What traffic does it cover?

A. It covers all traffic that moves under the class rates, and carload rates also to a limited extent, because there are a great many special tariffs besides that, in the country west of Chicago and north of the Ohio river. 3372

Q. Now, in conjunction with this do you use the Official Classification?

A. The Official Classification has very little importance in the territory west of the Missouri. It is of great advantage

3373 and value to the companies, all the companies operative in the territory west of the Missouri, the entering into the joint tariffs; because the joint tariffs on all commodities that move in any quantity ignore all classifications. Joint tariffs ignore all joint classification for the great bulk of the business and give the rate on each commodity as a commodity, all the way through from the point of shipment to the point of destination. So that it is not necessary, in regard to any article that is specified in this joint tariff, to refer to the classifications at all. That is one great value of it to the carrier and also to the shipper.

3374 Q. In what territory does the Official Classification apply?

A. Well, the western and the official overlap to a certain extent. The Official Classification is north of the Ohio river and east of the Mississippi river. The western classification crosses the Mississippi river and goes to Chicago.

Q. Now, I understand in this tariff, Ex. 5, the rates that are mentioned there are what you call commodity rates—

A. Yes, sir, they are all practically commodity rates in this tariff, but if you will notice—

Q. Now, when an article that is named in that tariff, des-
3375 tined, we will say, from New York to the Pacific coast, how do you make up the rate on articles of that character that are named in Ex. 5?

A. Have you one of these?

Mr. Day. No.

Witness. Well, I will hand it to you then (handing Mr. Day copy of tariff). On page 21 there are general class rates, but practically the business of the country moves under these commodity rates.

Q. Now I am asking you where the article is shipped from the Pacific coast to the Atlantic seaboard, or from the Atlan-
3376 tic seaboard to the Pacific coast, that is not named in this Ex. 5,—

A. That is what I am saying, and calling your attention to page 21, which provides for that.

Q. You use, then, the two classifications to ascertain that rate?

A. Theoretically that would be so; practically, I am in-

clined to think that most of the settlements are based on the 3377
western classification—in practice.

Q. Now, will you just state, looking at page 21, what the class rates are?

A. Yes, sir.

Q. Take the five classes.

A. You mean the five that are numbered?

Q. Yes; carloads.

A. Then there are five that are lettered classes. There are five numbered classes, Mr. Day, and five lettered classes. Now, which do you refer to?

Mr. Grover. Why can't you tear the page out and put it 3378
in evidence?

Witness. Page 21.

Mr. Day. Yes.

Witness. Yes, I see those.

Q. Those are the rates that apply on traffic from the Missouri river or from Chicago to the Pacific coast, where the articles are not named, specifically named, in that tariff sheet?

A. Yes, sir.

Q. In other words, you have an Official Classification on traffic that applies in all instances excepting where the rates 3379
in your Ex. 5 apply, which are the commodity rates?

A. Well, I should rather invert that, considering the volume of business. I think immensely the greater portion of the business moves under these commodity rates.

Q. Yes, I am assuming that now. But I am saying now that where the commodity rates do not apply, the Official Classification applies and fixes the rate.

A. If there is no commodity rate.

Mr. Grover. You use the word "official."

Mr. Day. Well, I mean classification; your western classification. 3380

Witness. If you will allow me to suggest, and so as to have it made clear, the Official Classification is not in force on any of these lines in the west here. What is called the western classification is in force here.

Q. The western classification applies on the territory west of the Mississippi river?

A. Yes, it runs to Chicago.

3381 Q. Now, the point I want to get into the record is this: these are commodity rates, and where a rate is not named in Ex. 5, as a commodity rate, the class rates apply—the official rates on page 21 apply?

A. That is right; that is so far as this business is concerned. Of course there are numerous other tariffs, and this was only produced as an illustration of what a joint tariff is, so it could be gotten into the record.

Q. I simply wanted to get into the record how the rates are made up.

3382 A. Yes, sir.

Q. You say in this Ex. 5, those are commodity rates and they cover the bulk of the traffic, but where they are not specifically named there, you look to the classification to find it?

A. Sure.

Q. And the class rates are named on page 21?

A. On page 21, yes, sir.

Q. There are ten classes?

A. Yes, sir. I will suggest also, if you will allow me to interrupt—I will suggest that if any part of this goes in ex-
3383 cept the title page, the number of articles that are specifically covered be counted up, approximately, and that also be stated.

Q. Mr. Clough, did you bring a copy of the classification that took effect—

Mr. Grover hands classification to Mr. Day.

Witness. See if that is the one you wanted; I sent for it.

Q. Is this the classification, western classification No. 29, that applied prior to the taking effect—

A. Various supplementary sheets to these classification volumes, as they are put out, are sent out from time to time; they are issued from time to time, and then as periods elapse
3384 they are all condensed into a single volume. This classification pamphlet included everything up to and on July 1, 1899, and thereafter except as modified and added to by subsequent supplementary sheets. I do not see any supplements in here; but I have no doubt there were supplements.

Q. Is that the next classification that was issued after that one? (Showing classification to witness.)

A. I can't answer that question. I don't believe it was.

I have a notion that there was at least one volume printed 3385
complete between July 1, 1899, and Oct. 1, 1902. I will ascertain this evening.

Q. Now, Col. Clough, to return to this Ex. 6. In this you say "Interstate business forwarded from and to towns where the Northern Pacific also has stations, but which towns can also be reached by other lines of railway." That is your statement?

A. Yes, sir.

Q. Take Ex. 6, the five divisions that you have made here, do either of these cover traffic that come to the Great Northern or the Northern Pacific from the Burlington? 3386

A. Everything.

Q. On other lines?

A. Yes, sir.

Q. Destined, say, to foreign parts?

A. Yes, sir. If you will allow me to explain—

Q. Well, which one of them would cover traffic that would come from, say, points east of Chicago and destined, say, for Asia?

A. That would come under either "3"—

Mr. Richards. No.

Witness.—or "4" or both. 3387

Mr. Richards. I think not, Colonel.

Witness. Yes, sir, it would come under "3". Just let me read that. (Looking at the exhibit.) Yes, sir.

Mr. Richards. Not at all. I don't see how you can make that good.

Witness. Why?

Mr. Richards. Number 3 says "Interstate business originating or terminating on connecting lines, carried via junctions common to both Northern Pacific and Great Northern Railways, and which was destined to or forwarded from 3388
towns on Great Northern Railway where the Northern Pacific Railway also has stations, that are reached by other lines of Railway."

Witness. That is right. The Asiatic business was intended to be included under "3" because the Northern Pacific and Great Northern points through which the traffic passes are reached either directly by other railroad routes or by

3389 other railroad routes in connection with the steamship service. That is, they are all bidding for that business that is indicated in the third paragraph.

Examined by Mr. Richards:

Q. Do you regard freight shipped, say, from Chicago to Hong-Kong, that passes over the Great Northern or Northern Pacific line, destined for a point on either of those lines? It is destined for Hong-Kong, isn't it?

A. But it has to pass through its western terminal.

3390 Mr. Day. It doesn't say so in this exhibit.

Witness. No.

Q. It limits it to freight that is destined to or forwarded from a town on the Great Northern or the Northern Pacific.

A. That is right. It is either forwarded from or destined to and passes through junction points, and at the Pacific coast terminal it has to pass through the terminal points of those companies and there be delivered to the steamer. The junction points that were intended were eastern terminals, or the junction point was particularly meant a point where the two roads come together and there connect with another carrier

3391 beyond. That was the intention of it, whichever way the carrier is beyond. So this was intended to cover both east and west-bound business to and from Asia.

Examined by Mr. Day:

Q. And section 3 does cover that?

A. Yes, sir.

Q. What does paragraph 5 cover?

A. Paragraph 5 covers all business that both originates and terminates on the Great Northern road (in case of the Great Northern), and on the Northern Pacific (in case of the North-

3392 ern Pacific), where the other company has no station. In other words, where it is interstate business which is strictly local to the several companies and the other company is not there at all, is not competing for the business.

Q. Now, turn to page one of Ex. 6, third division.

A. I have it now.

Q. Take the third paragraph.

A. The third paragraph of page one—I have not a copy of 3393
page one of Ex. 6, but I have a corresponding one for the Northern Pacific.

Examined by Mr. Richards:

Q. Just in the line of what I was asking you before and to clear up the matter in my own mind at least; does the third paragraph here include all this great foreign business respecting which Mr. Hill testified?

A. Yes, sir.

Q. So that altogether that amounts, as far as the Great Northern road is concerned— 3394

A. These are earnings, you understand.

Q. Yes, earnings—amounts to only 17 per cent of the earnings?

A. That is what it amounts to.

Q. Or to $2,891,310.69?

A. Yes, sir; that is what it amounts to, that is correct. The fact is, of course, that the immense bulk of the traffic of all kinds on these roads is strictly local to the company—begins and ends at places where the other is not present. I think that is practically true of every railroad in the country. The great bulk of all railroad traffic is local to the road. 3395

Examined by Mr. Day:

Q. Now, Colonel, to return to page one, the third paragraph.

A. Yes, I have the form here of the Northern Pacific.

Q. "The percentage of interstate traffic, the rates on which could be controlled only by agreement with lines competing with Northern Pacific and Great Northern, 6.89 per cent" of the whole.

A. Yes.

Q. What do you mean by that?

A. What I mean by that is: that is a class of business the 3396
transportation of which passes over, firstly, connecting lines. Oh, it is the third paragraph?

A. Yes, the third paragraph.

A. Oh, excuse me, I was reading the fourth. The fourth paragraph relates to traffic—

Q. Well, I asked about the third.

3397 A. The third paragraph relates to traffic which begins at a Great Northern and Northern Pacific common point, as, for instance, for the purpose of illustration, St. Paul, and goes to another common point on the Northern Pacific and Great Northern where another railroad between the same points is operating, as, for instance, Fargo, where the Milwaukee & St. Paul is operating. That is what I mean by that. Another of those points is Butte, where the Union Pacific is present. Another of those points is Spokane, where the Union Pacific is present.

Q. And Seattle and Portland?

3398 A. Yes, there is competition there also.

Q. Now, do you mean to state that that percentage, 6.89 percentage of the total interstate traffic, is controlled by rates that are the result of agreement by these competing lines?

A. No, sir; what I say is that they cannot be controlled by the Great Northern and Northern Pacific by their own arrangement, but in order to control rates they must bring in a third party who must be consulted and consent to the rates,—like the Milwaukee & St. Paul or the Union Pacific. That is what I mean. Do I make myself clear?

Q. Yes, I think so. Those are the rates that are mentioned

3399 in this Ex. 5?

A. Yes, sir. No, those are not quite the same. The rates in Ex. 5 are those in the fourth paragraph, if you will read the next below. No, there must be an agreement not only between the Great Northern and the Northern Pacific and a third carrier reaching the same point to control rates, but the connecting line beyond must be brought in to consent to the through rates; then four classes of parties are necessary.

Q. Where are the rate sheets that come under that third paragraph?

A. I have not those here.

3400 Q. As a matter of fact, doesn't Ex. 5 apply to both third and fourth?

A. It was not intended to; it was only intended to apply to the fourth, and there is a class of tariffs on the Great Northern road itself and on the Northern Pacific road going out to a number of those points.

Q. And on the St. Paul road and on the Union Pacific?

A. Yes, sir. 3401

Q. Where the rate is the result of agreement between those four or five lines?

A. Yes, sir, where, if the Great Northern or the Northern Pacific desired to raise the rate, they couldn't do it without securing a simultaneous rise to the same extent by the other competing carriers.

Q. Yes; the rates are the result of agreement and they won't change them without agreement.

A. Yes. Under paragraph four it is necessary to get the consent of the line beyond to the joint tariff, in addition to the local road that is competing directly. 3402

Q. Col. Clough, have you had anything to do with the rates since you went east?

A. Not directly, no, sir.

Q. Had anything to do with the traffic arrangements between the Great Northern and the Northern Pacific?

A. Absolutely nothing. My connection since I have been east has been nothing with the Great Northern. I have been a director and a member of the executive committee of the Northern Pacific, but the subject of rates and tariffs has never been mentioned in any of the meetings of the board or executive committee of the Northern Pacific since I have been a 3403 member.

Mr. Day. That is all, Colonel, and we withdraw our objection to that paper.

The Examiner. You withdraw your objections to Exs. 6 and 7?

Mr. Day. Yes. Your explanation regarding Ex. 6 applies to Ex. 7 also?

Witness. Yes, sir.

Mr. Day. The reporter will make a mark on these two classifications that are produced so we may subsequently put them in if we deem best. And, Col. Clough, will you file or 3404 submit to us the Western classification that was in force between January 1, 1900, and January 1, 1902?

Witness. I will do it if I can get it, and I think among the various roads around town I can get it.

Mr. Richards. That is all.

3405

RE-DIRECT EXAMINATION.

By Mr. Grover:

Q. Is there a provision in the constitution of the state of Minnesota subjecting stockholders to double liability for any indebtedness of the company?

A. There is. That is, in the state of Minnesota?

Q. The state of Minnesota.

A. Yes, sir.

Q. That is a material matter in the consideration of the or-
3406 ganization of corporations under the general laws of the state?

A. Yes, sir. That was another reason why we felt that the state of Minnesota was not a proper state to resort to for incorporation under the general law.

Q. What was the number of outstanding shareholders of the Northern Pacific Railway Company, in, say, August and September, 1901?

A. There were over 3,000; something like 3,600, to the best of my recollection. I will give it to you exactly. But it was between three and four thousand.

3407 Q. Was there any negotiation or discussion concerning the formation of the Northern Securities Company, or the purpose of its organization with any Northern Pacific shareholder except Mr. Morgan, outside of the Great Northern shareholders who likewise held Northern Pacific shares?

A. To the best of my knowledge there was not; I am sure there was none; and with Mr. Morgan only to the extent I have mentioned.

Q. That was a question whether he would turn in his shares?

A. Yes, sir; sell his shares and take his pay in the stock of
3408 the new company, or otherwise.

Q. Previous to the first day of May, 1901, did you know of any purpose on the part of Great Northern shareholders owning Northern Pacific shares to increase their holdings in Northern Pacific shares?

A. At what time was that?

Q. Prior to the first of May, 1901.

A. I never heard the subject mentioned.

By Mr. Day: 3409

Q. Colonel, just one other question that may be in there or may not. Your commodity rates or your tariff rates, say, to the Pacific and Pacific to the Atlantic apply by every line in the official classification territory?

A. Apply to all who are—

Q. —named on page 2 of this book?

A. To all who are consenting parties to this joint tariff.

The witness was excused.

W. P. CLOUGH.

Subscribed and sworn to before me this 25th day of October, 1902. 3410

FREDERICK G. INGERSOLL,
Special Examiner.

8411 CHARLES S. MELLEN, called as a witness on behalf of the defendants, being duly sworn by the Examiner, testified as follows:

Examined by Mr. Bunn:

Q. Mr. Mellen, you are the president of the Northern Pacific Railway Company?

A. I am.

Q. You have already given testimony in this case?

A. In the Power case.

8412 Q. Well, it has been introduced in this case by consent. Are you a member of the board of directors of the Northern Pacific Railway Company?

A. I am.

Q. How long have you been its president and a member of the board?

A. Since some time in August, 1897.

Q. Are you, as a director, also a member of the executive committee?

A. I am.

Q. Are you in the habit of attending the meetings of those
8413 boards?

A. Yes.

Q. Are you familiar with the corporate proceedings of the company since you became its president?

A. I am.

Q. Has the Northern Pacific Railway Company ever taken any action or any part as a corporation in the formation of the Northern Securities Company?

A. It has not.

Q. Has it taken any action or part as a corporation in the transfer of any shares of stock to the Northern Securities
8414 Company?

A. Not to my knowledge.

Q. I refer to shares either of Northern Pacific stock or Great Northern stock.

A. I think not; not to my knowledge, certainly.

Q. Prior to your connection with the Northern Pacific Company, Mr. Mellen, were you at one time connected with the Union Pacific Company?

A. I was, for four years. 3415

Q. For four years?

A. Yes, sir.

Q. During what years?

A. From June 1, 1888, to the first of April, 1892.

Q. And during that time were you over the Union Pacific lines frequently?

A. Yes.

Q. What was the nature of your duties for the Union Pacific road?

A. Well, I held several positions during the four years. I 3416
was assistant general manager, acting general manager, purchasing agent, and for the greater portion of the time the general traffic manager.

Q. And your headquarters were where?

A. In Omaha, Nebraska.

Q. Are you familiar, and have you been familiar during these years, with the Burlington lines, Northern Pacific lines, Great Northern lines and Union Pacific lines?

A. I am, and have been for ten years back.

Q. Mr. Mellen, did the acquisition of the stock of the Bur- 3417
lington road by the Northern Pacific and the Great Northern have any effect or influence to restrain or hinder trade or commerce between the states or with foreign nations?

A. I have thought it promoted it rather than hindered it.

Q. Will you tell us in what respect it promoted it?

A. It resulted in a much freer interchange of business between the Northern Pacific and the Burlington. The business increased very much. It has been more to the interest of the two companies to work closely together. It has opened a much wider market to the products tributary to the line of the Northern Pacific and the business has increased. I have no figures to show, but it is my impression the business has 3418
increased very considerably, and is bound to increase from month to month and from year to year as the result of the acquisition.

Q. What are the products which are tributary to the Northern Pacific lines and which are shipped from that line to the country reached by the Burlington?

A. The largest product is lumber.

3419 Q. Mineral products, and live stock also?

A. Very considerable live stock interchanged, and second to lumber in importance is the mineral products.

Q. What has been the effect on the passenger business?

A. It has very greatly increased. While we had a short time ago connection with our regular transcontinental train at Billings, it was uncertain owing to the fact that trains are frequently off time, as long distance trains generally are. We now have a solid train from Kansas City and St. Louis through to the Coast, and it is one of the profitable trains that we

3420 run.

Q. How many trains did you run to the Coast before the Burlington shares were purchased?

A. My impression is that we ran, during the summer months, two; but the rest of the year but one.

Q. Summer two, and winter one. How many have you run since?

A. We are running two through from St. Paul to the Coast and one from St. Louis and Kansas City by way of the Burlington, making three trains west of Billings.

Q. Has this third train taken its business away from the

3421 other two trains, or is it an addition of business?

A. The old trains (so to speak) are paying in excess of what they were when they were the only trains, and the Billings train is paying equal to any of the others.

Q. You are familiar, Mr. Mellen, with the Burlington lines and the general nature of the country reached by them?

A. I am.

Q. What, in your judgment, will be the future of that interchange of business between these roads by the Billings route?

A. I believe it is going to assume very large proportions. I question whether or no the business of the Northern Pacific,

3422 the interchange at Billings, will not be larger than the interchange at St. Paul, within a few years.

Q. Now, Mr. Mellen, is that increase of business which has occurred up to the present time, and future increase which you hope for,—do you refer in that respect to business at present existing and diverted from other lines, or to new business created?

A. I think it is new business created, so far as the Northern Pacific is concerned. I suppose if the towns upon the Burlington line did not secure their lumber from the line of the Northern Pacific they would not go without lumber, they would get it in some direction; but the result of the acquisition of the Burlington road by the Northern Pacific and Great Northern has been to make a market for the lumber of the Northwest country. Where the lumber would have come from, if the Northwest country supply was shut off, I can't say. I regard the lumber business that we interchange with the Burlington road as business made by the connection at Billings. 3423

Q. Mr. Mellen, why does this existing arrangement between these roads tend to create or promote business beyond what a mere connection and joint tariff would have done? 3424

A. It is among the possibilities that a joint tariff and interchange under the same might produce a large business, similar to that perhaps that we are doing now, but it is uncertain and insecure and people who are establishing large industries and seeking a market want to be sure of a secure one, that it may not be subject to the whims of management, that might possibly see in another part of the country a chance to get a few cents more on a carload of freight and divert the lumber business now coming from the state of Washington say to Texas or some other point where a supply could be obtained under a division of rates with the Burlington road. That might make it equally as well for the Burlington road, but at the same time would cause the Northern Pacific a great loss. 3425

CROSS-EXAMINATION.

By Mr. Day:

Q. You say the companies are closer together. What do you mean by that? What have they done? 3426

A. I mean to say there is a very much larger business interchanged between the companies.

Q. What have the companies done?

A. The companies are in exactly the same position they were before.

Q. You said it brought the companies closer together.

3427 A. Well, I meant that it promoted the interchange of business between the two companies.

Q. What has actually transpired, what has been done, what physical changes have been made by reason of the joint ownership of the Burlington?

A. There has been through service as far as the passenger business is concerned; there has been a freer interchange of business; I think there has been a larger business interchanged. I think we have been perhaps less desirous of securing the longest haul upon our traffic, and the Burlington per-
3428 haps has been desirous of promoting business with us in preference to shorter hauls in other directions.

Q. Have there been any directions from the Northern Pacific and the Great Northern to the officers of the Burlington?

A. There is no authority on the part of the officers of the Northern Pacific over any officer of the Burlington. The Northern Pacific is simply a stockholder of the Burlington, and any influence that it has it can only exercise at a stockholders' meeting.

Q. Has any instruction gone to anybody as officers of the
3429 Burlington as to what they should do in the way of withdrawing competition for traffic by the way of St. Paul or some other point?

A. I know of no one who could give any instructions to the Burlington except its board of directors.

Q. Then, what thing has been done to change the previous conditions or the previous methods of doing business except that you have put on a through passenger train from Kansas City?

A. We have done a larger business.

Q. I ask you what thing has been done that changed the
3430 conditions that existed before the purchase?

A. The Northern Pacific has become a stockholder, and the officers of the Northern Pacific would naturally feel freer to interchange business and promote business with a line it was interested in than a line with which it had no interest.

Q. You can't name a thing that has been done beyond the acquisition of ownership?

A. Beyond ownership, practically nothing.

Q. You spoke of a market being created that did not exist before. How was it created? 3431

A. Why, the interchange of business was made easier; tariffs were made that would permit the business to be interchanged.

Q. What tariff, and when was the tariff made?

A. Well, I can't call to mind any specific tariffs. I don't personally handle that branch of the business. I know tariffs have been made.

Q. But you are generalizing, and I ask you now for the details,—what it was that was done that makes the difference?

A. Well, there have been tariffs on lumber made; rates have been reduced on lumber. 3432

Q. When?

A. I can't give you specific instances. I will bring you tariffs, if you desire.

Q. No, but you pretend to know and I ask you now for the data, the particular facts that occurred upon which you rest this opinion you are giving here?

A. I have before me from day to day various matters that affect the interchange of business between the Burlington and the Northern Pacific road. I don't specifically charge my mind with any particular tariff, but such tariffs have been made and such business has been interchanged, and the business has been greater than it was before. 3433

Q. Oh, I have *no* doubt the business has been greater. Prosperity has been greater?

A. Yes.

CHARLES S. MELLEN.

Subscribed and sworn to before the undersigned this 27th day of October, 1902.

FREDERICK G. INGERSOLL. 3434
Special Examiner.

Further taking of testimony was thereupon, at request of defendants, adjourned to Nov. 10, 1902, at 11 a. m., in the City of New York, room 70 in the Federal Building in said city.

3435 Subsequent to the foregoing adjournment, it was agreed by and between all the parties hereto that the testimony of E. N. Saunders, a witness for and in behalf of the defendants, might be taken by and before said examiner at his office in the city of St. Paul, at the convenience of the parties and without notice to complainant; that a copy of the testimony of the witness should thereafter be forwarded to complainant for the entry of such objections as might be desired; that said witness should thereafter, at some date to be agreed upon, appear before said examiner for cross-examination.

3436 Thereupon, on the following day, to-wit, October 24th, 1902, at the office of said examiner in the city of St. Paul, Minnesota, the following proceedings were had:

E. N. SAUNDERS, called as a witness on behalf of the defendants, being duly sworn by the examiner, testified as follows:

Examined by Mr. Young:

Q. Where do you reside, Mr. Saunders?

A. St. Paul, Minnesota.

Q. What is your business?

3437 A. A miner and distributer of coal.

Q. You are president of the Northwestern Fuel Co?

A. Yes, sir.

Q. You have principal charge of the business of that company?

A. Yes, sir.

Q. Through what territory does that company distribute coal?

A. Principally in Minnesota, North and South Dakota and Nebraska, and we also distribute in Iowa, Northern Illinois and Wisconsin.

3438 Q. In what places do you have yards for wholesale distributing points?

A. The principal distributing places are at Duluth and West Superior and Washburn (Wisconsin), on Lake Superior, and at Green Bay and Milwaukee on Lake Michigan, and Chicago as a rail distributing point.

Q. How extensive in tonnage is the business of your company in bituminous coal?

A. The Northwestern Fuel Company's distributing tonnage 3439
of bituminous coal is about two million tons annually.

Q. What other concerns are you interested in, or do you have the management of, which are engaged in mining or distributing coal?

A. I am interested in the production of coal in Northern Illinois (a company called the Spring Valley Coal Company), and in a bituminous mining company in Green county, Indiana, and in a bituminous coal mining company in eastern Ohio, and a coal mining company in West Virginia.

Q. How extensive are the mining properties of the Spring Valley Mining Company in Illinois? 3440

A. Their capacity is about five thousand tons daily production.

Q. About how large a field have you?

A. 32,000 acres of Illinois coal, with an average producing capacity of 5,000 tons to the acre; probably a total of undug coal in the ground of 180 millions to 200 millions of tons at that property.

Q. Your present production or output, you say, is about 5,000 tons a day?

A. Yes, sir.

Q. Where is that shipped to, principally? 3441

A. Wisconsin, Iowa, Minnesota, Nebraska and the two Dakotas.

Q. Are you familiar with the mining production of bituminous coal in West Virginia, Pennsylvania and Ohio?

A. Yes, sir, quite familiar.

Q. To what extent have your own business operations informed you in regard to the mining business in those states?

A. I have had experience and acquaintanceship with the operation of mines in Ohio and Pennsylvania extending over a period of 25 years. In West Virginia I have been familiar with the operations for a period of about five years. All of 3442
that time I have been closely identified with distributing the products of these various mining interests that I have been interested in.

Q. From what source has been derived the greater part of the bituminous coal which you have distributed in Minnesota along points on the Northern Pacific or Great Northern lines?

A. From Pennsylvania and Ohio, up to within a very short

3443 period. The last five years a considerable quantity has been secured from Virginia. All of which originating from those three states has been brought by rail and lake to these various distributing points for distribution in this northwestern section. Latterly there has been a large and growing distribution of coal from western fields, especially from Illinois.

Q. State whether or not in recent years you have had difficulty in obtaining such supplies as you require of bituminous coal from the eastern coal fields?

A. In the past two years it has been practically impossible to get anything like an adequate supply from those eastern
3444 fields by the original channels, and the country, as a result, has been forced to look to the nearby coal fields for its supply.

Q. What is the cause of that diminution of supply?

A. Inability of the carrying companies engaged in hauling coal from western Pennsylvania, Virginia and Ohio mining districts to move it to Lake Erie ports in adequate quantities. The requirements for transportation on those railroads for supplying their nearby market have been so great that they have been absolutely unable to furnish the motive power or cars to move the supply of coal during the short period or
3445 season of navigation during which it can be moved.

Q. That is, you mean to move it in sufficient quantities?

A. In quantities sufficient to supply the demands of the people depending on the lake distributing points for fuel.

Q. State whether or not the insufficiency of their terminals on those eastern roads is a factor in this diminution of their capacity, or don't you know as to that?

A. Well, I should judge that it was owing to insufficient terminals, insufficient railroad tracks, insufficient power and insufficient cars; general incapacity.

Q. Does that state of things still continue?

3446 A. It has been very much aggravated during the past six months, and to such an extent that we are at this time, the last of October, absolutely unable to accept orders for a car of coal from any one. We have no prospect of securing between now and the close of navigation on the lakes any adequate supply for the territory that is dependent on us.

Q. You are speaking of bituminous coal?

A. Bituminous coal.

Q. State whether, in your judgment, the supply of bituminous coal from the eastern mines is liable to continue to be insufficient to supply the territory through which you distribute coal, especially on the lines of the Great Northern and the Northern Pacific Railway. 3447

A. I should think it is. And I base that opinion on the failure of pledges and promises on the part of the managers of roads engaged in moving this coal to the lakes. The demand is constantly increasing; and, while they have increased their facilities to an enormous extent, they have not any more than kept up with what might be termed their local requirements. So that we are in the situation of foreigners, so to speak. They take care of the people near home, and when they have done that they have exhausted their resources. 3448

Q. State whether or not the demand for bituminous coal in this western country, including the territory on the Northern Pacific and Great Northern, has been increasing, and at what rate,—speaking generally?

A. The demand has gradually increased ever since I have been engaged in the business, some 28 years; and for the last five or six years the consumption has increased at least 25 per cent a year. In fact, it has outrun all of our calculations and expectations, and it is evident that this whole northwestern country is up against a very grave problem as to getting an adequate supply of fuel to allow them to go on settling up the country as they have been, and increasing their manufacturing industries, which require fuel, as the foundation stone, unless new and very extensive bases of supply and facilities for moving the fuel can be secured. 3449

Q. What base of supply is there that is adequate?

A. There is only one near-by base, and that is in the State of Illinois. Indiana can be called upon to some extent, although it is almost impossible to get Indiana coal past Chicago. The production there is too limited to even supply Chicago adequately. But there is almost an unlimited supply in Illinois, and a very large development has already taken place in that state. 3450

Q. Are these Illinois coal fields that you speak of anywhere near the line of the Burlington road?

3451 A. There are very large tracts of the Illinois fields tributary to the Burlington road, and also very large tracts that are directly local to the Burlington road or its close-by connection.

Q. When you say directly local to the Burlington, do you mean that are not reached by other roads?

A. Yes, sir; that are wholly located on the Burlington; large mine developments.

Q. How is it with your own mines at Spring Valley with reference to the Burlington road?

A. Well, they are right on the Burlington road, although we
3452 do not market all of our coal on the Burlington. But we have free access and free shipping facilities on the Burlington.

Q. Are you familiar with the general practice in reference to the trans-shipment of coal over several connecting lines from Illinois points up here and to points beyond?

A. Quite familiar.

Q. Heretofore, prior to the year 1901, how has it been with Illinois coal shipped from the mines in that state destined to points beyond St. Paul and Minneapolis?

A. It has been almost impossible to get it through on account of the fact that the C., B. & Q. and other roads who
3453 could haul it to those points have always been unwilling, and in fact have refused to allow their equipment to go through to the destination of the coal, which necessitated transferring it here into the cars of the lines reaching north, to the great injury of the coal and great delay in transit, and with great addition to the cost.

Mr. Grover. What makes the additional cost?

Witness. The labor of transferring and the delays incident to transferring.

Q. State what effect that has upon the coal itself, and whether that effect is greater on Illinois coal than on Eastern
3454 coal?

A. It is damaging to all grades of bituminous coal, and especially to Illinois coal, in that it breaks it up and produces a large amount of screenings and waste, to the great detriment of the purchaser.

Q. What advantage would it be in the transportation and distribution of coal if the cars could go directly from the mines in Illinois to points of destination on the Great Northern and Northern Pacific roads without breaking bulk?

A. It would make the Illinois fields directly available to the 3455
users of coal on the lines of the Great Northern and Northern Pacific, giving the consumers the advantage of that great deposit, with a certainty of their being able to secure their coal supply cheaply and promptly.

Q. Is this Illinois coal of such character that a consumer can put in a large stock of it?

A. It is coal that is not advantageously stocked, as it contains rather more sulphur, is more friable and disintegrates more rapidly than higher classes of coals. But it has an evaporating power which is adequate for all purposes, in comparison with Eastern coal, if used fresh-mined and after being 3456
shipped directly from the mines.

Q. About how far west on the lines of the Great Northern and Northern Pacific do your operations extend?

A. Well, in bituminous coal to the borders of the State of Montana, the western limits of the Dakotas and Nebraska.

Q. Assuming, Mr. Saunders, that this coal can come from the Illinois coal mines up here on the Burlington road and then go out over the Great Northern and Northern Pacific without breaking bulk, on the through tariff (likely to be permanent), what advantage would the consumers of that coal 3457
at the points of destination on these two northern roads gain over and above what they would have if it went in the way it has been going, breaking bulk at St. Paul, and depending on a joint tariff between different roads?

A. In the first place, they would have an assured regular base of supply for a splendid quality of fuel, which they could depend upon; and, in my judgment, it would result in a reduction of the average cost to the consumers of fuel in that territory of 25 per cent.

Q. And this in addition to the advantages of a certain supply?

3458

A. Yes, sir. I meant to convey the idea that it is my opinion that the people in the territory served would secure a saving of 25 per cent in their necessary disbursements for fuel as compared with what they would have if the base of supply was not made available to them. In other words, this opens to the people of a large territory one of the most aggressively competitive fields of coal in the United States, from which heretofore they have been practically cut off.

3459 Q. What, in your judgment, would be the effect of this upon the traffic in coal and the development of the country along these two northern lines and the manufacturing and other business that may be located there?

A. It would greatly encourage the location of manufacturing interests in that territory and make it possible for them to operate successfully, as well as largely enhance the traffic in coal.

Q. State whether or not since the purchase of the Burlington shares by the Great Northern and Northern Pacific there has been any change as to coal cars going through from the
3460 Burlington road to points on the Great Northern and Northern Pacific as to transferring coal from one car to another?

A. There has. We are now allowed to load cars in Illinois and send them to their destination, wherever the buyer lives, on the line of either of those roads, without changing the coal from one car to another, with the result that we are already building up a very extensive trade in that class of coal.

E. N. SAUNDERS.

Subscribed and sworn to before the undersigned this 25th
3461 day of October, 1902.

FREDERICK G. INGERSOLL,
Special Examiner.

Thereafter, the direct testimony of said witness E. N. Saunders, having been reduced to writing, was by said Examiner forwarded to the solicitors for complainant, who thereupon instructed the Examiner to place upon the record the following statement:

"The complainant does not desire to cross-examine the witness E. N. Saunders, whose testimony was taken before the
3462 Examiner at St. Paul, Minn., on the 24th day of October, 1902, but complainant does object to the testimony of said witness Saunders, on the ground that said testimony and all thereof is irrelevant and immaterial."

3463

Office of the Examiner,
St. Paul, Minn., November 3rd, 1902.

Further hearing in this cause having been on the 23d day of October, 1902, adjourned to November 10th, 1902, at the City of New York, now on this 3rd day of November, 1902, at the request and by the consent of all parties hereto, the further hearing is adjourned from said November 10th, 1902, to November 12th, 1902, at Room 70 in the Federal Building in the City of New York.

3464

City of New York, November 12, 1902.

The taking of testimony was resumed before the Special Examiner, in Room 70 Federal Building, at 11 A. M.

All parties were represented.

Mr. Griggs. Mr. Examiner, on behalf of the defendants, I desire to offer in evidence a letter from the Interstate Commerce Commission upon the subject of certain testimony which we desire to introduce. Before formally offering the letter, however, I wish to read, as introductory to it, the following statement:

3465

"Mr. Griggs, of counsel for defendants, states, for the purpose of making proof in this cause, that for years prior to 1890 many of the principal railway companies of the country had acquired all or a majority of the shares of the stock of competing railway companies, or had acquired by purchase or lease the control of parallel and competing lines of railway, and that this state of things was matter of common knowledge, was reported to the Interstate Commerce Commission, and by it to Congress, and was known to Congress at the time of the passage of the Sherman Anti-Trust Act, and that Congress did not intend by that act to declare those transactions 3466
—many of them expressly authorized by state legislature—to be illegal, and also for the purpose of showing that the same practice in regard to competing companies and parallel and competing lines has been pursued, with like legislative sanction, and reported to the Interstate Commerce Commission and to Congress, and well known to the executive branch of the government from the passage of the Sherman Act to the

3467 beginning of this suit, without any objection on the part of any branch of the government, thus showing a general practical construction of the Sherman Act as not intended to forbid any such purchases, leases, or ownership of stock of parallel or competing lines, by any railway or other corporation, he did, on the second day of November, 1902, personally request the Interstate Commerce Commission to furnish the defendants with certified copies of so much of the reports made to the commission in each of the years from 1888 to 1901 by the following named railroad companies, as is contained in the following pages of the form of report furnished by the
3468 commission to the companies and by them filled out, sworn to and returned to the commission, viz.:

Pages 1, 4 and 14 of the reports for the year 1888;

Pages 1, 4, 5, 6, 7 and 20 of the reports for the year 1889;

Pages 3, 8, 9, 10, 11, 12, 38, 39, and the answers to questions 3 and 5 on page 53 in the reports for each of the years 1890 to 1901, both inclusive.

The pages named contain the questions by the commission and the answers of the companies, together with their explanatory remarks on the following matters:

3469 Name of carrier making report, date of organization, and, if consolidated, the names of the constituent companies, with reference to charters, and date and authority for consolidation, and what carrier operates the railroad.

The name, terminals and mileage of each railroad operated by the reporting company, and whether represented by the reporting companies' own capital stock, or roads of proprietary companies whose entire capital stock is owned by the reporting company, or whether operated under lease, with the mileage of each class of road.

The name, terminals and mileage of each railroad whose
3470 income from lease or otherwise is included in the reported income account.

The name of each railway company of which the reporting company owns any of the capital stock, with the amount of such stock owned, its par and its actual value, and the dividends received therefrom, and a like requirement as to all other stocks owned by the reporting company.

All leases, taken or surrendered during the year for which 3471
the report is made.

All consolidations or reorganizations effected during the same period.

All new stocks issued during the same period.

The companies whose reports were embraced in such reports were and are the following:

1. Boston & Maine Railroad Company;
2. New York, New Haven & Hartford Railroad Company;
3. New York Central Railroad Company;
4. Lake Shore & Michigan Southern Railway Company;
5. Pennsylvania Railroad Company; 3472
6. Pennsylvania Company;
7. Baltimore & Ohio Railroad Company;
8. Illinois Central Railroad Company;
9. Southern Railway Company;
10. Southern Pacific Company.

—which request said commission did wholly deny in the letter to him which he now produces and offers in evidence on behalf of the defendants."

It was in response to that request that the letter, which I now offer in evidence, was received.

The letter was marked defendants' Exhibit 10. 3473

Mr. Griggs. I would say further, Mr. Examiner, for the benefit of counsel, that I offer this letter in evidence to show that the request for these reports, which are, as we suppose, public records, was refused; and, being unable to obtain them, we propose now, in order to prove the facts, to follow the matter up by producing the next best obtainable evidence, viz.: the printed publications on this subject obtained from the railroads and verified by the compiler of the publications.

Mr. Richards. Mr. Examiner, you will note that the government objects to the introduction of this testimony on the 3474
ground that it is both incompetent and irrelevant. We will present to the Court our reasons for this objection.

8475 JOHN P. MEANY, called as a witness by the defendants, being duly sworn, testified as follows:

Examined by Mr. Young:

Q. Where do you reside?

A. In Brooklyn.

Q. What is your business?

A. I am editor and manager of Poor's Manual of Railroads.

Q. How long have you filled that position?

A. I have been editor since November, 1881.

8476 Q. Are you familiar with the mode in which that book is prepared?

A. Yes, sir.

Q. Had you any connection with Poor's Manual before 1881?

A. Yes, sir. I went there first in 1873.

Q. What was the nature of your relation with it between 1873 and 1881?

A. I was general junior clerk.

Q. To what extent, during that time, were you familiar as to the make-up, the way in which the book was made up?

A. During that time in a general way.

8477 Q. And since 1881 you have been the chief editor?

A. Yes, sir.

Q. Having in charge the making up of the book?

A. Yes, sir.

Q. Now will you please state in what manner, since you have had any knowledge on the subject, this Poor's Manual has been made up?

Mr. Richards. We desire to object to the testimony of this witness upon all grounds. We insist that what the other side evidently desires to prove by the witness is irrelevant and immaterial; and even if it were relevant and material, they are

8478 not attempting to prove the facts in the proper way.

Mr. Young. The defendants insist that this evidence, in connection with other competent evidence that will be introduced, is material, for the purpose of showing the construction of the Act of Congress of 1890, known as the Sherman Anti-Trust Act, and the intention of Congress in passing that act; the main contention in this case being whether the matters of which the defendants are said to have been guilty are matters

which are prohibited by that act. Now, as bearing upon the 3479
construction of the Act of Congress, and in support of our contention as to the true construction of the act, we propose to show the facts in regard to the ownership of stock in one railroad company by another, where the lines are competing, and other matters of that kind, which had existed for a great many years prior to the passage of the Sherman Act, and which were known to the public and to Congress, and which had been reported to Congress itself at that time; and among those facts, we propose to show, in a measure, the extent of that practice and of the knowledge of Congress in regard to it. We propose to show that as early as the year 1840 three rail- 3480
road companies were incorporated in the states of Massachusetts, New Hampshire and Maine to build a line of interstate railway from Boston to Portland: the Eastern Railroad of Massachusetts, the Eastern Railroad in New Hampshire, and the Portland, Saco and Portsmouth Railroad Company. About that time the Boston and Maine Railroad Company was incorporated in Massachusetts to build a railroad from Boston to Maine. Long before the passage of the anti-trust act, the Boston and Maine had itself first leased those parallel and competing lines, and afterwards practically absorbed all of them. So, again, some years before the passage of the anti- 3481
trust act, the West Shore Railroad extended from Weehawken in New Jersey to Buffalo, with ferry connections to New York, and was a competing line with the New York Central. That line was leased by the New York Central, and its entire capital stock of ten million dollars was acquired by the New York Central and Hudson River Railroad Company; and that was a matter of common knowledge and known to Congress when it passed the Sherman Anti-Trust Act. In like manner, the Lake Shore & Michigan Southern road, extending from Buffalo to Chicago, formed, with the New York Central and other 3482
roads, at Buffalo, a line of interstate railway between New York and Chicago. About the year 1881, a rival and competing line, the New York, Chicago & St. Louis, known as the Nickel Plate Line, was projected and built between Buffalo and Chicago, having the same connections and opportunities for interstate traffic that the Lake Shore itself had, and was a rival and actually competing line; and the majority of the

3483 capital stock of that company was acquired as early as 1883 or 1884 by the Lake Shore & Michigan Southern Railroad Company, thus making from New York to Chicago a series of parallel and competing lines, where the stock of one system, or a majority of it, was owned by the railroad which controlled the other system. In like manner the principal highways of interstate commerce between the cities of New York and Philadelphia were originally a parallel railroad and canal; the Camden & Amboy Railroad, and the Delaware & Raritan Canal, chartered by the state of New Jersey prior to the year 1840. Prior to 1871, those systems had become closely united
3484 in operation with the road of the New Jersey Railroad & Transportation Company from Jersey City to Trenton, and the road from Trenton to Philadelphia known as the Philadelphia and Trenton. In 1871 the Pennsylvania Railroad Company leased perpetually all of those parallel and competing lines, and has ever since operated them between New York and Philadelphia. Prior to the year 1870 the Pennsylvania Railroad Company had a substantially perpetual lease of the railroad from Pittsburg to Chicago, known as the Pittsburg, Fort Wayne & Chicago Railroad, and was built by that company.
3485 It also owned the entire stock of a railway leading from Pittsburg, known as the Pittsburg, Cincinnati & St. Louis, which among its other lines had a line from Pittsburg to a point known as Bradford Junction, in the state of Indiana, I think it was, where it connected with a line which itself leased, known as the Chicago, St. Louis & Pittsburg, or at least at some time known by that name, which extended from Bradford Junction to Chicago; and the entire stock of that Pittsburg, Cincinnati & St. Louis Road was owned by the Pennsylvania Railroad Company. In 1870 the Pennsylvania Railroad Company caused to be incorporated in the state of Pennsyl-
3486 vania a holding and operating company, known as the Pennsylvania Company, to which it transferred its leases and its holdings of stock in the lines west of Pittsburg. At the time of the organization of the Pennsylvania Company and the transfer to it by the Pennsylvania Railroad Company of its leases and stock holdings west of Pittsburg, the Pennsylvania Railroad Company, in consideration of such transfer, acquired and has ever since held the entire capital stock of the holding and operating company—the Pennsylvania Company.

Now, all of those are matters which existed at the time of 3487
the passage of the Act of 1890. And since then the Boston & Maine Railroad has gone on with the same policy of leasing and acquiring stock of parallel and competing lines, including the Boston & Lowell, with its connections—the Concord & Montreal, the Northern Railroad of New Hampshire, the Central Railroad of Vermont, the Connecticut & Passumpsic, the Fitchburg Railroad, with its lessor—the Vermont & Massachusetts, and other lines—the result of which is that the Boston & Maine has acquired at least four of what were originally parallel and competing lines between the cities of Boston and Montreal and Quebec, and also at least two par- 3488
allel and competing lines between Boston and the West, and still holds and operates them. And in like manner, the New York & New Haven Railroad Company, originally chartered to build and which did build a road from New York to New Haven of ninety miles—and the only road which it ever built, —afterward became consolidated with the New Haven, Hartford and Springfield Railroad Company, under the name it has ever since borne, the New York, New Haven & Hartford Road; and it has by a series of similar leases, acquisitions of stock, or purchases outright from other railroad companies, acquired 3489
a series of competing lines between Boston and New York—all rail lines, and lines of rail and water transportation, so that in point of fact a person cannot go by anything like a direct road from Boston to New York without going over one or the other of the roads which were originally parallel and competing, but which have been acquired in one of the different ways before stated by the New York, New Haven & Hartford Railroad Company. Among other acquisitions of the New York, New Haven & Hartford, they acquired a majority of or substantially all the stock of the New York & New England road—a parallel line which controlled one line of transporta- 3490
tion on Long Island Sound (that from Norwich to New York); and by their acquisition of the Old Colony Railroad, through substantially a perpetual lease, and the ownership of a very large portion of its stock, secured a controlling interest in the Old Colony Steamship Company, and also the stock of the steamers running from Providence and Stonington to New York.

3491 Now, coming to the state of New York, we find that the New York Central & Hudson River road has also acquired the Rome, Watertown & Ogdensburg road by substantially a perpetual lease—which with its connections had been a direct competitor and rival of that company. And within a very few years the New York Central Company has acquired ninety-five per cent of the stock of the Lake Shore & Michigan Southern Company, and substantially the same amount of the stock of the Michigan Central Railroad Company, which, with its lessor company, the Canada Southern Company, operates
3492 a line from Buffalo to Chicago, being naturally and originally a competing line both with the Lake Shore & Michigan Southern and the Nickel Plate. So we have from New York City to Chicago, the New York Central controlling by stock ownership this series of roads which were its natural competitors.

And so in the case of the Pennsylvania Railroad. Within a very short time, I think in the year 1899 or 1900, it acquired a controlling interest in the Baltimore & Ohio. The Pennsylvania road for many years had owned substantially all the stock of the Philadelphia, Wilmington & Baltimore Railroad Company, whose line extended from Philadelphia to Balti-
3493 more; and of the Baltimore & Potomac Railroad Company, whose line extended from Baltimore to Washington; and it operated these lines, and these lines from New York and Philadelphia made a through line from New York to Washington. The Baltimore & Ohio Railroad Company has owned a line for many years from Baltimore to Washington, and has operated other railroads for some years past, making a through line from New York to Washington, and beyond Washington. And in the West and Southwest the Baltimore & Ohio Railroad Company has had a line which touches all the principal points reached by the Pennsylvania Railroad, and competes
3494 with the Pennsylvania at Pittsburg, Cleveland, Sandusky, Wheeling, Chicago, Louisville, and St. Louis, to say nothing of other points. The Chesapeake & Ohio Railroad Company has also been very much in the same position in regard to the Pennsylvania Railroad as the Baltimore & Ohio has been. The same is true to some extent of the Norfolk & Western Railroad. And within the last three years, I think it is, the Pennsylvania Railroad Company has acquired, if not a major-

ity at least very near that amount of the capital stock of each 3495
one of these railroads operating parallel and competing lines. So to-day no official of the Government can go in or out of the city of Washington without riding over a railroad which is operated and controlled by some other railroad company also having parallel and competing lines going to the same place. That is true to-day and has been for some years.

Now, we say that many of these matters have been neces sarily well known, during all this period, to all the officers of the Government, both before and since the passage of the Anti-Trust Act. And they were done under the authority of state legislation which is plainly unconstitutional if these acts 3496
are restraints upon interstate commerce. Consequently we say that all of these matters are to be taken into consideration in determining, first, what congress intended by the passage of the act; and, secondly what the universal construction of the act has been since that time. And on these grounds we claim that the testimony is material. The question of its competency, of course, will be reserved until a later period.

Mr. Richards. Mr. Examiner, I do not intend to present in detail the objection of the government to the introduction of the testimony now offered, but the statement made by 3497
opposing counsel compels me to say a word in reply. The so-called Sherman Anti-Trust Act was passed on July 2d, 1890. It provides that "every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several states or with foreign nations, is hereby declared to be illegal." It was for some years doubtful whether this act did or did not apply to the railways of the country. The railways had for years been in the habit of entering into contracts affecting rates and fares on competitive traffic. This practice which prevailed before the passage of the anti-trust law was assailed in what was known as the 3498
Trans-Missouri Freight Association case. That case was begun when Mr. Miller was attorney general, to have declared illegal and void and to enjoin the execution of a contract between the railroads west of the Mississippi river, fixing and maintaining rates and fares on competitive interstate traffic. The case was argued by Attorney General Harmon, during the second Cleveland administration, and was decided in 1897.

3499 The Supreme Court in that case held that the Sherman Anti-Trust Law did apply to railways; and it declared the contract mentioned illegal and void. But the decision of that case did not conclusively establish the fact that the Sherman Anti-Trust Law applied to the railroads, because at that time a case was pending, known as the case of the United States against the Joint Traffic Association, which by both the lower courts had been decided against the United States. That case was argued before the Supreme Court early in the administration of President McKinley. It was a case growing
3500 out of an association of the trunk line systems east of Chicago, to fix and maintain rates and fares on competitive interstate traffic. In the argument before the Supreme Court both the constitutionality of the Sherman Anti-Trust Law and its application to the railways of the country were again argued and assailed. So it was really not definitely determined until after the decision of that case that the Sherman Anti-Trust Law as applied to railroads is constitutional, and in fact that the law does apply to railroads. That case was decided in 1898, when Mr. Griggs was attorney general of the United States. Now, the present suit is one brought against the Northern
3501 Securities Company, the Great Northern and the Northern Pacific Railway Companies, and certain stockholders of these two corporations. The position of the government is that in the formation of the Northern Securities Company in the way it was formed, there was a contract or combination made in restraint of interstate and foreign trade. In the answer of the defendants it is insisted that there was no contract or combination made in restraint of such trade. That is a proper defence, and I have no objection to any testimony tending to sustain it. But it is further urged, on the side of the defence, that if there was a contract or combination made
3502 in restraint of trade, other railway companies have been and are guilty of doing substantially the same thing. Now, is that any defence? If other railway companies did in any way enter into contracts or combinations in restraint of trade among the several states before the passage of the anti-trust act, can it fairly be claimed that the anti-trust act was not intended to apply to such contracts or combinations? The inference is clearly the other way. If before the passage of the

Sherman Anti-Trust Act railroad companies did in any way 3503
enter into combinations in restraint of interstate trade, and in interference with the freedom of such trade, then we must assume that congress intended to prohibit any such contracts or combinations in the future. But if we proceed further and enter into the investigation of the history of railroads since 1890, is it any defence to say that because other railways have entered into contracts or combinations in restraint of trade, for which they have not been prosecuted, that therefore the court must hold that under the law these defendants cannot be prosecuted? I would like the gentlemen to show where they find any reason or authority for such 3504
a defence. Can a man charged with an offence when brought into court plead as a defence that others have been guilty of like acts? Or, if men temporarily in charge of the interests of the United States, fail to prosecute violations of law, fail to institute suits to declare null and void combinations in restraint of interstate trade, is the law therefore, by construction, deemed to be modified or nullified? That would be a speedy and expeditious method of abrogating the will of congress. It would be a new way of amending the law or of wiping out the law—simply to fail to enforce it. I believe that the Sherman Anti- 3505
Trust Law has been enforced so far as it could be in the regular and orderly way. One question must be determined at a time, and it never was conclusively settled that the Sherman Anti-Trust Law applies to railways until the decision in the Joint Traffic Association case. And as soon as this particular combination was formed and the matter had been carefully investigated and passed upon by the Department of Justice, this suit was brought. Now, it is an entirely proper defence to attempt to show that there is not here any contract or combination in restraint of interstate trade. But I object to lumbering up the record in this case and endeavoring to mislead 3506
the public and befog the mind of the court by lugging into the case the entire railroad history of the country—as if the effect of a decision in favor of the United States in this proceeding would be to disrupt and disorganize the railroad systems of the country. I insist that no such result would follow. Even if the gentlemen could show that there was another case precisely on all fours with this, where a holding corporation

had been created by two parallel and competing lines, or their stockholders, for the purpose of taking over the controlling interest of both, and placing both under the control of one corporation—even if they could show that there existed another case on all fours with this (a thing they cannot do), still it would be no defence. Fair-minded men might insist, and I am willing to concede, that it would be the duty of the government to bring a prosecution if such a case were shown. But here we are to have unloaded onto us the railroad history of the country from the beginning, and it is to be insisted, in argument before the court, that every time a railroad, by lease or consolidation, or purchase of stock, took in a connecting line, that a case arose on all fours with this. And how can the court determine whether a case arose on all fours with this or not? Are we to try before this court every case of lease or consolidation or purchase of stock that has occurred in the development of the railway systems of the country, and as to each investigate and determine (because that is what we would have to do) whether the lines were parallel and competing, and whether they were engaged in interstate traffic, and whether the particular act amounted to a contract or combination in restraint of trade within the meaning of the Sherman Act? It would be simply interminable.

I do not object to the gentlemen on the other side presenting to the court, in argument, such historical facts as will enable the court to determine the conditions and circumstances congress had in mind when this law was passed. I do not object to the gentlemen referring in argument to the railroad history of the country. I think the court has a right to take judicial notice of that. I think it will take judicial notice of it. But I do object to this kind of evidence—to the incorporation into the record of this mass of immaterial matter.

Mr. Young. I regret that in my statement I did not succeed in making counsel for the government understand wherein this evidence is deemed by us to be material. Of course, if we admit that we have done things which are forbidden by the Anti-Trust Act, it is no excuse and no defence that every other company or person in the United States has done the same thing. But the main question is, Are the things which we are charged with doing forbidden by the

Anti-Trust Act? That is the question. It is not whether we 3511
are to be exonerated because other people have done these things; but the question on which this evidence is offered, and the material question in the case is, Are they within the Anti-Trust Act? Now, it is said that the two cases in the Supreme Court settled everything in regard to railroad companies. Suppose they did. We are not a railroad company, never had anything to do with the operation of railroads. The question of the purchase of the stock of two competing railroads by a third company has never been before the Supreme Court of the United States and is an open question to-
day, at least so far as any federal court is concerned. It is 3512
said, "You are charged with an agreement in restraint of trade." Wherein is the purchase of the stock of a railway company in restraint of trade? They say, "You have bought stock in two competing railroad companies, and, because you have, that is in restraint of trade." But the Solicitor General argues that if one railroad company should buy the stock in another competing railroad company, somehow that is not in restraint of trade, but would involve a great deal of investigation and examination to find out whether it really restrained trade or not. 3513

But our position in regard to that, even in regard to purchases by railroad companies of stock in competing companies, or their control of such companies by leases, or anything of that kind, is that the mere general language of the act of congress does not cover them? Congress knew, in 1890, that the railroad systems of the country rested on such combinations, and that to declare them void would make them valueless and illegal, and would make hundreds of millions of dollars of stocks and bonds absolutely worthless. Congress never intended by the act of 1890, by such general terms, to strike such a blow at the railroad and investing interests of 3514
the country.

We are not playing the baby act or saying that we are no worse than anybody else. But we say that this is a question of the construction of the act of congress, and that the construction that has been put upon it by state legislatures which have authorized such combinations, by the Interstate Com-

merce Commission, whose duty it is to report such matters to congress for their action, by the Department of Justice, upon whom is laid, in very unusual terms, the duty of especially seeing that this anti-trust act is carried out, and the fact that, during all this period, state legislatures, the national government, everybody, so far as these railroad matters are concerned, have believed that this purchase of stock in competing lines, and the leasing of competing railroads, are not within the anti-trust act; that that is a circumstance to which the court always gives the highest weight. A universal, popular, legislative construction of the act is the very best proof of what congress meant by it. That is our position.

The Examiner. Proceed with the testimony of this witness.

The last question was read to the witness.

A. In all cases where the railroad companies issue printed annual reports we take those and compile the statements for publication. In cases where there are no printed annual reports, we provide blank forms calling merely for statistical data. And in cases where our requests for information on our blank forms are ignored, we take the information from the state board of railroad commissioners' reports.

Q. How is the matter prepared for the book from those reports?

A. The statements are made up, based upon the report of the previous year, as printed in the previous issue of the manual, except where some very important changes are necessary, when it is entirely rewritten, and then after it is in galley form, in proof, we send a proof of each statement to the railroad companies of the country, each railroad company.

Q. You send a proof of your statement as to each railroad company to the officials of that company?

A. Yes, sir.

Q. And on its being returned to you what do you do?

A. Well, whatever corrections they note—we of course examine them carefully to see that they may not have made an error, and if the corrections are all right why, we note them on our set of proofs.

Q. That is your purpose in sending them to the officers of the company, to have them corrected if there are any errors in them?

A. Yes, sir.

3519

Q. And that is what you get?

A. Yes, sir.

Q. And that having been done, I suppose the printing of the book is carefully supervised to guard against error?

A. Oh, yes. The proofs are read two or three times.

Q. How many copies of the book circulate usually?

A. Our high water mark was 6,500; latterly it has been about 5,000, with extra sheets up to say 500 copies printed in case of emergency.

Q. How extensively does it circulate? Among what classes of people or government officials, anything of that kind?

3520

A. Well, all railroad companies, except some of very minor importance, the banks, trust companies, insurance companies, public libraries, all big law firms, boards of trade, chambers of commerce, state officials, national government officials.

Q. What national government officials?

Mr. Richards. Well, I want to testify on that subject myself—that there isn't one of them in the Department of Justice.

Mr. Young. You ought to get an appropriation to buy one.

Mr. Richards. It takes all our money to prosecute the trusts.

3521

Q. The Interstate Commerce Commission?

A. Yes, sir.

Q. Ever since its organization?

A. They have taken three copies regularly, as near as I can recollect.

Q. Has it a foreign circulation?

A. Yes, sir.

Q. In European countries?

A. Yes, sir.

Q. In what countries in Europe?

3522

A. Well, we have two agents, one in London (that is our chief agent), and one in Amsterdam.

Q. And where do the books go from those agencies?

A. I couldn't say as to that.

Q. What is the reputation of the book for accuracy and as a guide to be depended upon in reference to railroad statistics, history, etc.?

3523 A. It is everywhere recognized as being thoroughly accurate and reliable.

Q. Do you know of any other authority as complete and as accurate as this manual as to the railroads of the country?

A. There is none.

Q. Is there any similar publication at all in this country?

A. Not at all.

Q. I show the witness various volumes purporting to be Poor's Manual of Railroads, extending from 1871 to 1901, and ask him whether those are copies of your work.

3524 A. Yes, sir, all of those volumes that I see are copies of our work.

Q. And prepared in the manner you have stated?

A. Yes, sir.

CROSS-EXAMINATION.

By Mr. Richards:

Q. The preparation of this work is under your supervision?

A. Yes, sir.

Q. Of course you could not do the work directly yourself?

3525 A. Not all of it, no, sir.

Q. You said that you obtained this information sometimes from the reports of the railway companies, sometimes from reports made to the state railroad commissioners, and that the abstracts you made you sent to the railroad companies for correction. To what officer of the railway company would you send the report for correction?

A. Usually to the accounting officer, the auditor or comptroller, as the case might be, or perhaps it might be sent to the secretary and treasurer—whoever would make the report to us.

3526 Q. Did the railways always reply to you and correct these reports, or not?

A. In very few instances they refused.

Q. Do you assume to determine whether certain railway lines are parallel and competing or not?

A. No, sir, I don't assume anything of the kind.

Q. Does your Manual contain a statement with respect to the growth of any particular railway system that a certain

line which it had taken in, either by consolidation or otherwise, was a parallel and competing line? Do you state that? 3527

A. It gives the terminal points of the line as it existed and a historical statement, and that can be easily determined by anybody studying a map.

Q. Then, if I understand you correctly, your Manual does not contain any statement to the effect that certain railway lines are parallel and competing?

A. We merely give the facts, the history. We pass no opinions whatever, make no comments.

Q. Does it make a reference to the law of the state under which certain lines had been consolidated? 3528

A. In the history it probably may state in a majority of the cases the time the consolidation was made; it would give the date and perhaps state "organized under the laws of" such and such a state. That would be the history of the existing corporation.

Q. Well, it is true with regard to the growth of certain railway systems that a particular line may have been acquired by a system, like the Pennsylvania system, many years ago, when that line was local, that is, wholly within the state,—I mean the acquired line, and that acquired line, after it became the property, by consolidation or purchase of stock of the Pennsylvania Company, may have been extended into another state and become interstate. Is that true? 3529

A. Yes, it may be so.

Q. So that it might now be insisted that that was a parallel and competing line, so far as interstate traffic is concerned,—and it is with interstate traffic that the Federal Government is alone concerned,—while in point of fact, when the line was first taken in, it was local and did not engage in interstate traffic. Is that true?

A. That might be so. 3530

Q. Then, the only method of ascertaining whether a parallel and competing line, with respect to interstate traffic, had been acquired, would be to ascertain by contemporaneous maps just exactly the locality of the line when it was first acquired? It may show differently now, may it not?

A. Well, that is purely a legal question that I do not consider myself competent to discuss.

8531 Mr. Richards. Well, what I was really trying to get at was a matter of railway history. You have had charge of this publication for a great many years, and I understand that they expect to introduce in testimony a great many of these Manuals. I thought you might know something about that, generally. I want to know how to go to work and ascertain the facts myself.

By Mr. Young:

Q. I will ask you whether the statements in the Manuals under the head of the following companies were, before pub-
8532 lication, submitted to the respective companies and corrected by them where erroneous. If you will just answer as to each one separately. The Boston & Maine Railroad Company?

A. Yes, sir.

Q. The Eastern Railway of Massachusetts?

A. Well, that is under the head of the Boston & Maine in our Manual.

Q. In recent years, yes. The New York, New Haven & Hartford Railroad Company?

A. Yes, sir.

8533 Q. The Old Colony Railroad Company?

A. That is treated the same way as the Eastern.

Q. I mean so long as it was an independent line.

A. Oh, yes. That is, from 1882 up.

Q. The New York & New England, afterwards the New England, so long as it was an independent line?

A. Yes, sir.

Q. The New York Central & Hudson River Railroad Company?

A. Yes, sir.

Q. The West Shore Railroad Company?

8534 A. Yes, sir.

Q. The Lake Shore & Michigan Southern Railway Company?

A. Yes, sir.

Q. The New York, Chicago & St. Louis Railway Company?

A. Yes, sir.

Q. The Michigan Central Railway Company?

A. Yes, sir.

Q. Did you treat the Canadian Southern as being under the Michigan Central? 3535

A. Yes, sir.

Q. And you merely say Michigan Central as to that?

A. Yes, sir.

Q. The Pennsylvania Railroad Company?

A. Yes, sir.

Q. Including under that the statement as to the United Railroads of New Jersey and the Philadelphia & Trenton?

A. Yes, sir.

Q. Baltimore & Potomac, Philadelphia, Wilmington & Baltimore? 3536

A. Yes, sir.

Q. The Pennsylvania Company?

A. Yes, sir.

Q. Including in that—

A. All the lines.

Q. —the Pittsburgh, Fort Wayne & Chicago?

A. Yes.

Q. The Pittsburgh, Cincinnati & St. Louis?

A. Yes.

Q. The Chicago, St. Louis & Pittsburgh? 3537

A. Yes, sir.

Q. And the Cleveland, Cincinnati, Chicago & St. Louis Company?

A. Yes, sir.

Q. The Baltimore & Ohio Railroad Company?

A. Yes, sir.

Q. The Chesapeake & Ohio Railroad Company?

A. Yes, sir.

Q. The Norfolk & Western Railroad Company?

A. Yes, sir.

Q. The Illinois Central Railway Company? 3538

A. Yes, sir.

Q. How is it about the Southern Railroad Company? The same thing of that also?

A. Also, yes.

Q. Those that I have named are among the principal systems, in fact, comprise nearly all of the principal systems east of the Mississippi, do they not?

A. Yes, sir.

8539 By Mr. Richards:

Q. To what officers of these companies did you submit the statement which you afterwards published?

A. Well, as I stated before, it is usually to the accounting official, whether it be the auditor or the controller, or it may be the secretary, whoever sends us the information. But as all of those are printed reports, and have a long list of officials, they would go to the auditor or controller.

Q. In the case of all these railways which you have named, you say you have based your statement upon official reports
8540 of the railway company?

A. Their regular annual report to the stockholders.

Q. Of course, you know nothing personally as to the accuracy of the statements in these reports?

A. Only that they are official from the company, that is all I know.

JNO. P. MEANY.

Subscribed and sworn to before me this 13th day of November, 1902.

FREDERICK G. INGERSOLL,
Special Examiner.

Mr. Griggs. Mr. Richards, we offer now in evidence these 3541
different copies of Poor's Manual as respects these railroads which we had on the list, from 1871 down to 1902. Now I will say that there are only certain parts of the publication with reference to these different roads that we want to make use of. It is possible for us to take time and stand here and read to the examiner those parts, but I suggest it would save a great deal of time if we would excerpt what we need to use, referring to the book and page in each instance, submit that to you and let that be printed without taking time to state the substance of it here. Of course your objection is in. That will facilitate matters. In the same way we propose to 3542
show—I don't know as we need to offer them in evidence—the statistics of railways in the United States published by the Interstate Commerce Commission.

Mr. Grover. As reported to congress.

Mr. Griggs. As reported to congress. And we will make some excerpts of the matter in those particular volumes that you want in.

Mr. Richards. I shall not stand in the way, Mr. Examiner, of adopting the most expeditious method of getting this information into the record, subject, of course, to the objection 3543
I make that it is incompetent, immaterial and irrelevant. I don't think that it can properly be proved in the way counsel are trying to prove it. I am not satisfied that the different railroad companies, if they were called upon in court, would say that these statements are perfectly accurate. I don't know what the statements are.

Mr. Griggs. Well, the only question now is whether we shall read to the examiner the parts of these volumes which we desire to use, or whether we shall submit a written transcript at a later day.

Mr. Richards. Well, you can submit a written transcript 3544
of it.

Mr. Day. You are now referring to Poor's Manual.

Mr. Griggs. To Poor's Manual, and also to the statistics of the railways of the United States reported by the statistician of the Interstate Commerce Commission to the Interstate Commerce Commission and reported to congress by the Interstate Commerce Commission.

3545 Mr. Griggs. Solicitor General, I propose that it be stated on the record that, subject to all the objections of the government as to its admissibility, the parts of these publications (Poor's Manual) and the statistics of railways of the United States reported to congress by the Interstate Commerce Commission, so far as we desire to use them, be compiled in a written statement, and filed with the examiner and a copy sent to you, instead of reading them openly to the examiner now.

Mr. Day. And sent to us subject to any objections which the government may wish to enter.

3546 Mr. Griggs. Yes, as to accuracy.

Mr. Day. And competency.

Mr. Griggs. Not as a matter of proof, but simply for use for purposes of illustration, I desire to offer in evidence certain maps.

Mr. Richards. I have no objection to the introduction and use of the maps simply for purposes of illustration.

Mr. Griggs. The maps are as follows:

Map of the New York Central & Hudson River Railroad lines, with the lines referred to in different colors, as shown

3547 in the key to the map (defendant's Exhibit 11);

Map of the Pennsylvania line, with key and colors (defendants' Exhibit 12);

Map of the Boston & Maine line (defendants' Exhibit 13);

Map of the Illinois Central lines (defendants' Exhibit 14);

Map of the Baltimore & Ohio Railroad lines (defendants' Exhibit 15);

Map of the New York, New Haven & Hartford Railroad Company and Steamboat lines (defendants' Exhibit 16).

The defendants also offer in evidence statement of the highest and lowest prices of Great Northern preferred stock in

3548 each month from January, 1901, to November, 1902, inclusive. (Submitted by consent.)

Mr. Richards. As shown by the publication referred to?

Mr. Griggs. As shown by the publications in the financial reviews.

The statement was marked defendants' Exhibit 17.

Mr. Clough. I now furnish to counsel for the United States 3549
the following documents which I have heretofore been called upon by them to furnish, viz.: Volumes numbered 19 and 20, Official Classification of freight traffic; volume numbered 34 of the Western Classification of freight traffic, being the classification in force on the Northern Pacific and the Great Northern Railways. This classification contains in red ink the changes that have been made in the classification since January 1, 1901. (Handing the documents to Mr. Day.)

Mr. Richards. In this connection, I desire to ask Col. Clough whether he can furnish us with the report made by 3550
Mr. Grover as to the result of his search for a Minnesota charter, prior to the organization of the Northern Securities Company?

Mr. Clough. Since the last examination, I have satisfied myself that the report referred to, made by Mr. Grover, was verbal.

Mr. Richards. Colonel, to whom was that verbal report made?

Mr. Clough. I think both to Mr. Hill and myself.

Mr. Richards. Can you state the substance of it?

Mr. Clough. I stated it in my evidence. 3551

The further taking of testimony in this case was adjourned until the morning of Friday, November 21, 1902, at 11 o'clock, Room 70, Post Office Building.

PROCEEDINGS NOV. 21.

City of New York, November 21, 1902.
Room 70, Federal Building, 11 a. m.

The Examiner. The case of the United States against the 3552
Northern Securities Company et al. was set for hearing this morning. Are you ready to proceed?

Mr. Grover. We have an understanding with Mr. Richards, representing the government, that the case shall be continued until Tuesday morning next, at 11 o'clock.

The Examiner. The case will be continued until Tuesday, November 25, 1902, at 11 o'clock a. m.

3553

City of New York, November 25, 1902.
Room 70, Federal Building.

The hearing was resumed at 11 a. m., pursuant to adjournment.

All parties were represented.

Mr. Young. Mr. Examiner, I offer in evidence extracts from Poor's Manual of Railroads for the years indicated, in regard to various railroad companies. These, I believe, are subject to the same objection that was made to the introduction of Poor's Manual.

3554 Mr. Beck. We will re-state the objection.

Mr. Young, If, on examination by counsel for the complainant, they are found to be erroneous in any particular they are to be corrected to conform to the Manual which they purport to represent.

Mr. Beck. Counsel for the United States renew their objection to this testimony on the ground that neither Poor's Manual nor extracts thereof are competent testimony to prove any fact in the cause; and, in the second place, if competent testimony at all, that the extracts from Poor's Manual, offered
3555 by counsel for the respondents, are irrelevant. Counsel further reserve the right to place upon the record any special objection to such extracts which they may desire to note after reading the same.

The papers produced and offered in evidence by Mr. Young were marked Defendants' Exhibit 18-A, Defendants' Exhibit 18-B, Defendants' Exhibit 18-C, Defendants' Exhibit 18-D, Defendants' Exhibit 18-E, respectively.

Mr. Young. We also offer in evidence certain private statutes of the states of Massachusetts, Maine and New Jersey with reference to railroad companies, the titles of which are
3556 stated in the paper offered, and which paper is marked Defendants' Exhibit 19.

Mr. Beck. Counsel for the United States, while not objecting to the form of proof of these private statutes, yet objects to the same as irrelevant under the issues in this case.

Mr. Young. The defendants offer in evidence the pages and portions of pages enumerated below of the annual reports of the year 1889, and each year subsequent thereto, on the sta-

tistics of railways in the United States, made by the Inter- 3557
state Commerce Commission and transmitted to the senate and the house of representatives as an appendix and separate document constituting part of their report, together with the explanatory note printed in each volume as a preface and a table giving classification of railways and mileage for the years referred to, which tables include the pages and parts of pages referred to. They will be marked Defendants' Exhibits 20 and 20-A, B, C, D, E, F, G, H, I, J, K and L, both inclusive.

Mr. Day. Those are all Interstate Commerce Commission extracts?

Mr. Grover. Yes; with explanatory notes. 3558

Mr. Beck. Counsel for the United States object to this testimony as wholly irrelevant.

Mr. Grover. The defendants offer in evidence a memorandum showing principal changes in freight tariffs, Great Northern Railway system, in the years 1901 and 1902, to date.

Mr. Beck. That is objected to on the ground, in the first place, that the testimony is incompetent; in the second place, that it is irrrelevant for any purpose, as the effect of the combination upon rates is wholly unimportant.

The memorandum was marked Defendants' Exhibit 21. 3559

Mr. Grover. Defendants also offer in evidence a like memorandum in reference to the Northern Pacific.

Mr. Beck. Counsel for the United States renew the objection.

The Examiner. Same objection to the last as to the former.

The memorandum was marked Defendants' Exhibit 22.

Mr. Grover. The defendants offer in evidence pages 45, 46, 47, 48 and 56 of the Fifth Annual Report of the Northern Pacific Railway Company, fiscal year ending June 30, 1901, with the right reserved on the part of the government to offer the whole of said report or such other parts thereof as it may 3560
deem material.

A copy of the report referred to was marked Defendants' Exhibit 23.

Mr. Grover. Defendants also offer in evidence pages 37, 38, 39, 40 and 48 of the Sixth Annual Report of the Northern Pacific Railway Company for the year ending June 30, 1902, with the same reservation of right on the part of the government.

3561 A copy of the report was marked Defendants' Exhibit 24.

Mr. Young. In response to a request of counsel for the government, counsel for the defendants produce and hand to the government counsel the Thirteenth Annual Report of the Great Northern Railway for the year ending June 30, 1902, the government having the right to put the same in evidence if it so desires.

Mr. Grover. Exhibit 5, being Transcontinental Freight Bureau West Bound Tariff, contains many pages. For the purposes of this case reference is to be made to the cover, already marked Exhibit 5, to which is to be attached as part
3562 of the exhibit page 21 of said joint tariff.

Mr. Day. That is, both sides of the cover.

Mr. Grover. Yes, both sides of the cover.

The Examiner. The printed matter on both sides of the cover is offered?

Mr. Grover. Yes, and page 21.

The defendants, having no further testimony to offer at this time, further proceedings in this case were adjourned by the Examiner until the morning of Monday, December 1, 1902, at 11 o'clock, Room 70, Federal Building, City of New York.

3563

Room 70, Federal Building, City of New York,
December 1, 1902, 11 O'clock a. m.

The hearing was resumed at this time pursuant to adjournment, all parties being represented.

The defendants offered as evidence in this case the testimony given by E. H. Harriman, in the City of New York, in the case of the State of Minnesota vs. Northern Securities Company. Said testimony was received without objection, and is as follows:

"E. H. Harriman, being duly sworn as a witness on behalf 3564
of the complainant, testified as follows:

DIRECT EXAMINATION.

By Mr. Munn:

Q. Mr. Harriman, you are a member of the board of directors of the Union Pacific and chairman of its executive committee, I believe?

A. Yes, sir.

Q. You are also officially connected with the board of directors and the executive committee of the allied interests of 3565
the Union Pacific?

A. Nearly all of them.

Q. And you held such positions during the year 1901?

A. Yes, sir.

Q. On or prior to May 9, 1901, had you, acting for the companies or railway interests that you represented, acquired certain stock in the Northern Pacific Railway Company, amounting in round numbers to about 78 million dollars, par value?

A. Yes, sir.

Q. And that stock stood in your name and that of Mr. 3566
Pierce, holding it for the interests that you represented?

A. Yes, sir.

Q. Did J. P. Morgan & Company, or any member of that firm, open negotiations with you looking to the purchase or acquisition of such holdings during the fall of 1901?

A. Does it make any difference whether I opened the negotiations with them or they with me? I don't remember. It

3567 was either one or the other. The negotiations were opened. Or they may have been opened by some intermediate party. I don't remember just how it was.

Q. At what time were those negotiations opened?

A. It would be difficult for me to state within a month. It was September or October, I should think.

Q. It was either during the month of September or October, 1901?

A. I should think so.

Q. How long did those negotiations continue before they were finally consummated?

3568 A. I should think about a month or six weeks, possibly two months.

Q. With whom did you have your first dealings in those negotiations, if you remember?

A. I couldn't remember.

Q. Was it with Mr. Bacon of J. P. Morgan & Company?

A I had many talks with Mr. Bacon. I had talks with nearly every member of the firm.

Q. In these negotiations were they acting for themselves or acting with the understanding that these securities or this

3569 stock was to be turned over to some holding company when organized?

A. They never disclosed to me whether they were acting for themselves or somebody else.

Q. Before the negotiations were finally closed was it understood that you were to take some stock in a company to which this stock was to be transferred?

A. That is my recollection.

Q. And was that the Northern Securities Company?

A. It never was designated by any name.

Q. You didn't learn what company was to take it until you

3570 received the stock of that company in exchange?

A. Practically at that time.

Q. Did you understand, from the beginning of these negotiations, that this stock was ultimately to be turned over to some holding company which was to be organized?

A. No, I can't say that there was any understanding at the beginning of the negotiations for a settlement of whatever differences we might have in regard to that stock, whether it

was to be taken by them or by a holding company, or how it 3571
was to be paid for. It was only towards the end, when the thing crystallized, that the suggestion was made that payment should be made partly in cash and partly in a holding company stock. I think it was just toward the end of the negotiations when we were considering whether we would break away or get together on it.

Q. Well, did you understand at any time that they were acting for themselves in the matter and expected to take the stock themselves?

A. I had no understanding upon that subject.

Q. They were simply trying to secure this stock on some 3572
basis, then?

A. That is the substance of it.

Q. And it was not until toward the end of the negotiations that you learned they were acting for some holding company?

A. I didn't say I understood they were acting for a holding company. They didn't disclose to me that they were acting for anybody else at all during the negotiations.

Q. Well, you finally learned that the stock was in fact to be turned over to a holding company?

A. There never was anything on their part, it seems to me, 3573
that would lead me to infer that they were to turn that stock over to a holding company. Towards the end, when the matter crystallized, and when we were very nearly at the end of our tether, they offered to pay for these shares in the stock of a holding company so much, and so much in cash. Now, there was nothing said as to whether they would turn this stock over to a holding company or whether they would hold it themselves; but they would give us that holding company's stock in part payment.

Q. When did you learn that? How long before you actu- 3574
ally delivered the stock?

A. Before we delivered our shares?

Q. Yes.

A. It was several days. I don't remember just when. Perhaps two or three days. It may have been within three or four days, or perhaps two days. I have a great deal to do, Mr. Munn, and since our talk the other day I have been trying to

3575 refresh my memory on this very thing; but I was pretty busy in other matters at that time, and have been since.

Q. When you found that you were to take the stock of some other company in part payment for this stock, of course you knew then that they were acting for a holding company, did you not?

A. I don't see how I could know.

Q. Well, did you, Mr. Harriman?

A. No, I don't see how I could.

Q. When did you first learn that this stock was to be deliv-
3576 ered to the Northern Securities Company?

A. When it was delivered.

Q. That was the first you knew about that?

A. That is my recollection. The first I knew was when it was delivered to that company.

Q. When did they first make a proposition to you to make payment for this, or part payment for it, in the stock of some other company?

A. I think that was towards the end of our various conferences and negotiations, as I said; within a few days, perhaps, of the time the thing was absolutely closed.

3577 Q. Now, during these various conferences you had when these negotiations were pending what was the talk about payment for your stock? Was it to be paid for in cash, or how were they to pay for it?

A. I don't recollect that there was anything said as to just how it was to be paid for until towards the end.

Q. What did these negotiations relate to then? Whether you would surrender your stock or give it up?

A. Whether we would do anything with our stock except to stand where we were on the basis of holding preferred and common stock.

3578 Q. I suppose when you acquired the stock you supposed you had acquired a controlling interest in the Northern Pacific?

A. Practically that is what we thought.

Q. And did they contend that they had the right to retire this preferred stock which you held without your consent?

A. Yes, sir.

Q. That contention was made during these negotiations?

A. I think steps were taken to retire it before the negotia- 3579
tions were ended.

Q. You mean that official action had been taken, or that they told you they were going to retire it?

A. I think action had been taken.

Q. The record shows that the action taken to retire the preferred stock was on November 13, 1901.

A. It was about that time, then.

Mr. Young. And the record shows that your sale was closed after the 15th.

Witness. Then I say it was practically about that time.

Q. When in these negotiations did you first learn that they 3580
intended to retire the preferred stock?

A. I think when the action was taken.

Q. Up to that time, then, you supposed you had a controlling interest in the Northern Pacific by your holdings?

A. Yes, sir.

Q. And why were these negotiations pending, then, looking toward a settlement of your disputes, if you had started in to buy a controlling interest in the Northern Pacific and supposed you had it, and no questions were raised about that retirement?

3581

A. Well, of course it was stated to us that this preferred stock could be retired.

Q. Who made those statements?

A. Everybody. It was published in the papers. Statements were made by the directors and by people connected with the company, and published in the papers. I think you will find public statements were made at that time, that that was the intention. But of course the actual steps taken for that purpose were not taken until about the time we made our trade. And if they hadn't been taken and it hadn't been retired, we probably would have been in control. 3582

Q. You understoood, then, during these negotiations and prior to the time you closed the transaction—

A. That there was a probability—

Q. —that there would be an effort made to retire that stock without your consent?

A. A probability of it, yes.

3583 Q. Did Mr. Morgan, or any of the representatives of J. P. Morgan & Company, with whom you negotiated, state to you that they intended to do that?

A. I imagine they did. I don't remember just what—

Q. Well, that was one of the principal inducements that led you to finally surrender your holdings, was it not?

A. Practically.

Q. When did this discussion regarding the retirement of the preferred stock first come up, as you remember it?

A. I think in the summer of 1901.

3584 Q. So you had that in mind, when negotiations were first opened between yourself and the firm of J. P. Morgan & Company, of course?

A. I presume that that was one of the influences. I don't know whether I had it in mind or not. I didn't know just what we would do.

Q. At the time you finally consented to accept in part payment for your holdings stock in a holding company, did you insist upon any basis on which any other stock of the Northern Pacific Railway Company should be acquired by that holding company?

3585 A. No, sir.

Q. You finally agreed to turn in your holdings and receive from the Northern Securities Company upwards of 82 millions in stock of this company?

A. Yes, sir.

Q. Did you know at that time on what basis this holding company was to take in any other Northern Pacific or Great Northern stock?

A. Yes, sir.

Q. On what basis?

A. $115.

3586 Q. For the Northern Pacific?

A. Yes.

Q. And what for the Great Northern?

A. $180.

Q. Did you make any request or demand that they should not take any of the stock of either one of these companies at a higher rate than that?

A. No, sir.

Q. Did you understand that they would not? 3587

A. I did not.

Q. Were you willing to surrender your holdings to a company and allow it to determine whether they would exchange their stock with some other holder for twice the amount that you were getting?

A. Not if I supposed they would do it. But there was no stipulation.

Q. Well, you understood they would not?

A. I don't think the thought crossed my mind.

Q. Did they represent to you that that was the basis on which they were going to take in the stock? 3588

A. The statement was made to me that they would put this Northern Pacific stock into a holding company and give us—not this Northern Pacific stock—but that they would give us in part payment a holding company's stock on the basis of $115 for Northern Pacific, and, if Great Northern were taken in, on the basis of $180 for Great Northern. They didn't state how much they were going to take in, or how little they were going to take in. Nor did I ask them to stipulate that they would not take any more than a certain amount or to agree to take a minimum amount. The statement was simply made 3589 that they were going to form a holding company, or had formed a holding company, and would pay us in this stock, and that those were the terms on which it was to be bought.

Q. Did they state to you that if they took in any other stock than what you would surrender to the holding company they would take it on the basis of $115 for the Northern Pacific and $180 for the Great Northern?

A. I don't think that statement was ever made. It was a simple statement that they were going to change these shares of Northern Pacific and Great Northern on such a basis, and that they would make us part payment in that stock. 3590

Q. That is what I want to get at. They told you, then, that certain holders of the stock of the Great Northern and the Northern Pacific were going to exchange their stock for the stock of the Northern Securities Company, on the basis of $115 for the Northern Pacific and $180 for the Great Northern?

A. They didn't say certain ones were, but they were going to form this holding company, and that they would pay me in

3591 the holding company's stock, which stock should be issued on that basis. They didn't say that they had agreed to exchange certain stock.

Q. No, but what I want to get at is this. Didn't you understand from their statements that the basis of exchange, if any was made, was 115 and 180?

A. Yes.

Q. That is, 115 for Northern Pacific and 180 for Great Northern?

A. Yes.

3592 Q. Were you consulted at all regarding the formation of this holding company?

A. No, sir.

Q. You didn't know where it was going to be organized?

A. No, sir.

Q. And had nothing to do with it?

A. No, sir.

Q. You were not consulted about the retirement of the preferred stock, either, were you?

A. No, sir.

Q. Did you make any inquiries regarding who were to be
3593 the officers of the holding company, or where it was to be incorporated, or the amount of its capital stock, or anything of that kind, before you agreed to accept its shares in part payment for your holdings?

A. I don't know that I made any inquiries. I presume there was considerable talk about it, but I don't remember that I made any inquiry from anybody.

Q. Do you remember any statements made by persons with whom you negotiated or by Mr. Hill or his associates, who ultimately formed this company, as to where it was to be incorporated, or the amount of capital stock, or its officers?

3594 A. All I remember is just as I have stated: a statement made to me that if this trade went through they would pay us in the shares of a holding company which would issue its stock in exchange for Northern Pacific at 115 and Great Northern at 180. And I agreed to take so much of that stock in exchange for the shares of the Northern Pacific we held—all the Northern Pacific we held.

Q. But you made no inquiries as to where the corporation 3595
was to be formed or the amount of its capital stock?

A. I knew, of course, the amount of the capital stock; but I didn't go into the particulars of the formation of the company at all. That may seem strange. But in the enormous transactions we have down here we simply have faith that the man who is doing the thing is doing it properly, or else we don't negotiate or trade with him.

Q. Did you finally consent to surrender your holdings on the basis on which you did because you had made up your mind they would carry out the determination you had heard expressed, to retire the preferred stock, and thus take away 3596
from you the controlling interest in the stock of the Northern Pacific?

A. I think I recollect pretty clearly that from our standpoint we thought it was better for us to accept that price for our stock than to go into a legal contest.

Q. And you understood that if you did not do that you would have a legal contest on that question?

A. Well, we took it for granted, naturally, action having been taken determining to retire the preferred stock.

Q. Well, action was not taken to retire the preferred stock 3597
until your negotiations had nearly reached a conclusion?

A. Yes, but they had not reached a conclusion.

Q. That is, you waited until the very last moment to see if they would do what you understood they would do?

A. Well, we were very patient.

Q. Then if such action had not been taken you would not have surrendered your stock?

A. I don't know. That is a condition we did not have to meet. I don't think I could answer that question fairly, nor do I think it is exactly a fair question; because the board of directors might have determined (if they had not done it) to 3598
have sold our shares for less.

Q. Well, you were acting on behalf of your company largely by yourself at that time, I suppose?

A. Largely.

Q. And your actions were guided by what you have stated?

A. By what I found, the surroundings, yes.

3599 Q. When you began buying this stock for your company or companies you did it with the expectation of acquiring control in the Northern Pacific, of course?

A. Or an influential voice in the management.

Q. And you knew that you did in fact have a majority of the combined stock of the Northern Pacific after you got through with your purchases?

A. Certainly.

Q. And would continue to control that company unless they retired your preferred stock?

A. Or unless we sold it.

3600 Q. Of course you knew, during these negotiations, that Mr. Morgan and Mr. Hill and the stockholders of the common stock of the Northern Pacific who were co-operating with them, or allied with them, claimed to control the Northern Pacific by virtue of a majority of the common stock?

A. Naturally.

Q. Did they claim to you during these negotiations that they had such majority of the common stock?

A. I don't remember that they did. That was the general talk. I don't think it was necessary for them to even make

3601 the statement.

Q. You knew that, of course?

A. Naturally. It was known by everybody. I think it was not necessary for them to make that statement to me, because among the other statements, as I say, about the retiring of the preferred stock, was a statement made and published in the papers.

Q. And they never disclosed to you for whom they were acting until the transaction was ready to be closed?

A. Do you mean Morgan?

Q. Yes.

3602 A. Do you mean the exact company?

Q. Yes.

A. My recollection is that he did not. In fact, I don't think this transaction was closed until practically the very minute the payment was made. I think there was considerable discussion and dispute as to the final payment, and about—I don't remember now whether it was the amount to be paid or whether it was the amount of stock to be delivered; I think

it was the amount of stock to be delivered. They supposed 3603
we had somewhat more stock than we really had.

Q. When did you have your stock transferred on the books of the Northern Pacific Railway Company in the name of yourself and Mr. Pierce?

A. I don't remember. It must have been some time before that.

Q. It was prior to the annual meeting in October, wasn't it?

A. I think so, yes.

Q. And you had all your holdings transferred at that time?

A. Practically all. I don't think it was all; I think nearly all was, though. There may have been some of the stock held out; I don't remember.

3604

Q. During these negotiations did the representatives of J. P. Morgan & Company, with whom you dealt, tell you that unless they organized a holding company and this stock was turned over to such holding company, that the transaction would not go through?

A. No, I don't think any such statement was necessary.

Q. Well, was any such statement made?

A. I don't remember that the question ever came up. This was a running negotiation, and it was difficult to tell what either side would do. I think until practically the last minute I didn't know what I would do.

No cross-examination.

(Signed) E. H. HARRIMAN."

3605 It is admitted that at a meeting of the board of directors of the Northern Securities Company, held at 27 Pine street, in the City of New York, on the 15th day of November, 1901, at 2:30 p. m., pursuant to adjournment, of which adjournment written notice had been sent to all directors, the following resolutions were adopted, as shown by the minutes of the meeting:

"Present: Messrs. James J. Hill, George F. Baker, Daniel S. Lamont, N. Terhune, George W. Perkins, W. P. Clough, George C. Clark, John S. Kennedy, D. Willis James and E. T.
3606 Nichols.

"The president occupied the chair.

"The minutes of the adjournment of the directors' second meeting, held at 31 Nassau street, in the City of New York, at 2 o'clock p. m. on November 14, 1901, were then read and approved.

"Upon motion, duly made and seconded, it was unanimously resolved that in case of absence or disability of the president his duties and authority shall be exercised by the respective vice-presidents in the order of their numbers, beginning with the first.

3607 "The president stated that he now had an opportunity of acquiring $37,023,000 par value of the common stock and $41,085,000 par value of the preferred stock of the Northern Pacific Railway Company at an aggregate price of $91,407,500, payable as to $82,491,871 in the fully paid-up and non-assessable shares of this company at par, and as to the remaining $8,915,629 in cash. On motion, and by affirmative vote of all the directors present, it was resolved that the president be and hereby he is authorized in behalf of this company to purchase said stock, namely, $37,023,000 par value of the common stock, and $41,085,000 par value of the preferred stock of the North-
3608 ern Pacific Railway Company, at an aggregate price of $91,407,500, payable as to $82,491,871 thereof in the fully paid-up and non-assessable shares of the capital stock of this company at par, and as to $8,915,629 in cash, and that the officers of this company be and hereby they are authorized to issue fully paid-up and non-assessable shares of stock of this company to the amount of $82,491,871, and to pay $8,915,629 in cash in consideration of such $37,023,000 of the common stock and

$41,085,000 of the preferred stock of the Northern Pacific Railway Company. 3609

"Resolved, That the president be and hereby he is authorized at any time to retire at par for cash any and all preferred stock of the Northern Pacific Railway Company that may be acquired by this company, and in case such retirement shall be effected prior to January 1, 1902, to allow interest up to January 1, 1902, at the rate of four per cent per annum on the sum receivable for such preferred stock.

"Resolved, That the president be and hereby he is authorized in behalf of this company to purchase at their par value an amount of the convertible certificates of the Northern Pacific Railway Company, to be issued pursuant to the resolutions of the board of directors of the Northern Pacific Railway Company, passed November 13, 1901, equal to 75-80 of the par amount of any and all common stock of the Northern Pacific Railway Company that shall have been acquired by this company. 3610

"Resolved, That the president be and hereby he is authorized, in case of the purchase by this company of any of the controvertible certificates of the Northern Pacific Railway Company, to convert the same into common stock of the Northern Pacific Railway Company whenever such conversion may be effected. 3611

"Resolved, That the president be and hereby he is authorized to borrow on such terms as he may arrange any moneys required for the purpose of carrying out the foregoing resolutions, and to make all financial arangements and to do all acts and things which he may deem needful in the premises.

"The meeting thereupon, on motion duly made and seconded, was adjourned until 2 o'clock p. m. of Tuesday, November 19, 1901, at the office on the ninth floor of the building No. 27-29 Pine street, New York City." 3612

It is admitted that the proxy committee appointed by the directors of the Northern Securities Company to vote its stock in the Northern Pacific Railway Company was Charles Steele, A. B. Hepburn and George F. Baker, Jr., and the proxies appointed to vote the Northern Securities stock in the Great Northern Railway Company were James N. Hill, E. T. Nichols and Edward Sawyer.

3613 At the annual meeting, 1902, of the Great Northern Railway Company, E. T. Nichols voted the Northern Securities stock in the Great Northern Railway Company. At that meeting of the Great Northern Railway Company, of the stock owned by the Northern Securities Company 458,017 shares standing in the names of the trustees mentioned below were voted. The shares in the Great Northern Railway Company which were standing in the name of the Northern Securities Company were not voted. The total number of shares of Great Northern Railway Company stock voted at that meeting was
3614 650,771; 192,754 shares of Great Northern Railway Company's stock were voted by holders other than the Northern Securities Company or anybody representing it. All votes cast at said meeting were unanimous. The gentlemen in whose names the 458,017 shares stood of Great Northern stock owned by Northern Securities Company were not present. They voted by proxy. E. T. Nichols, secretary of the Northern Securities Company, held the proxies for those shares. The following are the names of those holding shares as trustees for the Northern Securities Company and the number of shares held by each:

3615

H. H. Bourke	100,000
H. E. Hall	100,000
Wm. H. Bruel	100,000
M. R. Brown	11,514
E. Mayglothling	75,399
M. L. Zabriskie	635
Charles A. Pattee	70,469
Total	458,017

3616 At the annual meeting, 1902, of the Northern Pacific Railway Company, A. B. Hepburn voted the stock of the Northern Pacific Railway Company held by the Northern Securities Company.

At a meeting of the directors of the Northern Securities Company, held November 14, 1901, the three incorporators, Mr. George F. Baker, Jr., Abram M. Hyatt and Richard Trim-

bell, constituted the board of directors. They adopted a res- 3617
olution as follows:

"Resolved, That the president be and hereby he is authorized for and in behalf of this company to purchase any shares of the preferred capital stock of the Great Northern Railway Company, a corporation organized and existing under the laws of the state of Minnesota, that shall be tendered to this company at a price not exceeding $180 for each share of such capital stock of the par value of $100, such price to be payable in the fully paid-up shares of the capital stock of this company at par, the board of directors having adjudged and determined and hereby adjudging and determining that the value of such 3618
shares of the capital stock of the Great Northern Railway Company is at least $180 per share."

At a meeting of the board of directors of the Northern Securities Company, held November 13, 1901, the following resolution was adopted:

"Resolved, That the president be and hereby he is authorized for and in behalf of this company to purchase any shares of the common capital stock of the Northern Pacific Railway Company, a corporation organized and existing under the laws of the state of Wisconsin, that shall be tendered to this 3619
company, at a price not exceeding $115 for each share of such capital stock of the par value of $100, such price to be payable in the fully paid-up shares of the capital stock of this company at par, the board of directors having adjudged and determined and hereby adjudging and determining that the value of such shares of the capital stock of the Northern Pacific Railway Company is at least $115 per share."

3620 The defendants offer as evidence in this case the testimony of W. P. Clough, taken in the City of New York in the case of the State of Minnesota vs. The Northern Securities Company. Said testimony is received without objection, and is as follows:

"W. P. Clough, being first duly sworn as a witness in behalf of the complainant, testified as follows in answer to interrogatories propounded by Mr. Munn:

Q. The records show that you were present at a meeting of the directors of the Northern Securities Company on the 15th
3621 of November, 1901, to which I have already called Mr. Nichols' attention (being the resolution above set forth), where the statement was made by the president of the Northern Securities Company as to his ability or the possibility of acquiring $37,023,000 of the common stock of the Northern Pacific, and $41,085,000 of the preferred stock. You were present at that meeting?

A. I was, yes, sir.

Q. Was there any discussion at that meeting as to the advisability of this purchase and the terms upon which it was to be made?

3622 A. There was no extended discussion.

Q. Well, will you state what discussion took place?

A. If you will be kind enough to let me take those minutes I will explain just what did occur. (Referring to pamphlet containing minutes of the meeting.) This meeting was an adjourned meeting, held at half-past 2 o'clock on the afternoon of the 15th, which, as I remember, was Friday. A little before the hour for the meeting had arrived, (perhaps half an hour or so), one of the partners of J. P. Morgan & Company (my recollection is that it was Mr. Steele) came to the Northern Securities office and said that a negotiation which was
3623 pending at that time between J. P. Morgan & Company and Messrs. Harriman and Pierce, for the purchase of their holdings in Northern Pacific preferred and common, he thought would very shortly come to a conclusion as to terms; that is, the precise terms upon which Harriman and Pierce would sell would be arrived at very shortly. And he said, at the same time, that probably before closing the contract, if one were entered into, Harriman and Pierce might, if the stock were

turned over to the Northern Securities Company, desire to see 3624
some action of the board, and suggested that some kind of action should be taken, and inquired about the meeting. I told him that there was to be a meeting that afternoon, but that likely there could not be another meeting on Saturday (which would be the following day) on account of the fact that a number of our directors did not come to their business on Saturday and that a meeting could not be had until the fore part of the week after that day. Then it was suggested that as that was the case and this bargain might come to an early termination and it might be desired to close it up soon, some sort of action 3625
be taken at the meeting to be held that afternoon. And then a sketch was made of a minute entry for the meeting, beginning with the words "The president stated" and ending with the resolution which closes the first paragraph of the 18th page of this printed volume of the minutes. But as the bargain had not yet been concluded, the figures showing either the amount of the stock or the price to be paid could not then be stated, but he thought they would be ascertained before the close of the meeting. So this preamble, commencing with the words, "The president stated," and the resolutions following were prepared just as they are now, with the sums left 3626
blank, and the meeting assembled and, after waiting a little while, no figures were present, and some of the directors being anxious to get away I produced this preamble and resolution and I read the resolution and explained it in a general way to the meeting. And after quite a general expression of opinion among the directors who were present, that a purchase of this stock was very desirable, the resolutions with the blanks and the preamble were adopted. Then we passed to other business. Just as the meeting was breaking up (the other business being finished) I think Mr. Perkins came in (who was a director). I think Mr. Perkins appeared for the first time 3627
near the close of this meeting, after most of the business had been done, and brought in figures showing the amount of preferred and common stock, respectively, that Harriman and Pierce had, and the price to be paid; showing the money and the amount of stock of the Northern Securities Company that was to be paid for it. I looked at it, and it was shown to Mr. Hill, and then it was perceived that the amount of Northern

3628 Pacific stock contained in that statement was appreciably less than the amount of stock which we had all the time supposed they owned. And we declined to close the trade; that is, the Securities Company declined to take the stock from Morgan & Company on that basis. The meeting then adjourned, with the whole matter left open. And, as I understood, negotiations were then resumed between Morgan & Company and Harriman and Pierce, and were concluded some time between Friday afternoon and the following Monday morning (which was the 18th). Then a basis was reached, which is expressed by the figures which now appear in this resolution. The pre-
3629 ferred and common stock of the Northern Pacific were brought in and paid for, and the minutes were written up with these numbers inserted as they now appear here. The meeting for the purpose of acting upon this project again had been adjourned until the following Tuesday. It was found that the following Tuesday was the first day we could reasonably expect to get a quorum. So the following Tuesday the minutes of the meeting of the previous Friday with the blanks filled as they now stand, were read and approved by the board of directors. That is the history of the resolution.

3630 Q. Now, Col., that is the only official action taken by the Northern Securities Company for the acquisition of this stock?

A. Yes, sir. That is it, precisely.

Q. And no other authorization or ratification was given or made?

A. No, sir, none at all. When the minutes were read at the meeting of the 19th, and approved, with the resolution as it now appears of record, with the numbers filled in, the transaction had been closed; the Harriman and Pierce stocks had been delivered and paid for by the Northern Securities Company the previous day.

3631 Q. There had been no meeting of the directors or executive committee taking any further action regarding this particular transaction, between the meeting of November 15th and the one of November 17th that you refer to?

A. None whatever.

Q. November 18th, I guess it is.

A. 19th.

Q. November 19th?

A. Yes, sir. The board adjourned from Friday afternoon 3632
until the following Tuesday afternoon."

Counsel for the government have submitted to counsel for the defendants a statement of supposed errors in the extracts of Poor's Manual of Railroads, offered in evidence by the defendants at the last hearing. This statement of supposed errors counsel for defendants will compare and make such corrections as may be necessary to conform the extracts to the manuals.

The defendants rest.

3633

Office of the Examiner,
St. Paul, Minn., Dec. 12, 1902.

Mr. John K. Richards, Solicitor General of the United States, complainant herein, has this day advised the Examiner as follows: "Unless the defendants offer other testimony, the government has no further testimony to present in this case."

The witness, W. P. Clough, having neglected to sign his testimony, as found on pages 653 to 661 of vol. 2 of this record, such signing has been by consent of all parties to this cause duly waived.

FREDK. G. INGERSOLL,
Special Examiner.

3634

[Defendants' Exhibit 1.]

NORTHERN SECURITIES COMPANY.

James J. Hill—President.
John S. Kennedy—First Vice-President.
George F. Baker—Second Vice-President.
D. Willis James—Third Vice-President.
W. P. Clough—Fourth Vice-President.
E. T. Nichols—Secretary and Treasurer.

3635

27-29 Pine Street, New York City,
November 22nd, 1901.

TO HOLDERS OF STOCK OF THE GREAT NORTHERN RAILWAY COMPANY:

The Northern Securities Company, incorporated under the laws of the State of New Jersey, with an authorized capital stock of $400,000,000, and with power to invest in and hold the securities of other companies, has commenced business,
3636 and has acquired from several large holders of stock of the Great Northern Railway Company a considerable amount of that stock.

A uniform price has been paid of $180 per share, in the fully paid stock of this Company, at par. This Company is ready to purchase additional shares of the same stock at the same price, payable in the same manner, and will accept offers made on that basis if made within the next sixty days.

Offers for sale of stock of the Great Northern Railway Company should be made upon the enclosed form, and should be accompanied by the certificates of the stock offered with
3637 transfers duly executed, having United States stamps for transfer tax of two cents per share affixed.

Upon receipt of any such offer, so accompanied, the Northern Securities Company will deliver to the seller of the stock of the Great Northern Railway Company certificates of its own stock to the amount of the purchase price above named, or, if such certificates are not then ready for delivery, its negotiable receipt, obliging it to issue and deliver such certificates as

soon as ready. For fractional parts of shares scrip certif- 3638
icates convertible into stock in multiples of $100 will be given.

NORTHERN SECURITIES COMPANY,
By James J. Hill,
President.

TO THE NORTHERN SECURITIES COMPANY, NEW YORK:

The subscriber hereby offers to sell and deliver to the North- 3639
ern Securities Company ———— shares in the capital stock of the Great Northern Railway Company, represented by the certificates hereto attached, for the price of one hundred and eighty dollars ($180) per share, payable in the fully paid stock of the Northern Securities Company, at par, in accordance with the terms of the circular of the latter named Company, dated November 22nd, 1901.

The stock of the Northern Securities Company to be paid in accordance with the foregoing tender should be issued as follows:

Shares. Name. Full address.

Dated ————, 190

(Copy.)

3640

[Defendants' Exhibit 2.]

November 30th, 1901.

Dear Sir:

Replying to your letter of the 23rd instant, asking for further information about the Northern Securities Company, I beg to say that the business of that Company is to deal in high-class securities, to hold the same for the benefit of its shareholders and to do such other acts as will advance the interests of the Companies whose securities it holds.

3641 The powers of the Company do not include the operation of railways, banking, nor buying or selling for others on commission.

The organization of such a Company has been considered for many years by the original promoters of the St. Paul, Minneapolis & Manitoba Railway Company, and its successor, the Great Northern Railway Company, who have always remained the largest shareholders therein. These men have deemed it wise to make permanent arrangements for the protection of their interests and for securing a continuous policy in the management of their properties. Believing the

3642 Northern Securities Company will secure the objects named, they have generally sold to it their holdings of Great Northern shares, on the terms stated in the circular.

The traffic of Coal and other local Companies is of great value to the Railway, while the conduct of the business of such Companies is outside of the Railway's corporate powers. The Securities Company will control this large traffic for the Railway and will receive the profits of these separate properties.

The offer contained in the circular came from the request of the large holders of Great Northern, above mentioned, who

3643 desired that all other holders might have the same opportunities as themselves in association with them, and upon the same terms. The writer is of opinion that the offer of the Securities Company is one that Great Northern shareholders can accept with profit and advantage to themselves.

Yours truly,

(Signed) JAS. J. HILL.

DEFENDANTS' EXHIBIT 3. 921

3644

(Defendants' Exhibit 3.)

THIRTEENTH ANNUAL REPORT

3645

OF THE

GREAT NORTHERN

Railway Company. 3646

FISCAL YEAR ENDED 3647

JUNE 30, 1902.

DEFENDANTS' EXHIBIT 3. 923

3648

GREAT NORTHERN RAILWAY COMPANY.

DIRECTORS.

JAMES J. Hill (term expires 1902).....St. Paul.
FREDERICK WEYERHAEUSER (term expires 1902).....St. Paul.
SAMUEL HILL (term expires 1902).....Minneapolis 3649
R. I. FARRINGTON (term expires 1903).....St. Paul.
EDWARD SAWYER (term expires 1903).....St. Paul.
M. D. GROVER (term expires 1903).....St. Paul.
JAMES N. HILL (term expires 1904).....St. Paul
WILLIAM B. DEAN (term expires 1904).....St. Paul.
HENRY W. CANNON (term expires 1904).....New York.

OFFICERS.

3650

J. J. HILL, President.....St. Paul.
J. N. HILL, Vice President.....St. Paul.
R. I. FARRINGTON, Second Vice President.....St. Paul.
E. T. NICHOLS, Third Vice President, Secretary and Assistant Treasurer.....New York.
J. W. BLABON, Fourth Vice President.....St. Paul.
E. SAWYER, Treasurer and Assistant Secretary.....St. Paul.
N. TERHUNE, Assistant Secretary and Assistant Treasurer.New York.
J. G. DREW, Comptroller.....St. Paul.
M. D. GROVER, General Solicitor.....St. Paul.
J. F. STEVENS, General Manager and Chief Engineer.....St. Paul.
F. E. WARD, General Superintendent.....St. Paul.
F. B. CLARKE, General Traffic Manager.....St. Paul. 3651
E. A. BERNHOLZ, Transfer Agent.....New York.
M. H. NILES, Transfer Agent.....New York.

DEFENDANTS' EXHIBIT 3. 925

3652

THIRTEENTH ANNUAL REPORT

OF THE

GREAT NORTHERN RAILWAY COMPANY.

3653

To the Stockholders:

The President and Directors submit the following report for the year ended June 30th, 1902:

FINANCIAL.

CAPITAL STOCK.

There has been no increase in the authorized share capital of the Great Northern Railway Company during the year, and same remains as $125,000,000. 3654

Of the capital authorized there had been issued to June 30th, 1901 (page 6, last year's report)	$98,711,750.00
There have been issued during the year $12\frac{1}{2}$ shares, amounting to.....	1,250.00
in completing previous transactions.	
1,400 shares, amounting to.....	140,000.00
have been transferred to the Great Northern Employes' Investment Company, Limited, under the contract referred to on page 7 of Report for the year ended June 30th, 1900. To June 30th, 1902, the Investment Company had subscribed and paid for 4,200 shares ($420,000) under the contract mentioned. 3655	
Carried forward	$98,853,000.00

3656 Brought forward $98,853,000.00
250,000 shares, amounting to..... 25,000,000.00
were issued as of August 1st, 1901, in accordance with the President's circular of March 18th, 1901.

Total outstanding June 30th, 1902.....$123,853,000.00

There were held in the Treasury of the Company June 30th, 1902, 5,670 shares of Great Northern stock, not used in acquir-
3657 ing the outstanding 4,536 shares of Manitoba stock, and 5,800 shares of Great Northern stock to be issued only to the Investment Company as subscribed for.

The Report last year explained in detail the securities to be acquired. During the year the Company has acquired the $5,000,000 St. Paul, Minneapolis and Manitoba Railway Company's Improvement Bonds referred to last year, and same are held in the Company's Treasury. The adjustment of the accounts made necessary by this acquisition and mentioned in last year's Report (page 7) has been made, and is reflected in the Balance Sheet herewith, page 33.

3658 Instead of purchasing the capital stock ($5,000,000) of the Seattle and Northern Railway Company, as originally intended, it was decided to buy the physical property of that Company, and the same was purchased as of February 1st, 1902, by the Seattle and Montana Railroad Company for the sum of $1,500,000 cash. To enable the Seattle and Montana Railroad Company to make this purchase, action was taken by its stockholders to increase its capital stock from $12,500,000 to $14,000,000, the additional $1,500,000 of stock being bought by the Great Northern Railway Company.

3659 The stocks of the other Companies mentioned on page 6 of last year's Report have not as yet been issued, pending the completion of the lines and the closing of the construction accounts, but this Company has advanced the necessary funds for construction purposes, and is carrying the amounts as advances to apply on stock subscriptions.

BONDED DEBT. 3660

There has been a net increase of $1,292,000 during the year in the bonded debt of the St. Paul Minneapolis and Manitoba Railway Company, outstanding in the hands of the public, as will be seen by reference to table on page 32, made up as follows:

MONTANA EXTENSION MORTGAGE FOUR PER CENT BONDS issued during the year account construction of additional mileage within the State of Montana, as explained in previous reports		$2,278,000
Less the following reductions—		
CONSOLIDATED MORTGAGE 4½ PER CENT BONDS redeemed and canceled by the trustee through the operation of the sinking fund, as per detail on pages 38 to 40		$1,012,000
Less bonds issued—		
On account of additions and improvements	$26,000	
In exchange for St. Paul, Minneapolis & Manitoba Railway Company's second mortgage bonds, surrendered and canceled	357,000	
In exchange for St. Paul, Minneapolis & Manitoba Railway Company's Dakota extension mortgage bonds, surrendered and canceled.	49,000	
Total issued		432,000
Net reduction in consolidated mortgage 4½ per cent bonds		$580,000
SECOND MORTGAGE SIX PER CENT BONDS, canceled as above		357,000
DAKOTA EXTENSION MORTGAGE SIX PER CENT BONDS, canceled as above		49,000
Total reduction		$986,000
Net increase in St. Paul, Minneapolis & Manitoba Railway Company's bonded debt		$1,292,000

3661

3662

There has been no change during the year in the bonded debt of any of the Proprietary Companies. 3663

The amount of Northern Pacific-Great Northern, Joint C. B. & Q. collateral 4 per cent bonds outstanding June 30th, 1902, is the same as reported last year, $215,153,000 Bonds and $1,400 Scrip. The Chicago, Burlington & Quincy Railway Company has collected the dividends on the C. B. & Q. R. R. stock, deposited as collateral to secure these bonds, and paid the interest on the bonds, without affecting this Company's Income Account.

3664

GENERAL.

Expenditures were made during the year on the capital accounts of Proprietary Companies for work completed or under construction, as follows:

Eastern Railway Company of Minnesota	$1,417,587.46
Montana Central Railway Company (Credit)	19,298.99
Willmar & Sioux Falls Railway Company	9,717.00
Duluth, Watertown & Pacific Railway Company	1,603.00
Seattle & Montana Railroad Company	2,460,552.68
Duluth Terminal Railway Company	6,040.73
Park Rapids & Leech Lake Railway Company	6,781.12
3665 Minneapolis Union Railway Company (Credit)	10.45
Total	$3,882,972.55

As shown on page 27, there was appropriated out of the net revenue for the year $2,000,000 for the "Fund for Permanent Improvements and Renewals;" and there was charged against that fund $1,820,225.11, the cost of improvements (other than those charged to operation) made during the year to the property leased from the St. Paul, Minneapolis and Manitoba Railway Company.

3666

NEW LINES.

The Report last year referred at length to new lines then under construction or contemplated, of which 268.29 miles have been completed, as follows:

Seattle & Northern Ry.,

Anacortes to Rockport, Wash., 54.42 miles taken over by the Seattle & Montana R. R. Co. February 1st, 1902, as explained on page 6.

Dakota & Great Northern Ry.,

3667 Bottineau to Souris, N. D., 12.72 miles, opened for operation October 7th, 1901; Lakota to beyond Edmore, N. D., 27.72 miles, opened for operation July 1, 1902.

These two lines have been leased by the Great Northern Railway Company.

Montana & Great Northern Ry.,

Jennings to Gateway, Mont. (on the International Boundary), 50.98 miles, opened for operation July 10th, 1902.

Crow's Nest Southern Ry., 3668

Gateway to Morrisey Junction, B. C., 44.26 miles, with a spur from Morrisey Junction to Morrisey, B. C., 4.21 miles, opened for operation September 15th, 1902.

Washington & Great Northern Ry.,

Marcus to Boundary, Wash., 27.66 miles, and from the International Boundary to Republic, Wash., 31.92 miles, opened for operation August 17th, 1902.

Vancouver, Victoria & Eastern Ry. and Nav. Co.,

From International Boundary line at Rideau, B. C., to the boundary line near Carson, B. C., 14.40 miles, opened for operation August 17th, 1902. A spur from the main line to Grand Forks, B. C., 1.89 miles, is under construction. 3669

These lines have been built in a thoroughly substantial and permanent manner, and have been equipped with passing tracks, yard tracks, stations, water plants and other buildings.

The work of changing from narrow to standard the gauge of the Great Falls and Canada Railway (now owned by the Montana and Great Northern Railway Company) from Great Falls to Sweet Grass, Montana, 134.37 miles, is now in progress and will be completed about December 1st, 1902. 3670

There has been built during the year at Everett, Wash., 3.35 miles of new main track, forming part of a new connection between the tracks of the St. Paul, Minneapolis and Manitoba Railway Company near Lowell and the tracks of the Seattle and Montana Railroad Company at Everett Junction.

During the year the Eastern Railway Company of Minnesota has purchased the line constructed by the Swan River Logging Company, Limited, from Barclay Junction to Virginia, Minnesota, 18.73 miles in length, heretofore operated under contract with privilege of purchase, as mentioned on page 13 of the report for year ended June 30, 1900. 3671

Good progress has been made during the year on the two steamships being built for the Great Northern Steamship Company at New London, Conn., and it is expected they will be launched in December.

3672

REVISION OF LINES.

References were made on pages 14 and 15 of last year's Report to the revision of lines for the purpose of reducing grades and curvature.

Of the work there mentioned, there was completed and opened for operation during the year:

3673 Between Huntley Coulee and Great Falls, Mont., 22.62 miles. The work on this line was especially heavy, and the line has been built in the most substantial and permanent manner.

Between Harrington and Moscow, Wash., 2.89 miles, and

Between Moscow and Edwall, Wash., 1.42 miles.

The opening of these new lines has decreased the main track mileage by 3.66 miles.

Work has been continued during the year on the new line from Belleville to Fairhaven, Wash. Track is now being laid on the lower end of this line, and the line is nearly completed.

3674 The length of the new line is about 18.9 miles; of the old line 20.55 miles. The maximum grades on the old line were 2.7 per cent going south and 1.2 per cent going north. On the new line the maximum grade is one-half of one per cent in each direction. The work on the new line has been both heavy and expensive.

A new line has been built between Everett and Marysville, Wash., including "Y," 1.55 miles in length, in place of 1.58 miles of old line, securing a much better crossing of the Snohomish River, over which a new draw bridge has been built. This was referred to on page 17 of last year's Report.

3675 A small change of line has been made near Nyack, Mont., for a distance of 2,670 feet.

To improve the alignment, work is now in progress on a new line between Elmira and Bonner's Ferry, Idaho, about 15.45 miles in length.

3676

LEASE OF THE EASTERN RAILWAY OF MINNESOTA.

To simplify operation and accounting the Great Northern Railway Company leased for a period of ninety-nine years from May 1st, 1902, the lines of railway and property of the Eastern Railway Company of Minnesota. While the Great Northern Railway Company has always owned the capital stock of the Eastern Railway Company, that Company's railways, elevators, etc., prior to May 1st, 1902, had been operated independently.

3677 As rental under the lease, the Great Northern Railway Company pays the interest as it matures, on the Eastern Railway Company's bonds, dividends at the rate of six per cent per annum on the capital stock of the Eastern Company and all taxes and assessments upon the property, gross earnings and income of the Eastern Company, or for which that Company or its property may be liable, levied, assessed or falling due during the term of the lease.

On account of this lease, the Gross Earnings, Operating Expenses, Taxes, Income from Operation and Miscellaneous Income Received of the Eastern Railway Company of Minnesota, 3678 as given in table on page 26, are for the ten months ended April 30th, 1902, only; the Gross Earnings, Operating Expenses, etc., of the lines leased for the months of May and June, 1902, being included in the figures of the Great Northern Railway Company as given in tables on pages 27 and 28.

EQUIPMENT.

By the purchase of the Seattle and Northern Railway, the Seattle and Montana Railroad Company acquired the following equipment: 3679

1 locomotive, 1 passenger coach.
1 baggage and express car, 4 box cars.
10 flat cars and 26 logging trucks.

Same have been carefully inspected and appraised, and taken into equipment account at their appraised value.

3680 The following equipment has been sold or taken out of service during the year:

21 light Great Northern locomotives.

1 light locomotive acquired by the Willmar and Sioux Falls Railway Company in 1900, in purchase of Sioux City and Northern Railroad.

1 sleeping car and 1 poling car.

The Report for last year stated that of the equipment ordered 60 locomotives, 62 passenger cars and 2,000 freight cars had not been received and taken into account at the end of that year.

3681 During the year under review, orders were placed for 40 locomotives, 62 passenger cars, 3,300 freight cars and 5 wrecking cars with steam cranes.

Of the total new equipment undelivered at the close of last year and ordered this year, the following had been received and taken into account at the close of this year:

66 locomotives, as follows:

6 ten-wheel passenger locomotives, 19″x26″ cylinders, weighing 120,000 pounds on drivers.

10 ten-wheel passenger locomotives, 19″x28″ cylinders, weighing 134,000 pounds on drivers.

3682 40 consolidation freight locomotives, 20″x32″ cylinders, narrow fire box, weighing 179,000 pounds on drivers.

5 consolidation freight locomotives, 20″x32″ cylinders, wide fire box, weighing 180,000 pounds on drivers.

5 compound consolidation freight locomotives, 23″ and 33″x32″ two cylinders, weighing 180,000 pounds on drivers.

4 dining cars, 70 feet long.

50 first-class passenger coaches, 60 feet 10 inches long.

2 postal cars, 60 feet 8½ inches long.

3683 6 baggage and express cars, 64 feet 9 inches long; 5 additional equipment and 1 replacing destroyed car.

1,500 forty-feet 80,000 pounds capacity box cars; 1,322 additional equipment and 178 replacing destroyed cars.

300 forty-feet 80,000 pounds capacity flat cars; 223 additional equipment and 77 replacing destroyed cars.

200 forty-feet 60,000 pounds capacity refrigerator cars; 195 additional and 5 replacing destroyed cars.

200 twenty-two ft. 100,000 pounds capacity steel ore cars.

1 Lidgerwood Unloader.

All the above equipment is equipped with air brakes and automatic couplers. 3684

The remaining 34 locomotives, 62 passenger cars, 3,100 freight cars and 5 wrecking cars are now being delivered.

There were built at the Company's shops for additional equipment:

50 four-wheel caboose cars,
15 cinder cars and
6 supply cars.

Some transfers between classes and changes were made in other equipment.

There was expended during the year for equipment $3,137,- 3685
273.92, of which amount $2,696,389.07 was charged to "Equipment Account."

As equipment is destroyed or taken out of service, Operating Expense is charged and "Fund for Replacement of Equipment" is credited with the cost of replacing same. When equipment for replacement is purchased, the cost of same is charged to the account last mentioned.

ADDITIONS AND IMPROVEMENTS.

3686

Crossing gates have been put in at Division and Harrison Streets, N. E. Minneapolis; also at Eighth Street, Moorhead, Minn., with electric signals at Sixth, Seventh and Ninth streets. At Crookston, Minn., a bridge has been built, carrying Eighth Street over our tracks.

The work of enlarging the division terminal at Havre, Mont., referred to last year, has been completed, there having been built a new yard, 23-stall roundhouse with turntable and cinder pit, water supply, 20-pocket coaling station, sandhouse, machine shops with engine and boiler house and transfer 3687
tables, blacksmith and boiler shop, store house, scrap bins and lumber sheds, oil house, freight depot and track scales. The new buildings are of brick, and modern in every respect.

The division yard at Everett, Wash., has also been completed—yard containing 23,100 feet of track, 15-stall brick

roundhouse with turntable and cinder pit, water supply, 20-pocket coaling station, brick machine shop, carpenter shop, store house, scrap bins, etc., oil house and sand house.

The yard at Stony Brook, Minn., on the Eastern Railway, has been revised and 6,390 feet of additional track laid, 15 pockets added to the coaling station, the water supply improved and the buildings relocated.

The yards at Butte, Mont., and Rossland, B. C., have been revised and enlarged.

At Church's Ferry, N. D., the junction point of the Cando Branch, a new "Y" track has been laid, several additional yard tracks put in, buildings relocated and a new roundhouse and freight transfer platform, 12′x240′, built.

A track about 14,000 feet long, with several spurs from same, has been put in at Blaine, Wash., to reach industries on the water front.

Many passing tracks between Crookston and Cass Lake, Minn., have been extended to a length of 4,000 feet. The laying of additional passing tracks 3,000 feet long and the extension of old tracks to that length have been continued during the year, and in addition many house tracks and tracks for local industries have been laid. The net increase in side track mileage during the year, including these tracks and such tracks in the new yards mentioned as were laid June 30th, 1902, but not including side tracks on new lines built or acquired during the year, is as follows:

Line leased from St. Paul, Minneapolis & Manitoba Railway Co.	38.48 miles
Line leased from Eastern Ry. Co. of Minnesota	18.41 "
Line leased from Park Rapids & Leech Lake Ry. Co.	.19 "
Duluth Terminal Railway	.03 "
Montana Central Railway	3.10 "
Willmar & Sioux Falls Railway	1.08 "
Minneapolis Union Railway	.01 "
Seattle & Montana Railroad	10.00 "
Spokane Falls & Northern Railway System	1.89 "
Total	73.19 miles

During the year main line tracks have been relaid as follows: 3692
9.378 miles with 80-pound rail, 435.647 miles with 77½-pound rail, 2.413 miles with 75-pound rail and 3.818 miles with 60-pound rail.

The longest stretches of track relaid with 77½-pound rails were 234 miles between Williston, N. D., and Eureka, Montana; 126 miles between Concord and Columbia Falls, Montana; and 31 miles on the line between Breckenridge, Minn., and Larimore, N. D., where work is now in progress on 100 miles additional to complete the relaying of the main tracks between these points.

On new tracks built and tracks relaid tie-plates are being 3693
used as rapidly as they can be secured; the total number of plates in tracks June 30th, 1902, is approximately 6,500,000.

The permanent lining of the Wickes tunnel, on the Montana Central Railway, referred to last year, has been completed, and the track through the tunnel relaid with 77½-pound rails, the distance being included in the figures above given.

The work of building new shops at St. Paul is now in progress, the buildings under construction being:

Machine Shop, 600′x150′, containing 25 pits, 49′ long inside; a tin shop, 46′x73′.

A building 452′2″x235′, containing blacksmith shop 325′ 3694
x146′; boiler shop 191′4″x183′ with 10 pits; flue shop, 76′x52′; truck shop, 76′8″x52′ and tank shop, 235′x87′4″.

Power House, 110′2″x106′6″, containing an engine room, 52′6″x110′2″, and a boiler room 110′2″x54′. Boilers of 1,250 horse power are to be installed in this boiler room.

Transfer Pit, 625′ long, fitted with a 50′ transfer table.

Store House, 400′x100′, two stories. The east 40′ of the building contains the store department offices, and in 3695
the west 50 feet is located the brass foundry.

Iron House, 200′x100′, with a standard gauge track through the centre.

A two-story building, 40′x60′ containing the chemical laboratory and the office of the shops superintendent.

All of the buildings are of brick and of the most modern type.

A brick storehouse, 30′x90′, for materials and supplies, has been built at Larimore, N. D., and the oil house at West Superior shops extended 30 feet.

3696 An electric lighting plant has been installed at West Superior, Wis., for lighting the dock, warehouse, elevators, shops, freight house and division office building.

Dock No. 6 at West Superior, Wis., has been extended 868 feet, additional tracks put in, 600 feet of coal pockets built, and slip on east side of the dock dredged to a depth of 20 feet.

An incline with pontoon and the necessary tracks for a car ferry to New Westminster have been put in at Liverpool, B. C.

The brick passenger station at Spokane, Wash., referred to last year, has been completed. On the second and third floors
3697 are located the offices of the officials of the Western District and the General Offices of the Spokane Falls and Northern Railway System.

New depots have been built at the following stations:

Mayer, Minn.	Sharon, N. D.	Colgate, N. D.
Doran, Minn.	Perth, N. D.	Knox, N. D.
Berwick, N. D.	Kragnes, Minn.	University, N. D.
Elmer, Minn.	Priest River, Ida.	Berthold, N. D.
Portage, Mont.	Wooley, Wash.	Ephrata, Wash.
Interbay, Wash.	Buhl, Minn.	Grandy, Minn.
Brookston, Minn.	Barclay Jct., Minn.	Cohasset, Minn.
Litchfield, Minn.		

3698 Depots at sixteen other stations have been enlarged.

A brick freight house, 50′x300′ has been built at Great Falls, Montana, and one 40′x300′ is now under construction at Fargo, N. D.

A freight shed has been built at Lynd, Minn., and one at Stephen, Minn.

An extension has been made to the wool warehouse at Benton, Montana.

A grain warehouse, 60′x160′, has been built at Downs, Wash., and extensions, each 60′x160′, made to the grain ware-
3699 houses at Edwall, Harrington and Lamona, Wash.

A new ice house has been built at Sioux City, Iowa, and extensions to the ice houses at Willmar, Minn., and Grand Forks, N. D.

Section houses have been built at the following stations: 3700

Swan River Minn. (2)	Kilva, Mont. (2)	Tagus, N. D.
Tioga, N. D.	Coburg, Mont.	Harlem, Mont. (2)
Malta, Mont. (2)	Kremlin, Mont. (2)	Burnham, Mont.
Hingham, Mont. (2)	Moscow, Wash. (2)	Boulder, Mont.
Odessa, Wash. (2)	Burlington, Wash.	Everett, Wash. (2)
Interbay, Wash.	Portage, Mont.	Ferndale, Wash.
Palermo, N. D. (2)		

and an addition has been built to the section house at Saunders, Wis.

Stock yards have been built at: 3701

Grand Rapids, Minn.	Avon, Minn.	Kerkhoven, Minn.
Osakis, Minn.	Sheffield, S. D.	Zimmerman, Minn.
Graceville, Minn.	Yale, S. D.	Hazel, S. D.
Grover, S. D.	Nassau, Minn.	Lynd, Minn.
South Shore, S. D.	Pisek, N. D.	Holloway, Minn.
Cavalier, N. D.	Des Lacs, N. D.	Hannah, N. D.
Stanley, N. D.	Browning, Mont.	Havre, Mont.
Clancy, Mont.	Wooley, Wash.	Everett, Wash.
Litchfield, Minn.		

The stock yards at Brandon, Minn., Monticello, Minn., Great Falls, Mont., and Galata, Mont., have been enlarged. 3702

Scales have been placed in the stock yards at Danvers, Minn., and Minot, N. D. Improvements have been made to other stock yards.

Coaling stations equipped with lifting engines and the necessary tracks have been built at Minneapolis Junction, Minn., Smith Lake, Minn., Casselton, N. D., and East Spokane, Wash., replacing stations of an old pattern that had burned. Coaling platforms and sheds have been built at Cambridge, Minn., Silver, Mont., Northport, Wash., and Chewelah, Wash.

Permanent improvements in the water supply are being continued, numerous plants, both additional and replacing others, having been built, and improvements made on existing plants. 3703

Loading platforms have been built at eighteen stations.

3704 Right-of-way fence has been built during the year as follows:

Great Northern Railway	334.26 miles
Eastern Railway of Minnesota	2.21 "
Montana Central Railway	4.84 "
Willmar & Sioux Falls Railway	16.08 "
Duluth, Watertown & Pacific Railway	2.10 "
Seattle & Montana Railroad	1.91 "
Total	361.40 miles

3705 Banks have been widened and raised on 239.02 miles of track, banks restored to grade on 195.40 miles, and track ballasted with gravel on 461.48 miles.

A large amount of hydraulic work and ditching has been done along the Coast Line between Everett and Seattle, Wash.

The replacement of bridges and trestles with steel, or filling them so as to make solid embankments, has been actively followed during the year, the work done being:

	Length of steel bridges built:	
	Great Northern Railway (on old lines)	1,094 feet
3706	Eastern Railway of Minnesota	210 "
	Duluth Terminal Railway	200 "
	Total in replacement	1,504 feet
	In addition steel bridges were built on new lines between Huntley, Coulee and Great Falls, Montana	2,018 feet
	Total length of steel bridges built	3,522 feet
	Lineal feet of bridges filled:	
	Great Northern Railway	6,498 feet
	Eastern Railway of Minnesota	336 "
	Willmar & Sioux Falls Railway	5,293 "
	Duluth, Watertown & Pacific Railway	213 "
3707	Seattle & Montana Railroad	670 "
	Total	13,010 feet

To provide the necessary waterways in place of bridges filled as above, 12 stone culverts, 24 pipe culverts and 2 box culverts were put in.

So much permanent bridge work has been done during the past few years that the amount to be done each year is rapidly decreasing. 3708

The wooden bridging on the line was still further reduced during the year by the removal or relocation of lines as follows:

Great Northern Railway:	
Changes of line between Edwall and Moscow, and Moscow and Harrington, Wash	1,659 feet
Eastern Railway of Minnesota:	
Removal of line between Brace Junction and Pokegama Junction	2,265 " 3709
Total	3,924 feet

The following is a close approximation of the quantities of material moved during the year in changes of line, construction of additional lines at Everett, Wash., reduction of grades, widening and raising banks, bridge-filling and ballasting:

In changes of line, construction of additional lines at Everett, Wash., and reduction of grades	1,463,589 cu. yds.
In widening and raising embankments, and generally restoring banks 3710	980,685 "
For filling bridges	460,417 "
For ballasting (gravel)	1,194,446 "
Total	4,099,137 cu. yds.
There were also placed:	
Masonry	26,168 cu. yds.
Concrete	21,515 "
Riprap	57,686 "
Total	105,369 cu. yds.

3711

Following the plan of previous years, only such amounts as represented cost of actual additions to the property have been charged to "Additions and Improvements," and the entire amount charged to that account during the year on account of the line leased from the St. Paul, Minneapolis and Manitoba Railway Company, or $1,820,225.11, has been transferred to "Fund for Permanent Improvements and Renewals," so that

8712 the Great Northern Railway Company is not carrying on its books, as an asset, the cost of any additions or improvements to the line leased from the Manitoba Company.

All replacements, renewals, etc., have been charged to Operating Expenses. The amount included in "Maintenance of Road and Structures" this year, for extraordinary improvements, etc., is $1,663,812.

The efficiency of the railway as a means of transportation is improving every year.

Attention is called to the increase in the train load of revenue freight and the resulting income per train mile.

8713

VOLUME OF TRAFFIC AND RATES.

The tonnage of revenue freight hauled during the year increased 3,311,552 tons, or 33.363 per cent; freight earnings increased $5,785,363.28, or 21.108 per cent. The number of bushels of wheat hauled East increased 26,987,682 bushels, equal to 809,630 tons. Including this increase, however, there
3714 were 4,587,599 less bushels of wheat hauled this year than during the year ended June 30th, 1900, and the earnings from East-bound wheat traffic this year were $542,685.26 less than during that period.

There was an increase of 1,458,179 gross tons in the amount of iron ore hauled on the Eastern Division.

The increase in freight traffic aside from wheat and iron ore amounted to 1,070,762 tons, and in the earnings to $2,587,894.50. This increase was in general business and over the entire System, except on the Montana Central Railway, where there was a falling off in the volume of freight traffic and
3715 earnings on account of the practical suspension of the mining and manufacturing of copper in Montana for nearly four months. On account of the rapid settlement and development of the country through which the system runs, there has been a large increase in shipments of merchandise and supplies required by the smaller towns. This is shown by the fact that while the tonnage hauled increased 33.363 per cent

as above given, the ton mileage increased but 28.547 per cent. 3716
Or, the average distance each ton was hauled last year was 250 miles, while this year it was 241 miles. This is still further reflected in the comparatively small reduction in the average revenue per ton per mile of .012 cents, or 1.3777 per cent, equal on the ton mileage hauled this year to about $383,000. That is, there has been a greater increase in the volume of the higher class freight than in the lower classes. Effective January 25th, 1902, the rates on all classes of merchandise between stations in Minnesota, North Dakota and South Dakota were reduced an average of about fifteen per cent.

It is the policy of the Company to reduce freight rates as 3717
rapidly as the volume of traffic and earnings will justify, and to this end the rates on grain, grain products, potatoes, onions and hay, from stations in the State of Washington to Puget Sound, were reduced during August, 1902, an average of ten per cent. Effective August 28th, 1902, the rates on grain and grain products from stations in Minnesota, North Dakota and South Dakota to Eastern terminals were reduced an average of about ten per cent.

While the ton mileage of revenue freight increased 28.547 per cent, the mileage of loaded freight cars increased but 3718
21.2035 per cent and the mileage of freight hauling trains but 17.3725 per cent, resulting in an increase of 36.301 tons (9.5205 per cent), in the average number of revenue tons per freight train mile, making the average train load of revenue freight 417.595 tons.

The earnings of passenger trains increased $1,869,091.08, or 29.5468 per cent, of which $1,752,840.51 came from passenger fares, $29,272.65 from sleeping cars, $8,220.73 from transportation of mails, $63,183.61 from transportation of express, and the balance from miscellaneous sources.

Although there has been no increase in passenger rates dur- 3719
ing the year, the average revenue per passenger per mile has increased .037 cents, or 1.6157 per cent, caused by the natural increase in local travel due to the settlement of the country and to the prosperous condition of the people.

8720 The large movement of people to the Northwest during the last few years, which still continues without abatement, has resulted in the settlement of a vast area of vacant lands adjacent to the Company's line. During this period more than 5,000,000 acres of Government land in the northern part of North Dakota has been taken under the Homestead Act. It is also satisfactory to note that many of the large farms in this state are being cut up into smaller ones. The immigration into the Western and Pacific States during the past year has continued, and in numbers has exceeded that of any previous year.

8721 The Government having undertaken the reclamation of the semi-arid lands by means of irrigation, a speedy settlement of the same will follow. The farmers from the older states stand ready at the present time to buy all the lands the Government will irrigate at prices that will pay a profit on the cost of the work.

The opening of the new lines hereinbefore referred to, the excellent crop that has just been harvested, and the prosperous condition generally of the territory served by the Company, all indicate that the business of the Company for the 3722 year ending June 30th, 1903, will show a large increase over the year just ended.

The Board respectfully call attention of the shareholders to the Report of the Comptroller, with the customary balance sheet and statistical tables, and to the Report of the Land Commissioner.

JAMES J. HILL,
President.

DEFENDANTS' EXHIBIT 3. 943

3723

COMPTROLLER'S REPORT.

MR. JAMES J. HILL, President:

DEAR SIR: Herewith I beg to submit statements showing results of operation of the Great Northern Railway Company and its proprietary companies for the fiscal year ended June 30th, 1902. 3724

These statements are made in the same form and on the same basis as those submitted with last year's report.

The statements on the pages next following, 24 and 25, show the Earnings, Operating Expenses, Taxes, etc., of the Railway SYSTEM, exclusive of the Spokane Falls & Northern Railway System, which is operated separately. The statement on page 26 shows the division of these amounts between the several railways, and includes as a separate item the same information for the Spokane Falls & Northern Railway System. On pages 27 and 28 are given the Revenue and Income Accounts of the Great Northern Railway COMPANY. 3725

The balance sheet on page 33, like the one published last year, presents a complete statement of the property, capitalization and finances of what is known as the Great Northern Railway Line. The finances, etc., of the Spokane Falls & Northern System and of the Northern Steamship Company are not included, those properties being operated and their finances kept separate and distinct from those of the balance of the system.

J. G. DREW,
Comptroller.

3726

GROSS EARNINGS, OPERATING EXPENSES, TAXES, AND NET EARNINGS OF THE RAILWAY SYSTEM, AND PER MILE OF ROAD OPERATED, FOR THE FISCAL YEAR ENDED JUNE 30TH, 1902, COMPARED WITH THE PREVIOUS FISCAL YEAR.

NOTE: These figures do NOT include the Spokane Falls & Northern Railway System.

3727

GROSS EARNINGS.

PER CENT.	1902.	CLASS.	1901.	PER CENT.
76.0680	$27,409,017.23	Freight	$21,623,653.95	76.2721
18.4895	6,662,173.25	Passenger	4,909,332.74	17.3164
2.2185	799,365.59	Mail	791,144.86	2.7906
1.0339	372,553.21	Express	309,369.60	1.0912
2.1901	789,146.78	Miscellaneous	717,188.60	2.5297
	$36,032,256.06	Total	$28,350,689.75	

3728

OPERATING EXPENSES.

PER CENT.	1902.	CLASS.	1901.	PER CENT.
50.1172	$8,915,425.12	Conducting Transportation	$7,751,339.13	48.9246
15.3255	2,726,282.76	Maintenance of Equipment	2,354,311.46	14.8599
26.4345	4,702,479.41	Maintenance of Road and Structures,	4,402,157.25	27.7854
8.1228	1,444,976.95	General Expenses	1,335,613.22	8.4301
	$17,789,164.24	Total	$15,843,421.06	

DEFENDANTS' EXHIBIT 3. 945

3729

SUMMARY OF EARNINGS AND EXPENSES.

1902.		1901.
$36,032,256.06	Gross Earnings	$28,350,689.75
17,789,164.24	Operating Expenses	15,843,421.06
$18,243,091.82	Net Earnings	$12,507,268.69
1,239,693.97	Taxes	969,642.31
$17,003,397.85	Income from Operation	$11,537,626.38
49.37	Operating Expenses, per cent of Gross Earnings	55.88
52.81	Operating Expenses and Taxes, per cent of Gross Earnings	59.30
$6,864.11	Gross Traffic Earnings per Mile of Road	$5,449.64
3,388.82	Operating Expenses per Mile of Road	3,045.46
$3,475.29	Net Earnings per Mile of Road	$2,404.18
5,249.37	Average Miles of Road under Operation	5,202.31

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3785 3784 3783 3782

STATEMENT SHOWING THE REVENUES FOR THE YEAR ENDED JUNE 30th, 1902, OF THE GREAT NORTHERN RAILWAY COMPANY AND ALL PROPRIETARY COMPANIES.

COMPANIES.	GROSS EARNINGS.	OPERATING EXPENSES.	TAXES.	INCOME FROM OPERATION.	MISCELLANEOUS INCOME RECEIVED.	TOTAL.
Great Northern Railway	$28,397,134.90	$14,148,761.74	$984,375.37	$13,268,997.79	$1,460,458.43	$14,729,456.22
RAILWAYS:						
Eastern Ry. of Minnesota†	4,238,929.41	1,645,632.02	139,209.41	2,454,087.98	457,444.98	2,911,532.96
Montana Central Ry.	1,787,051.63	1,105,435.84	47,568.67	634,047.12	62,268.41	696,315.53
Willmar & Sioux Falls Ry.	1,520,292.78	858,695.87	61,874.09	600,382.82	21,279.68	621,662.50
Duluth, Watertown & Pacific Ry.	88,847.34	36,298.77	6,666.43	45,882.14	172.00	46,054.14
Total Railway System Proper.	$36,032,256.06	$17,789,164.24	$1,239,693.97	$17,003,397.85	$2,001,623.50	$19,005,021.35
OTHER COMPANIES:						
Spokane Falls & Northern Ry. System	1,165,197.04	582,398.88	30,443.31	552,454.85	9,336.62	561,791.47
Minneapolis Union Ry.	225,997.75	53,105.29	1,053.71	171,838.75	9,706.68	181,545.88
Minneapolis Western Ry.	65,089.80	35,114.69	1,555.22	28,419.89	149.21	28,569.10
Duluth Terminal Ry.	36,232.52	22,732.52	.....	13,500.00	.....	13,500.00
Northern Steamship Co.*	1,333,740.83	1,119,155.80	.....	214,584.53	10,934.30	225,518.83
Total for System.	$38,858,513.50	$19,601,571.42	$1,272,746.21	$17,984,195.87	$2,031,750.26	$20,015,946.13

† For ten (10) months ended April 30th, 1902. * For year ended December 31st, 1901.

EXPLANATORY NOTE.

DIVIDENDS:—Out of the net income of the Companies named the following dividends have been declared:

Eastern Railway Company of Minnesota	$800,000.00
Willmar and Sioux Falls Railway Company	350,000.00
Spokane Falls and Northern Railway System:	
Columbia and Red Mountain Railway Co.	13,220.00
Red Mountain Railway Co.	9,530.00
Minneapolis Union Railway Company	25,000.00
Northern Steamship Company	150,000.00
Total	$1,347,750.00

which amount is not included in the "Miscellaneous Income" of the Great Northern Railway as given in the above table, but is added to the "Miscellaneous Income" in the Income account on page 28.

DULUTH TERMINAL RY. CO.:—This Company is the owner of the railway used by the Great Northern Railway to secure entrance into Duluth and of extensive yards in Duluth. Its stock and bonds are all owned by the Eastern Railway Co. of Minnesota. Under the franchise of the Duluth Terminal Railway Co. its earnings derived from trackage are limited to six per cent on its stock and bonds; the interest and dividends paid, amounting to $13,500, are not included in the "Miscellaneous Income" above shown.

REVENUE ACCOUNT GREAT NORTHERN RAILWAY COMPANY.

3736

EARNINGS FROM OPERATION OF THE LINES LEASED BY THE GREAT NORTHERN RAILWAY COMPANY AND LINE OF THE SEATTLE & MONTANA RAILROAD CO.

YEAR ENDED JUNE 30th, 1902.

Earnings:		
Freight	$21,002,636.68	
Passenger	5,690,996.13	
Mail	708,290.64	
Express	324,211.69	
Miscellaneous	670,999.76	
Gross earnings		$28,397,134.90
Operating Expenses:		
Conducting transportation	$7,069,911.71	
Maintenance of equipment	2,169,783.07	
Maintenance of road and structures	3,792,051.97	
General expenses	1,112,014.99	
Total operating expenses	$14,143,761.74	
Taxes	984,375.37	
		15,128,137.11
Income from operation		$13,268,997.79
From which have been paid:		
Rentals:		
To St. P., M. & M. Ry. Co.:		
Guaranteed interest on St. P., M. & M. Ry. Co.'s bonds, paid and accrued... (For details see page 32.)	$3,471,414.01	
Guaranteed dividends of 6 per cent on capital stock of St. P., M. & M. Ry. Co.	1,200,000.00	
Maintenance of organization of St. P., M. & M. Ry. Co.	6,346.62	
To Eastern Ry. Co. of Minnesota:		
Guaranteed interest on bonds and guaranteed dividends of 6 per cent on the capital stock of Eastern Ry. Co. of Minnesota, paid or accrued	232,500.00	
Other rentals	165,049.03	
Total rentals	$5,075,309.66	
From which deduct amount received by Great Northern Ry. Co. as dividends paid or accrued on stocks of the St. P., M. & M. Ry. Co. and Eastern Ry. Co. of Minnesota owned by it	1,332,764.00	
Net	$3,742,545.66	
Improvements:		
Amount transferred to fund for permanent improvements and renewals	2,000,000.00	
Total		5,742,545.66
Balance transferred to income account		$7,526,452.13

3737

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INCOME ACCOUNT GREAT NORTHERN RAILWAY COMPANY.

3741 YEAR ENDED JUNE 30TH, 1902.

Balance transferred from revenue account		$7,526,452.13
Other Income:		
Interest on bonds owned.....	$380,635.00	
Dividends on stocks owned.....	1,419,960.32	
Rentals of leased lines.....	176,484.89	
Bills receivable (land notes).....	2,059.34	
Rental of equipment and car service..	180,273.19	
Profit on securities sold during year..	363,177.45	
Income from other sources—ground rents, miscellaneous items, etc.....	293,868.24	
		2,816,458.43
3742 Total income		$10,342,910.56
From which have been paid dividends as follows:		
Aug. 1, 1901, 1¾ per cent on $98,716,600.	$1,727,540.50	
Nov. 1, 1901, 1¾ per cent on $123,730,100	2,165,276.75	
Feb. 1, 1902, 1¾ per cent on $123,788,000.	2,166,290.00	
May 1, 1902, 1¾ per cent on $123,817,900	2,166,813.25	
		$8,225,920.50
Balance transferred to profit and loss		$2,116,990.06

DEFENDANTS' EXHIBIT 3. 949

3743

DETAILS OF OTHER INCOME.

Interest on Bonds Owned:			
Town of Wadena bonds	$240.00		
Town of Sandness bonds	120.00		
Town of Leaf River bonds	120.00		
Town of Hutchinson bonds	315.00		3744
Town of Minnesota Falls bonds	120.00		
Duluth Terminal Ry. Co. bonds	5,250.00		
Montana Central Ry. Co. bonds	32,500.00		
Willmar & Sioux Falls Ry. Co. bonds	1,050.00		
Park Rapids & Leech Lake Ry. Co. bonds.	12,500.00		
Butte, Anaconda & Pacific Ry. Co. bonds..	50,000.00		
Spokane Falls & Northern Ry. Co. bonds..	154,800.00		
Nelson & Fort Sheppard Ry. Co. bonds....	77,580.00		
Columbia & Red Mountain Ry. Co. bonds..	17,460.00		
Red Mountain Ry. Co. bonds	13,020.00		
St. P., M. & M. Ry. Co.'s Montana ext. bonds	15,560.00		
Total		$380,635.00	3745
Dividends on Stocks Owned:			
Northern Steamship Co. stock	$150,000.00		
Great Northern Ry. Co. stock	3,060.32		
St. Paul Union Depot Co. stock	1,750.00		
Minneapolis Union Ry. Co. stock	25,000.00		
Duluth Terminal Ry. Co. stock	3,000.00		
Park Rapids & Leech Lake Ry. Co. stock..	35,000.00		
Eastern Ry. Co. of Minnesota stock	800,000.00		
Willmar & Sioux Falls Ry. Co. stock	350,000.00		
Red Mountain Ry. Co. stock	9,530.00		
Columbia & Red Mountain Ry. Co. stock..	13,220.00		
Butte, Anaconda & Pacific Ry. Co. stock..	29,400.00		3746
Total		$1,419,960.32	

3747

STATISTICS OF FREIGHT AND PASSENGER TRAFFIC ON SYSTEM.

(But NOT including Spokane Falls & Northern Railway System.)

FOR THE YEAR ENDED JUNE 30th, 1902, COMPARED WITH THE PREVIOUS YEAR.

3748

DESCRIPTION.	1902.	1901.	INCREASE.	
			Amount.	Per Cent.
FREIGHT TRAFFIC.				
Mileage of Freight Trains	6,861,788	5,627,697	1,234,091	21.9298
Mileage of Mixed Trains	777,704	881,061	*Decrease* 103,357	11.7310
Total	7,639,492	6,508,758	*Increase* 1,130,734	17.3725
Mileage of Locomotives employed in "helping" Freight and Mixed Trains	307,574	304,331	3,243	1.0656
Percentage of "helping" to Revenue Train Mileage	4.0261	4.6757	0.2868	.....
3749 Mileage of Loaded Freight Cars	187,292,935	154,527,689	32,765,246	21.2035
Mileage of Empty Freight Cars	64,312,308	44,468,558	19,843,750	44.6242
Total Car Mileage	251,605,243	198,996,247	52,608,996	26.4372
Tons of Freight Carried, Revenue	13,287,363	9,925,811	3,311,552	33.3630
Company	1,802,455	1,592,440	270,015	16.9561
Total	15,099,818	11,518,251	3,581,567	31.0947
Tons of Revenue Freight Carried One Mile	3,190,217,482	2,481,751,195	708,466,287	28.5470
Earnings from Freight Traffic	$27,813,080.10	$21,998,491.43	$5,814,588.67	26.4315
AVERAGES.				
All Cars Handled per Freight Train Mile	32.93	30.57	2.36	7.7200
Tons Revenue Freight Hauled per Train	417.595	381.294	36.301	9.5205
Tons Revenue Freight Hauled per Loaded Car	17.033	16.060	.973	6.0585
Earnings per Freight Train Mile	$3.64	$3.38	$0.26	7.6923
3750 Earnings per Ton per Mile	*Cents* .859	*Cents* .871	*Decrease* *Cents* .012	1.3777

DEFENDANTS' EXHIBIT 3. 951

8751

STATISTICS OF FREIGHT AND PASSENGER TRAFFIC ON SYSTEM.—*Continued.* 3752

DESCRIPTION.	1902.	1901.	INCREASE.	
			Amount.	Per Cent
PASSENGER TRAFFIC.				
Mileage of Passenger Trains	4,614,850	4,284,900	329,950	7.7008
Mileage of Locomotives employed in "helping" Passenger Trains	41,932	52,862	*Decrease.* 10,930	20.6765
Percentage of "helping" to Revenue Train Mileage	0.9086	1.2337	*Increase.* .3126	
Passengers Carried	3,493,245	2,717,851	775,394	28.5297
Passengers Carried One Mile	286,320,423	214,392,859	71,927,564	33.5494
Earnings of Passenger Trains	$8,194,964.77	$6,325,873.69	$1,869,091.08	29.5468
AVERAGES.				
Earnings per Passenger Train Mile	$1.5197	$1.2245	$0.2952	24.1078
Earnings per Passenger per Mile	*Cents* 2.827	*Cents* 2.290	*Cents* 0.037	1.6157
TOTAL TRAINS.				
Mileage of Freight and Passenger Trains	12,254,342	10,793,658	1,460,684	13.5328
Earnings from Freight and Passenger Trains	$36,007,994.87	$28,324,365.12	$7,683,629.75	27.1278
Earnings per Train per Mile	2.94	2.63	.31	11.7871
Expenses per Train per Mile	1.45	1.47	*Decrease.* .02	1.3605
Net Traffic Earnings per Train per Mile	1.49	1.16	*Increase.* .33	28.4483

3753

NOTE—The Train, Locomotive and Car Mileage figures given above have been compiled and all computations based upon them made in accordance with the rules of the Interstate Commerce Commission.

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STATEMENT OF BONDS AND STOCK OUTSTANDING IN THE HANDS OF THE PUBLIC FOR WHICH THE GREAT NORTHERN RAILWAY COMPANY IS RESPONSIBLE DIRECTLY OR UNDER GUARANTEE.

Outstanding July 1, 1901.	BONDS.	Outstanding July 1, 1902.	Annual Charges Paid 1901-1902.
	ST. P., M. & M. RY.:		
$7,860,000.00	Second Mortgage, 6 per cent	$7,508,000.00	$463,775.00
5,625,000.00	Dakota Extension, 6 per cent	5,576,000.00	335,880.00
13,344,000.00	Consolidated Mortgage, 6 per cent	13,344,000.00	800,640.00
20,756,000.00	Consolidated Mortgage, 4½ per cent	20,176,000.00	919,867.50
7,907,000.00	Montana Extension, 4 per cent	10,185,000.00	389,433.33
14,545,454.54	Pacific Extension, 4 per cent	*14,545,454.54	581,818.18
	Total shown on page 27		$3,471,414.01
	EASTERN RY. OF MINN.:		
4,700,000.00	First Division, First Mt'ge, 5 per cent.	4,700,000.00	$235,000.00
5,000,000.00	Northern Div., First Mt'ge, 4 per cent	5,000,000.00	200,000.00
	MONTANA CENTRAL RY.:		
6,000,000.00	First Mortgage, 6 per cent	6,000,000.00	360,000.00
4,000,000.00	First Mortgage, 5 per cent	4,000,000.00	200,000.00
	WILLMAR & SIOUX FALLS RY.:		
3,646,000.00	First Mortgage, 5 per cent	3,646,000.00	182,300.00
	MINNEAPOLIS UNION RY.:		
2,150,000.00	First Mortgage, 6 per cent	2,150,000.00	129,000.00
650,000.00	First Mortgage, 5 per cent	650,000.00	32,500.00
	MINNEAPOLIS WESTERN RY.:		
500,000.00	First Mortgage, 5 per cent	500,000.00	25,000.00
$96,683,454.54	Total Bonds on Railway Property	$97,975,454.54	$4,835,214.01
	STOCK.		
$454,600.00	ST. P., M. & M. RY.—6 per cent guaranteed, unexchanged	$453,600.00	†Net $27,236.00
$97,138,054.54	Total	$98,429,054.54	$4,862,450.01
$98,711,750.00	Great Northern Railway Company, outstanding	$123,853,000.00	$8,225,920.50

Bonds on Railway property, outstanding as above	$97,975,454.54
Outstanding Capital Stock of Great Northern and St. P., M. & M. Ry. Companies	124,306,600.00
Total Capitalization of System	$222,282,054.54
Mileage of Track in System, including second, third, fourth, fifth and sixth tracks, covered by above capitalization as shown on page 36	5,926.84
Stocks and Bonds per mile of Main Track	$37,504.31
Mileage of Main Tracks covered by bonds in hands of public	4,734.10
Bonded Debt Outstanding per mile of Main Track covered thereby	$20,695.69

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*Not including £3,000,000 St. P., M. & M. Ry. Co.'s Pacific Extension Bonds in Treasury of Great Northern Railway Company.

†Difference between amount of rental accrued under lease and dividends received or accrued on St. P., M. & M. Ry. Stock owned by Great Northern Railway Company.

In addition to the bonds above listed, the Great Northern and Northern Pacific Railway Companies have issued their Joint C., B. & Q. Collateral 4 per cent Bonds and Scrip to the amount of $215,154,400.00, secured by the deposit with the Standard Trust Company of New York, as Trustee of 1,075,772 shares of the Capital stock of the Chicago, Burlington & Quincy Railroad Company.

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

DEFENDANTS' EXHIBIT 3. 955

EQUIPMENT OF GREAT NORTHERN RAILWAY COMPANY AND PROPRIETARY LINES. 3766

FOR YEAR ENDED JUNE 30, 1902, AS COMPARED WITH YEAR ENDED JUNE 30, 1901.

Class.	1902.	1901.	
Locomotives	608	563	
Passenger Equipment—			
Sleeping cars	48	50	
Parlor cars	5	5	
Dining cars	16	12	
Buffet smokers	8	8	
Coaches	214	163	3767
Tourist cars	24	24	
Passenger and baggage	36	35	
Baggage, mail and express	116	110	
Business cars	19	18	
Total passenger equipment	486	425	
Freight Equipment—			
Box cars	15,915	14,582	
Combination box and stock cars	745	750	
Transfer freight cars	50	50	
Furniture cars	1,152	1,152	
Hay cars	6	6	
Refrigerator cars	404	209	3768
Stock cars	627	627	
Flat and coal cars	3,544	3,312	
Sand cars	600	600	
Ore cars (wood)	1,101	1,101	
Ore cars (steel)	800	600	
Ballast cars	764	764	
Caboose cars	390	340	
Cinder cars	68	53	
Boarding cars	52	51	
Derrick and tool cars	47	47	
Steam shovels	19	19	
Lidgerwood unloaders	13	12	3769
Ditching cars	1	1	
Pile drivers	10	10	
Rotary snow plows	6	6	
Snow dozers	16	15	
Flangers	1	1	
Logging trucks	126	100	
Other work equipment	88	85	
Total freight and work equipment	26,545	24,493	

3770

TRACK STATEMENT.

GREAT NORTHERN RAILWAY AND PROPRIETARY LINES.

LINES OPERATED BY THE GREAT NORTHERN RY. CO.:	*Miles.*	*Main Track Miles.*	*Total Miles.*
Leased from St. P., M. & M. Ry. Co.:			
First Main Track		3,799.19	3,799.19
Second Track	30.61		
Third Track	9.28		
Fourth, Fifth and Sixth Tracks	13.05		52.94
Total Main Track			3,852.13
Side Tracks			707.81
Total Miles of Tracks owned by St. P., M. & M. Ry. Co.			4,559.94
3771 Leased from Eastern Ry. Co. of Minnesota			686.72
First Main Tracks		469.83	
Second Track	25.40		
Side Tracks	171.40		
	Side Track Miles.		
Duluth Terminal Railway	3.66	1.82	5.48
Leased from Park Rapids & Leech Lake Ry. Co	7.15	49.04	56.19
Leased from Dakota & Great Northern Ry Co	2.61	40.44	43.05
Tracks of the Seattle & Montana R. R. Co., operated by G. N. Ry	46.52	204.66	251.18
Spur to Flathead Lake, at Kalispell, Mont			12.18
Total Tracks operated by Great Northern Ry. Co., June 30, 1902		4,564.98	5,594.74
PROPRIETARY COMPANIES:			
Willmar & Sioux Falls Ry. Co	48.94	433.41	482.35
Leased Tracks between Sioux City, Ia., and South Sioux City, Neb		8.32	8.32
3772 Duluth, Watertown & Pacific Ry. Co	4.08	69.84	73.92
Montana Central Ry. Co	55.52	260.51	316.03
Minneapolis Union Ry. Co	4.74	2.63	10.00
Second Track	2.63		
Minneapolis Western Ry. Co	5.04	1.69	6.73
Total Miles of Road in System as operated June 30, 1902		5,336.38	
Total Miles of Track, all kinds, in System as operated June 30, 1902			6,487.09
OTHER COMPANIES:			
Spokane Falls & Northern Ry. System (operated separately)	23.40	203.03	226.43
Montana & Great Northern Ry. Co			196.28
Jennings, Mont., to International Boundary (opened July 10, 1902)	5.40	50.98	
Great Falls, Mont., to International Boundary under reconstruction)	5.53	134.37	
3773 Crow's Nest Southern Ry. Co			53.37
International Boundary to Morrissey, B. C. (opened Sept. 15, 1902)	4.90	48.47	
Washington & Great Northern Ry. Co	4.49	59.58	64.07
Vancouver, Victoria & Eastern Ry. & Navigation Co., Marcus, Wash., to Grand Forks, B. C., and Republic, Wash. (opened Aug. 17, 1902)	2.58	16.29	18.87
Total Miles of Road in System, Including lines operated separately and under construction		5,849.10	7,046.11

DEFENDANTS' EXHIBIT 3. 957

TRACK STATEMENT—*Continued.* 3774

RECAPITULATION OF TRACK MILEAGE:

First Main Track	5,845.78		
Second Track	58.78		
Third, Fourth, Fifth and Sixth Tracks	22.33		
Total Main Tracks covered by Capitalization given on page 32	5,926.84		
Leased Tracks	3.32		
Side and Spur Tracks	1,115.95		
Total Tracks, all kinds, in System, including lines operated separately and under construction		7,046.11	
NOTE—Total Mileage of Road in System as operated June 30th, 1902, as shown on page 35	5,336.88		
Total Mileage of Road in System, June 30th, 1901, as per report for that year	5,244.43		3775
Increase in Mileage		91.95	

This increase is made up as follows:

SEATTLE & MONTANA R. R.:

Line from Anacortes to Rockport, Wash., purchased from Seattle & Northern Ry. Co	54.42		
Mileage owned by S. & M. R. R. Co., but heretofore leased to Seattle & Northern Ry. Co	3.82		
New lines constructed at Everett, Wash., net additional mileage	3.32		
		61.56	

DAKOTA & GREAT NORTHERN RY.:

New lines constructed during year:			
Bottineau to Souris, N. D.	12.72		
Lakota to Edmore, N. D.	27.72		
		40.44	
Total Increase		102.00	3776

Less Decreases in Mileage:

ST. P., M. & M. RY.:

Change of line between Portage and Great Falls, Montana	3.43		
Change of line at Edwall, Wash.	.01		
Change of line at Harrington, Wash.	.22		
Change of line at Wenatchee River, Wash.	.13		
		3.79	

EASTERN RY. OF MINNESOTA:

Track between Brace Junction, Minn., and Pokegama Junction, Wis., removed	6.26		
Total Deduction		10.05	
Net Increase in Mileage		91.95	3777

3778

LAND COMMISSIONER'S REPORT.

MR. JAMES J. HILL, President.

DEAR SIR: I respectfully submit the following report re-
3779 garding the *Minneapolis & St. Cloud Land Grant* for the fiscal year ended June 30th, 1902:

An adjustment of this grant has been arrived at with the State of Minnesota during the year.

	Acres.	Acres.
The total acreage earned is		425,664.00
Of which there has been deeded to the company	425,660.90	
Total acreage sold to June 30th, 1902, less sales canceled		402,609.78
Value of same	$1,290,560.20	
Average price per acre	3.21	
3780 Remaining unsold June 30th, 1902		23,054.22

OPERATIONS DURING THE YEAR.

Sales, acres	281,228.19
Amount sold for	$495,686.32
Average price per acre	1.76
Receipts of land department	545,751.71
Disbursements of land department	6,124.77
Amount of deferred payments due company which are bearing interest at six and seven per cent	459,071.09

3781

CHARLES H. BABCOCK,
Land Commissioner.

DEFENDANTS' EXHIBIT 3. 959

3782

ST. PAUL, MINNEAPOLIS & MANITOBA RAILWAY COMPANY'S SINKING FUND ACCOUNT CONSOLIDATED MORTGAGE FUNDS.

July 1st, 1901. *By* balance to credit of sinking fund as per page 41 of last year's report	$15,672.99	
June 30th, 1902. From land department, as per land commissioner's report on page 42	1,178,392.73	
Revenue Todd County lands	3,859.64	
Total credits	$1,197,925.36	3783

Debits:

To bonds purchased by trustee and canceled.

Date.	Amount.	Price.	Cost.		
July 16, 1901	$3,000.00	113¾	$3,416.25		
July 19, 1901	15,000.00	113¾	17,081.25		
Aug. 19, 1901	4,000.00	114¼	4,570.00		
Aug. 27, 1901	2,000.00	113⅝	2,267.50		
Aug. 30, 1901	3,000.00	114¼	3,427.50		
Sept. 25, 1901	7,000.00	114	7,980.00		
Oct. 2, 1901	1,000.00	114⅜	1,143.75		
Oct. 2, 1901	12,000.00	114½	13,740.00		3784
Oct. 14, 1901	3,000.00	114⅜	3,431.25		
Oct. 28, 1901	35,000.00	115½	40,425.00		
Nov. 12, 1901	20,000.00	116¼	23,225.00		
Nov. 13, 1901	9,000.00	116⅛	10,473.75		
Nov. 14, 1901	3,000.00	116¼	3,483.75		
Nov. 22, 1901	1,000.00	116¼	1,162.50		
Dec. 2, 1901	3,000.00	116¼	3,483.75		
Dec. 3, 1901	3,000.00	116½	3,487.50		
Dec. 3, 1901	20,000.00	116½	23,250.00		
Dec. 12, 1901	10,000.00	116½	11,625.00		
Dec. 13, 1901	5,000.00	116½	5,812.50		
Dec. 27, 1901	26,000.00	116	30,160.00		
Dec. 30, 1901	1,000.00	116¼	1,161.25		3785
Dec. 31, 1901	5,000.00	116⅝	5,818.75		
Jan. 6, 1902	1,000.00	114	1,140.00		
Jan. 7, 1902	5,000.00	113⅝	5,681.25		
Jan. 9, 1902	5,000.00	113½	5,687.50		
Forward ...	$202,000.00		$233,135.00	$1,197,925.36	

	Date.	Amount.	Price.	Cost.	
3786	Bro't forw'd	$202,000.00		$233,135.00	$1,197,925.36
	Jan. 9, 1902	4,000.00	116¼	4,650.00	
	Jan. 10, 1902	11,000.00	114⅛	12,553.75	
	Jan. 13, 1902	1,000.00	114	1,140.00	
	Jan. 14, 1902	50,000.00	114⅛	57,062.50	
	Jan. 14, 1902	11,000.00	114	12,540.00	
	Jan. 16, 1902	6,000.00	114	6,840.00	
	Jan. 17, 1902	1,000.00	114	1,140.00	
	Jan. 22, 1902	1,000.00	114	1,140.00	
	Jan. 27, 1902	10,000.00	114⅛	11,412.50	
	Jan. 28, 1902	4,000.00	114	4,560.00	
3787	Jan. 29, 1902	2,000.00	114	2,280.00	
	Jan. 30, 1902	15,000.00	114	17,100.00	
	Feb. 4, 1902	1,000.00	114	1,140.00	
	Feb. 4, 1902	7,000.00	114⅛	7,988.75	
	Feb. 6, 1902	9,000.00	114	10,260.00	
	Feb. 6, 1902	3,000.00	114	3,420.00	
	Feb. 6, 1902	10,000.00	114⅛	11,412.50	
	Feb. 10, 1902	26,000.00	114⅛	29,672.50	
	Feb. 10, 1902	2,000.00	114½	2,290.00	
	Feb. 11, 1902	6,000.00	114	6,840.00	
	Feb. 19, 1902	8,000.00	114½	9,160.00	
	Feb. 25, 1902	18,000.00	114¼	20,565.00	
	Mar. 7, 1902	1,000.00	114⅜	1,146.25	
3788	Mar. 26, 1902	1,000.00	114¼	1,142.50	
	April 8, 1902	38,000.00	115¼	43,747.50	
	April 8, 1902	10,000.00	115	11,500.00	
	April 8, 1902	10,000.00	115½	11,550.00	
	April 17, 1902	1,000.00	115	1,150.00	
	May 2, 1902	1,000.00	115¾	1,157.50	
	May 5, 1902	2,000.00	115¼	2,305.00	
	May 5, 1902	35,000.00	115⅝	40,468.75	
	May 8, 1902	15,000.00	116¼	17,418.75	
	May 9, 1902	5,000.00	115⅝	5,781.25	
	May 12, 1902	15,000.00	116¼	17,418.75	
	May 12, 1902	19,000.00	116	22,040.00	
	May 13, 1902	65,000.00	115¾	75,318.75	
3789	May 14, 1902	5,000.00	115½	5,762.50	
	May 15, 1902	200,000.00	115¾	231,500.00	
	May 15, 1902	1,000.00	115½	1,155.00	
	May 16, 1902	2,000.00	115¾	2,315.00	
	Forward ...	$834,000.00		$961,180.00	$1,197,925.36

DEFENDANTS' EXHIBIT 3. 961

Date.	Amount.	Price.	Cost.		
Bro't forw'd	$834,000.00		$961,180.00	$1,197,925.36	3790
May 19, 1902	2,000.00	115½	2,310.00		
May 19, 1902	2,000.00	115¼	2,305.00		
May 19, 1902	4,000.00	115⅞	4,635.00		
May 21, 1902	1,000.00	115¾	1,153.75		
May 22, 1902	4,000.00	116	4,640.00		
May 22, 1902	2,000.00	115⅞	2,317.50		
May 23, 1902	2,000.00	115⅞	2,317.50		
May 26, 1902	2,000.00	115⅞	2,317.50		
May 26, 1902	50,000.00	115½	57,750.00		
May 26, 1902	1,000.00	115¾	1,157.50		
May 31, 1902	2,000.00	116	2,320.00		
June 4, 1902	11,000.00	116	12,760.00		3791
June 9, 1902	3,000.00	115½	3,457.50		
June 9, 1902	2,000.00	115¼	2,305.00		
June 9, 1902	1,000.00	116	1,160.00		
June 10, 1902	50,000.00	115¼	57,625.00		
June 10, 1902	1,000.00	115½	1,155.00		
June 10, 1902	1,000.00	116	1,160.00		
June 13, 1902	24,000.00	115¾	27,780.00		
June 17, 1902	1,000.00	115¾	1,157.50		
June 17, 1902	3,000.00	115¾	3,468.75		
June 20, 1902	1,000.00	115¾	1,158.75		
June 23, 1902	5,000.00	115⅛	5,781.25		
June 30, 1902	2,000.00	115.68	2,313.67		3792
June 30, 1902	1,000.00	115⅛	1,156.25		
Total	$1,012,000.00	Costing		1,166,842.42	
June 30, 1902, balance, being funds applicable for further redemption of bonds.....				$31,082.94	

3793 REPORT OF LAND COMMISSIONER ST. PAUL, MINNEAPOLIS & MANITOBA RAILWAY CO.

To MR. LOUIS W. HILL, President,

St. Paul, Minneapolis & Manitoba Ry. Co.

DEAR SIR: I respectfully submit the following report of operation of the Land Department for the year ended June 30th, 1902:

			Acres.	Acres.
3794	Total acreage of land grant computed at ten sections for each mile of road, as formerly construed by the State of Minnesota.....			3,848,000.00
	Total acreage of land grant, as construed by United States general land office.....			3,479,611.36
	Total acreage deeded to company prior to June 30th, 1902		3,220,760.30	
	Less decreed to Northern Pacific R. R. Co. by Supreme Court United States, March 2d, 1891.....	365,860.92		
	Decreed to Northern Pacific R. R. Co., in accordance with terms of settlement of November 1st, 1897	48,916.08		
3795	Redeeded to United States.....	3,330.02		
			418,107.02	
	Net acreage deeded.....		2,802,653.28	
	Total acreage sold prior to June 30th, 1902....		2,967,261.17	
	Less sales canceled.....		303,738.92	
				2,663,522.25
	Remaining unsold June 30th, 1902.....			816,089.11

3796 Owing to sales and other disposals of land within the limits of the Grant by the United States prior to the time at which this Company's right attached, a final adjustment of the Grant by the Government, which is approaching completion, will reduce the above area by about 600,000 acres.

During the year ended June 30th, 1902, 124,179.99 acres of land were sold for $1,129,277.71, an average of $9.09 per acre. There were also sold 819 town lots for $15,003.20, an average price per lot of $18.32.

The number of land sales during the year was 1,412, with an average of about 88.00 acres to each purchase.

MAP(S) IS/ARE TOO LARGE TO BE FILMED

DEFENDANTS' EXHIBIT 3. 963

3797

CASH RECEIPTS OF LAND DEPARTMENT FOR YEAR ENDED JUNE 30TH, 1902.

Cash sales and installments of principal on new land contracts	$146,042.23	
Amount of principal received on old contracts	883,480.06	
Amount received for trespass, stumpage, grass sales, etc.	5,208.24	
Amount received for interest on old and new contracts	187,774.39	
Amount received for principal and interest on town lot contracts	21,574.17	
	$1,244,079.09	3798
Less expense of land department and trustee	65,686.36	
Net receipts	$1,178,392.73	
Amount of deferred payments due this company on land contracts bearing interest at 7 and 6 per cent	$3,266,741.76	
Amount of deferred payments due this company on town lots bearing interest at 7 and 6 per cent	10,745.49	
	$3,277,487.25	

Referring to that portion of report for the year ending June 30th, 1893, relating to lands lying within the limits of the grant 3799 on the Dakota side of the Red River, the Company has reconveyed to the United States a total of 63,477.92 acres, for which the Company is authorized to locate an equivalent amount elsewhere. The Company has selected to June 30th, 1902, 55,242.20 acres in lieu of a part of the above amount.

The following are the sales during the year covered by the Dakota Grant, viz.:

172.95 acres for $3,507.05, an average per acre of	$20.27	
Receipts during the year		$28,892.65
Taxes paid, expenses of examination and selection of land and other disbursements made during the year in connection with grant		3,133.49 3800

The remaining lands are in process of adjustment with the Government.

CHARLES H. BABCOCK,
Land Commissioner.

3819

[Defendants' Exhibit 6.]

GREAT NORTHERN RAILWAY LINE.

	Per Cent.	*Per Cent.*
Percentage of Interstate Traffic, the rates on which could be controlled by joint action of Northern Pacific and Great Northern alone	2.78	
Percentage of Interstate Traffic, the rates on which could be controlled by joint action of Northern Pacific and Great Northern, with connecting lines	.65	
Aggregate percentage of above two classes		3.43
Percentage of Interstate Traffic, the rates on which could be controlled only by agreement with lines competing with Northern Pacific and Great Northern	6.89	
Percentage of Interstate Traffic, the rates on which could be controlled only by agreement both with lines competing with Northern Pacific and Great Northern, and with connecting lines	17.09	
Aggregate percentage of above two classes		23.98
Percentage of Interstate Traffic moving between stations on Great Northern Railway Line, neither of which is reached by Northern Pacific lines		72.59
		100.00

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3821

GREAT NORTHERN RAILWAY LINE.

Statement of Freight and Passenger Earnings For Fiscal Year Ended June 30th, 1901.

The total Freight Tariff Earnings of the Great Northern Railway Line (Great Northern, Eastern Railway of Minnesota, Montana Central, Willmar & Sioux Falls, and Duluth, Watertown & Pacific Railways) were $21,623,653.95. 3822

The above earnings consist of:

Local to State through which line passes	$7,013,050.96
Interstate	14,610,602.99

3823 The Interstate Freight Earnings are made up as follows:

		Per Cent.
1. Interstate business forwarded from and to towns where the Northern Pacific also has stations, but which towns can also be reached by other lines of railway	$974,999.17	6.67
2. Interstate business forwarded from and to towns reached by Northern Pacific and Great Northern Railways only	380,117.53	2.60
3. Interstate business originating or terminating on connecting lines, carried via junctions common to both Northern Pacific and Great Northern Railways, and which was destined to, or forwarded from, towns on Great Northern Railway where the Northern Pacific Railway also has stations that are reached by other lines of railway	2,249,642.91	15.40
4. Interstate business originating or terminating on connecting lines, carried via junctions common to both Northern Pacific and Great Northern Railways, and which was destined to or forwarded from towns reached by Northern Pacific and Great Northern Railways only	79,805.69	.55
5. Interstate business not included in above four subdivisions	10,926,037.69	74.78
Total	$14,610,602.99	100.00

3824

3825

The total Passenger Tariff Earnings of the Great Northern Railway for fiscal year ending June 30th, 1901, were $4,909,332.74.

The above earnings consist of:

Local to States through which line passes	$2,599,029.72
Interstate	2,310,303.02

3826

The Interstate Passenger Earnings are made up as follows: 3827

		Per Cent.	
1. Interstate business forwarded from and to towns where the Northern Pacific also has stations, but which towns can also be reached by other lines of railway	$190,655.23	8.25	
2. Interstate business forwarded from and to towns reached by Northern Pacific and Great Northern Railways only	91,101.35	3.94	
3. Interstate business originating or terminating on connecting lines, carried via junctions common to both Northern Pacific and Great Northern Railways, and which was destined to, or forwarded from, towns on Great Northern Railway where the Northern Pacific Railway also has stations that are reached by other lines of railway	641,667.78	27.78	3828
4. Interstate business originating or terminating on connecting lines, carried via junctions common to both Northern Pacific and Great Northern Railways, and which was destined to, or forwarded from, towns reached by Northern Pacific and Great Northern Railroads only	30,540.56	1.32	
5. Interstate business not included in above four subdivisions	1,356,338.10	58.71	3829
Total	$2,310,303.02	100.00	

The total Tariff Earnings (Passenger and Freight) of the Great Northern Railway for fiscal year ending June 30th, 1901, were:

Local to States through which line passes	$9,612,080.68	
Interstate	16,920,906.01	
Total Tariff Earnings	$26,532,986.69	3830

3881 **The Interstate Earnings are made up as follows:**

		Per Cent.
1. Interstate business forwarded from and to towns where the Northern Pacific also has stations, but which towns can also be reached by other lines of railway	$1,165,654.40	6.89
2. Interstate business forwarded from and to towns reached by Northern Pacific and Great Northern Railways only	471,218.88	2.78
3. Interstate business originating or terminating on connecting lines, carried via junctions common to both Northern Pacific and Great Northern Railways, and which was destined to, or forwarded from, towns on Great Northern Railway where the Northern Pacific Railway also has stations that are reached by other lines of railway	2,891,310.69	17.09
4. Interstate business originating or terminating on connecting lines, carried via junctions common to both Northern Pacific and Great Northern Railways, and which was destined to, or forwarded from, towns reached by Northern Pacific and Great Northern Railways only	110,346.25	.65
5. Interstate business not included in above four subdivisions	12,282,375.79	72.59
Total	$16,920,906.01	100.00

3882

3883

Correct:

J. G. DREW,
Comptroller.

DEFENDANTS' EXHIBIT 7. 973

3834

[Defendants' Exhibit 7.]

NORTHERN PACIFIC RAILWAY.

	Per Cent.	*Per Cent.*	
Percentage of Interstate Traffic, the rates on which could be controlled by joint action of Great Northern and Northern Pacific alone	2.89		
Percentage of Interstate Traffic, the rates on which could be controlled by joint action of Great Northern and Northern Pacific, with connecting lines	4.90		
Aggregate percentage of above two classes		7.79	3835
Percentage of Interstate Traffic, the rates on which could be controlled only by agreement with lines competing with Great Northern and Northern Pacific	2.58		
Percentage of Interstate Traffic, the rates on which could be controlled only by agreement both with lines competing with Great Northern and Northern Pacific, and with connecting lines	13.25		
Aggregate percentage of above two classes		15.83	
Percentage of Interstate Traffic moving between stations on Northern Pacific system, neither of which is reached by Great Northern lines		76.38	3836
		100.00	

NORTHERN PACIFIC RAILWAY COMPANY.

Statement of Freight and Passenger Earnings for Fiscal Year Ending June 30th, 1901.

The total Freight Tariff Earnings of the Northern Pacific Railway for the year ending June 30th, 1901, were $23,036,438.22.

The above earnings consist of: 3837

Local to State through which line passes	$7,955,094.34
Interstate	15,081,343.88

8838 **The Interstate Freight Earnings are made up as follows:**

		Per Cent.
1. Interstate business forwarded from and to towns where the Great Northern also has stations, but which towns can also be reached by other lines of railway	$305,166.60	2.02
2. Interstate business forwarded from and to towns reached by Great Northern and Northern Pacific Railways only	337,172.69	2.24
8839 3. Interstate business originating or terminating on connecting lines, carried via junctions common to both Northern Pacific and Great Northern Railways, and which was destined to, or forwarded from, towns on Northern Pacific Railway, that are reached by other lines of railway	2,125,502.37	14.10
4. Interstate business originating or terminating on connecting lines, carried via junctions common to both Northern Pacific and Great Northern Railways, and which was destined to, or forwarded from, towns reached by Northern Pacific and Great Northern Railways only	866,077.57	5.74
8840 5. Interstate business not included in above four subdivisions	11,447,424.65	75.90
Total	$15,081,343.88	100.00

The total Passenger Tariff Earnings of the Northern Pacific Railway for fiscal year ending June 30th, 1901, were $7,017,823.41.

The above earnings consist of:

Local to States through which line passes	$2,845,314.47
Interstate	4,172,508.94

8841

DEFENDANTS' EXHIBIT 7. 975

The Interstate Passenger Earnings are made up as follows: 3842

		Per Cent.	
1. Interstate business forwarded from and to towns where the Great Northern also has stations, but which towns can also be reached by other lines of railway	$191,865.45	4.60	
2. Interstate business forwarded from and to towns reached by Great Northern and Northern Pacific Railways only	217,222.55	5.21	
3. Interstate business originating or terminating on connecting lines, carried via junctions common to both Northern Pacific and Great Northern Railways, and which was destined to, or forwarded from, towns on Northern Pacific Railway that are reached by other lines of railway	425,486.35	10.20	3843
4. Interstate business originating or terminating on connecting lines, carried via junctions common to both Northern Pacific and Great Northern Railways, and which was destined to, or forwarded from, towns reached by Northern Pacific and Great Northern Railways only	76,896.20	1.84	
5. Interstate business not included in above four subdivisions	3,261,038.39	78.15	3844
Total	$4,172,508.94	100.00	

The total Tariff Earnings (Passenger and Freight) of the Northern Pacific Railway for fiscal year ending June 30th, 1901, were:

Local to States through which line passes	10,800,408.81
Interstate	19,253,852,82
Total Tariff Earnings	$30,054,261.63

3845

3846 The Interstate Earnings are made up as follows:

		Per Cent.
1. Interstate business forwarded from and to towns where the Great Northern also has stations, but which towns can also be reached by other lines of railway	$497,032.05	2.58
2. Interstate business forwarded from and to towns reached by Great Northern and Northern Pacific Railways only	554,395.24	2.89
3. Interstate business originating or terminating on connecting lines, carried via junctions common to both Northern Pacific and Great Northern Railways, and which was destined to, or forwarded from, towns on Northern Pacific Railway that are reached by other lines of railway	2,550,988.72	13.25
4. Interstate business originating or terminating on connecting lines, carried via junctions common to both Northern Pacific and Great Northern Railways, and which was destined to, or forwarded from, towns reached by Northern Pacific and Great Northern Railways only	942,973.77	4.90
5. Interstate business not included in above four subdivisions	14,708,463.04	76.38
Total	$19,253,852.82	100.00

3847

3848

St. Paul, Minn., October 23rd, 1902.

Correct:

HENRY A. GRAY,
Comptroller.

DEFENDANTS' EXHIBIT 8.

Data from Annual Reports of Roads Forming the Great Northern Railway System for the Years Ended June 30th, 1897 to 1901, Inclusive.

Item.	1897.	Year Ended June 30th— 1898.	1899.	1900.	1901.
Capital Stock Outstanding in Hands of Public:					
G. N. Ry. Co., page 17 of Report to I. S. C. Com.	$25,000,000.00	$25,000,000.00	$89,226,610.00	$98,413,500.00	$98,711,750.00
St. Paul, Minneapolis & Manitoba Ry. Co. (see note)	20,000,000.00	20,000,000.00	504,800.00	469,200.00	454,600.00
Funded Debt Outstanding in Hands of Public:					
G. N. Ry. Co., page 19 of Report to I. S. C. Com.	15,000,000.00	15,000,000.00	36,000.00	.....	.....
St. Paul, Minneapolis & Manitoba Ry. Co.	70,795,854.54	71,723,454.54	71,257,454.54	70,631,454.54	70,037,454.54
Proprietary companies	20,346,000.00	25,946,000.00	25,946,000.00	25,946,000.00	26,646,000.00
Total capitalization of system	$151,141,854.54	$157,669,454.54	$186,970,864.54	$195,460,154.54	$195,849,804.54
Mileage of system covered by above capitalization*	4,390.19	4,529.11	5,148.48	5,404.20	5,429.18
Great Northern Railway Co.:					
Net income, page 31 of Report to I. S. C. Com.	$2,457,267.23	$3,571,768.71	$5,638,225.72	$8,626,541.46	$6,897,369.07
Dividends	1,250,000.00	1,500,000.00	3,851,033.76	6,408,777.72	6,897,369.07
Surplus	$1,207,267.23	$2,071,768.71	$1,787,191.96	$2,217,763.74	.....

*In addition to this mileage, the capitalization covers a fleet of two passenger steamers (costing nearly $2,000,000), and six freight steamers (costing over $1,500,000), operating on the Great Lakes, between Buffalo, N. Y., and Duluth, Minn.

3852 3851 3850 3849

DEFENDANTS' EXHIBIT 8.

977

25532

DEFENDANTS' EXHIBIT 8—*Continued.*

EXPLANATORY NOTES.

Capital Stock of Great Northern Ry. Co.:

Original issue of 1890, from which there were acquired properties and securities to value of $21,839,523.90, as per statement given on page 16 of Report to Commission for the five months ended June 30, 1890 ..... $20,000,000.00

Page 39 of that report gives list of stocks acquired, and includes the entire outstanding capital stock of the

Eastern Railway Co. of Minnesota.
Montana Central Railway Co.,
Willmar & Sioux Falls Railway Co.,
Duluth, Watertown & Pacific Ry. Co.,
Minneapolis Union Railway Co., and
Northern Steamship Company,

from which it will appear that the $20,000,000 of Great Northern Railway stock above mentioned was the only stock in the hands of the public on the mileage of these companies.

During year ended June 30th, 1894, there was issued at par for cash, additional stock to amount of.. to pay for improvements, additional properties, etc. See pages 16-17 and 53 of Report to Commission for this year. 5,000,000.00

This accounts for the amount of capital stock shown as outstanding in hands of public June 30th, 1897 and 1898..... $25,000,000.00

DEFENDANTS' EXHIBIT 8—*Continued.*

EXPLANATORY NOTES.

1899: See page 53 of Report to Commission, for year ended June 30th, 1899.
The following stock was issued during the year and for the purposes mentioned:

To redeem $15,000,000 G. N. Ry. collateral trust bonds ..... (Shown on same page that $14,964,000 of these bonds had been redeemed June 30th, 1899. The balance were redeemed the following year, as shown by the report for that year.)	$15,000,000.00
To purchase the capital stock of the Seattle & Montana R. R. Co..... (From page 37 of same report, it will be seen that $12,499,550 of this stock had been acquired during the year at a cost of $9,999,640. The mileage of the Seattle & Montana R. R. is therefore covered by the amount of Great Northern Ry. stock outstanding.)	10,000,000.00
In exchange for 194,952 shares ($19,495,200) of the capital stock of the St. P., M. & M. Ry. Co. (See page 37 of Report.)	24,369,000.00
To purchase 75,000 shares of additional capital stock issued by the Eastern Railway Co. of Minn. ..... (See page 37 of Report.)	7,500,000.00
To purchase the securities of the Spokane Falls & Northern Ry. system. (See pages 36 and 37 of Report to Commission for year ended June 30, 1900. The mileage of the S. F. & N. system is therefore covered by the amount of G. N. Ry. stock outstanding.....	7,357,610.00
Total June 30th, 1899.....	$89,226,610.00

DEFENDANTS' EXHIBIT 8—*Continued.*

EXPLANATORY NOTES.

1900: See page 53 of Report to Commission for year ended June 30, 1900:

In exchange of 356 shares ($35,600) of the capital stock of the St. P., M. & M. Ry. Co.....	$44,500.00
To purchase securities of Spokane Falls & Northern Ry. system	142,390.00
To purchase 35,000 shares of additional capital stock issued by Eastern Ry. Co. of Minn.....	3,500,000.00
To purchase 55,000 shares of additional capital stock issued by Willmar & Sioux Falls Ry. Co. (Page 37 of Report for this year shows the acquisition of these additional securities.)	5,500,000.00
Total to June 30, 1900.....	$98,413,500.00

1901: See page 53 of Report for this year:

In exchange for 146 shares ($14,600) capital stock St. Paul, Minneapolis & Manitoba Ry. Co...	$18,250.00
Issued for cash at par for improvements, etc.....	280,000.00
Total June 30, 1901.....	$98,711,750.00

Capital Stock of St. Paul, Minneapolis & Manitoba Ry. Co.:

The amount entered for 1899 and subsequent years is the difference between the outstanding capital stock of this company, $20,000,000, as given on page 17 of its Report to the Commission each year, and the amount of that stock owned by the Great Northern Ry. Co., and acquired with its own capital stock, as shown on page 37 of the Report made to the Commission each year by the Great Northern Ry. Co.

Funded Debt of St. Paul, Minneapolis & Manitoba Ry. Co., Outstanding in Hands of Public:

The figures given may be verified by referring to page 19 of the reports made by the St. P., M. & M. Ry. Co. to the Commission for the year named, deducting in each case from the amount shown on that page the sum of $14,303,030.31, account of St. P., M. & M. Ry. Co.'s Pacific extension bonds owned by the Great Northern Ry. Co. During the years 1897 and 1898 these Pacific extension bonds were deposited as collateral security for the $15,000,000. Great Northern Ry. bonds shown. Since the payment of the Great Northern's bonds with proceeds of additional capital stock, as above explained, the St. P., M. & M. Ry. Pacific extension bonds have been free assets in the Great Northern treasury.

DEFENDANTS' EXHIBIT 8—*Continued.*

FUNDED DEBT OF PROPRIETARY COMPANIES OUSTANDING IN HANDS OF PUBLIC.

Items.	1897.	1898.	1899.	1900.	1901.
Eastern Ry. Co. of Minnesota:					
First Division, first mortgage	$4,700,000.00	$4,700,000.00	$4,700,000.00	$4,700,000.00	$4,700,000.00
Northern Division, first mortgage	.....	5,000,000.00	5,000,000.00	5,000,000.00	5,000,000.00
Montana Central Ry. Co.:					
First mortgage, 6 per cent	6,000,000.00	6,000,000.00	6,000,000.00	6,000,000.00	6,000,000.00
First mortgage, 5 per cent	2,700,000.00	3,300,000.00	3,300,000.00	3,300,000.00	4,000,000.00
Willmar & Sioux Falls Ry. Co.:					
First mortgage	3,646,000.00	3,646,000.00	3,646,000.00	3,646,000.00	3,646,000.00
Minneapolis Union Ry. Co.:					
First mortgage, 6 per cent	2,150,000.00	2,150,000.00	2,150,000.00	2,150,000.00	2,150,000.00
First mortgage, 5 per cent	650,000.00	650,000.00	650,000.00	650,000.00	650,000.00
Minneapolis Western Ry. Co.:					
First mortgage	500,000.00	500,000.00	500,000.00	500,000.00	500,000.00
Totals	$20,346,000.00	$25,946,000.00	$25,946,000.00	$25,946,000.00	$26,646,000.00

The above figures may be verified by reference to the reports made by the several companies named, to the Commission for the years shown by the column headings.

255534

DEFENDANTS' EXHIBIT 8—*Continued.*

MILEAGE OF SYSTEM COVERED BY CAPITALIZATION.

Company.	1897.	1898.	1899.	1900.	1901.
St. Paul, Minneapolis & Manitoba Ry. Co....	3,779.87	3,813.90	3,816.12	3,814.41	3,802.98
Eastern Ry. Co. of Minnesota.....	72.39	172.33	412.92	410.95	457.31
Duluth Terminal Ry. (entire stock and bonds of this company owned by Eastern Ry. Co. of Minnesota).....	1.78	1.78	1.78	1.78	1.82
Montana Central Ry. Co.....	256.74	261.69	261.95	261.95	260.51
Willmar & Sioux Falls Ry. Co.....	205.25	205.25	205.25	433.41	433.41
Duluth, Watertown & Pacific Ry. Co.....	69.84	69.84	69.84	69.84	69.84
Minneapolis Union Ry. Co.....	2.63	2.63	2.63	2.63	2.63
Minneapolis Western Ry. Co. (entire capital stock of this company purchased by Great Northern Ry. Co. for cash, and such stock will be found entered on page 37 of the Report made by the G. N. Ry. Co. to the Commission for each of these years)	1.69	1.69	1.69	1.69	1.69
Seattle & Montana R. R. Co.....	.....	.....	159.10	151.39	146.92
Spokane Falls & Northern Ry. system.....	.....	.....	217.20	207.11	203.03
Park Rapids & Leech Lake Ry. Co. (entire stock and bonds of this company owned by E. Ry. Co. of Minn.).....	.....	.....	.....	49.04	49.04
Totals	4,390.19	4,529.11	5,148.48	5,404.20	5,429.18

Note.—There is no defendants' Exhibit 9 in the case.

FREDK. G. INGERSOLL,
Special Examiner.

3873

3874 [Defendants' Exhibit 10.]

INTERSTATE COMMERCE COMMISSION.

Washington, November 3, 1902.

Hon. John W. Griggs,
27 Pine St.,
New York, N. Y.

Dear Sir: Your request for certified copies of designated parts of annual reports by certain carriers to the Interstate Commerce Commission has been considered, and it is deemed
3875 that compliance therewith would be incompatible with the established rule and practice of the Commission based upon what it believes to be considerations in the interest of the public service and a due regard for the rights and interests of the carriers required under the law to make such reports, and must therefore be denied.

Very respectfully,

JUDSON C. CLEMENTS,
Commissioner.

Note.—Defendants' Exhibits 11, 12, 13, 14, 15, and 16 are maps of different lines of railway, and will be found in Volume 4 of this record.

FREDK. G. INGERSOLL,
Special Examiner.

3876

[Defendants' Exhibit 17.]

GREAT NORTHERN PREFERRED STOCK.

Highest and lowest prices in each month from January, 1901, to November, 1902, inclusive.

Month.	PRICE.		Authority.
	Low.	High.	
3877 1901.			
January	188	200	The Financial Review. Annual—1902, page 119. Published by Wm. B. Dana Company.
February	189	194⅞	
March	194	208	
April	179	203½	
May	167½	191½	
June	184¼	187	
July	172	186	
August	173	188	
September	179	189½	
October	183	196¾	
November	192½	202½	
December	181	192	
3878 1902.			
January	183	191	Quotation Supplement C. & F. Chronicle, Feb. 8, 1902, page 32.
February	183½	190½	Quotation Supplement C. & F. Chronicle, March 8, 1902, page 32.
March	181½	187	Quotation Supplement C. & F. Chronicle, April 5, 1902, page 34.
April	184½	187¾	Quotation Supplement C. & F. Chronicle, May 3, 1902, page 34.
		Ex. Div.	
May	182	186	Quotation Supplement C. & F. Chronicle, June 7, 1902, page 34.
June	184	190⅛	Quotation Supplement C. & F. Chronicle, July 5, 1902, page 34.
July	186⅜	195	Quotation Supplement C. & F. Chronicle, Aug. 2, 1902, page 34.
3879		Ex. Div.	
August	191	198	Quotation Supplement C. & F. Chronicle, Sept. 6, 1902, page 34.
September	190	202¼	Quotation Supplement C. & F. Chronicle, Oct. 4, 1902, page 34.
October	182	195	Quotation Supplement C. & F. Chronicle, Nov. 8, 1902, page 34.

Note.—Defendants' Exhibits 18-A, 18-B, 18-C, 18-D and 18-E are extracts from Poor's Manual of Railways, and will be found in Volume 4 of this record.

FREDK. G. INGERSOLL,
Special Examiner.

3880 [Defendants' Exhibit 19.]

MASSACHUSETTS.

Chap. 201, L. 1887.

"An act to authorize the sale to the New York & New England Railroad Company of the Springfield & New London Railroad, and of certain property of the Boston & Albany Railroad Company, in Springfield."

Chap. 399, L. 1898.

3881 "An Act to authorize the New England Railroad Company to lease its railroad to the New York, New Haven & Hartford Railroad Company."

MAINE.

Chap. 223, Laws of Maine, 1883.

"An Act to ratify the contract between the Eastern and Portland, Saco and Portsmouth Railroad Companies, dated May 4, 1871, and all contracts additional and supplemental
3882 thereto." Sp. L.

Chap. 268, L. 1887.

"An Act relating to the Boston & Maine Railroad."

NEW JERSEY.

Chap. XLI (41), Priv. Laws 1887 (p. 287).

"An Act granting the consent of the legislature to the assignment to the West Shore Railroad Company of a lease of a
3883 railroad and franchises made by the North River Railroad Company to the New York, Ontario & Western Railway Company."

Chap. L (50), Priv. L. 1887 (p. 288).

"An Act granting the consent of the legislature to the leasing of the railroad and franchises of the West Shore Railroad Company to the New York Central & Hudson River Railroad Company."

Note:—Defendants' Exhibits 20, 20-A, 20-B, 20-C, 20-D, 20-E, 20-F, 20-G, 20-H, 20-I, 20-J, 20-K and 20-L are excerpts from Interstate Commerce Commission Reports, and will be found in volume 4 of this record.

FREDK G. INGERSOLL,
Special Examiner.

3884

[Defendants' Exhibit 21.]

MEMORANDUM

Showing principal changes in freight tariffs on Great Northern Railway system, in the years 1901 and 1902, to date.

No. 1. *G. N. Ry. G. F. O. No. 7,610.*

3885

Great Northern Ry.
Duluth, Watertown & Pacific Ry.

Effective Jan. 25, 1902.

Between St. Paul and Minneapolis and 410 stations on said roads, in Minnesota, North Dakota and South Dakota. Makes reductions ranging from 5 to 20 per cent in rates on all classes of merchandise, taking class rates. Average reductions about 10 per cent.

No. 2. *G. N. Ry. G. F. O. No. 7,610.*

3886

Great Northern Ry.
Duluth, Watertown & Pacific Ry.

Effective Jan. 25, 1902.

Distance Tariff,

Between all stations on said roads in Minnesota, North Dakota and South Dakota. To apply where terminal tariffs do not produce lower rates. Makes reductions ranging from 5 to 20 per cent in rates on all classes of merchandise taking class rates. Average reduction about 10 per cent.

3887

No. 3. *G. N. Ry. G. F. O. No. 7,620.*

Great Northern Ry.
Eastern Railway of Minnesota.
Duluth, Watertown & Pacific Ry.

Effective Jan. 25, 1902.

Between Duluth and West Superior, and about 377 stations in Minnesota, North Dakota and South Dakota. Makes reduc

tions ranging from 5 to 20 per cent in rates on all classes of merchandise taking class rates. Average reduction, about 10 per cent. 3888

No. 4. *G. N. Ry. G. F. O. No. 7,630.*

W. & S. F. Ry. G. F. O. No. 796.

Willmar & Sioux Falls Ry.
Great Northern Ry.
Duluth, Watertown & Pacific Ry.
Eastern Ry. of Minnesota.

Effective Jan. 25, 1902. 3889

Between Sioux City, Iowa and Sioux Falls, South Dakota, and about 225 stations in Minnesota, North Dakota, South Dakota, and Wisconsin. Makes reductions ranging from 1 to 12 per cent in rates on all classes of merchandise taking class rates. Average reduction about six per cent.

No. 5. *G. N. Ry. G. F. O. No. 7,963.*

Great Northern Ry.
Willmar & Sioux Falls Railway.
Duluth, Watertown & Pacific Ry. 3890
Montana Central Ry.
Butte, Anaconda & Pacific Ry.

In connection with 24 connecting railways. Between Chicago and other points in the middle territory and points in Montana and eastern Washington. Makes reductions ranging from 3 to 70 per cent in about 30 commodities therein specified. Increases rates on gun powder and high explosives.

No. 6.	G. N. Ry.	G. F. O.	No. 8,724	Oct.	27, 1902	
	"	"	" 8,692	"	24, "	
	"	"	" 8,605	Sept.	30, "	3891
	"	"	" 8,551	"	18, "	
	"	"	" 8,484	"	12, "	
	"	"	" 8,283	Aug.	13, "	
	"	"	" 8,225	"	1, "	
	"	"	" 8,175	July	19, "	
	"	"	" 8,101	"	8, "	

3892 No. 6--Cont'd.

G. N. Ry.	G. F. O.	No. 7,993	June 23,	1902
"	"	" 7,986	" 20,	"
"	"	" 7,929	" 2,	"
"	"	" 7,858	May 24,	"
"	"	" 7,348	Oct. 19,	1901

Make reductions ranging from 3 to 50 per cent on a large number of specified commodities moving between stations on most parts of the system.

3893 *No. 7.* *G. N. Ry. G. F. O. No. 8,300.*

Great Northern Ry.
Duluth, Watertown & Pacific Ry.

Effective, August 28, 1902.

To St. Paul, Minneapolis, Duluth and West Superior, from about 416 stations in Wisconsin, Minnesota, North Dakota and South Dakota. Makes reductions in wheat, flax, millet, and other grains and flour, ranging from 6 to 18 per cent. Average reduction about 10 per cent.

3894 *No. 8.* *G. N. Ry. G. F. O. No. 8,301.*

W. & S. F. Ry. G. F. O. No. 1,167.

Effective August 28, 1902.

To St. Paul, Minneapolis, Duluth and West Superior, from about 60 stations on the Willmar & Sioux Falls Railway. Makes reductions in rates on flax-seed, grain, flour, and mill-stuffs, averaging about 6 per cent.

No. 9. *G. N. Ry. G. F. O. No. 8,192.*

3895 Great Northern Ry.

Effective, Aug. 23, 1902.

To Seattle from about 46 stations, Spokane to Lowell, in state of Washington, inclusive. Makes reductions averaging about 10 per cent on grain of all kinds, flour, feed, mill-stuffs, flax-seed, potatoes, onions and hay.

No. 10. *G. N. Ry. G. F. O. No. 8,567.* 3896

Great Northern Ry.
Willmar & Sioux Falls Ry.

Effective, Oct. 16, 1902.

Reduces rates on wheat, barley, flax-seed and flour, from stations on Gt. Northern, Wenatchee to Spokane, inclusive (26 stations) to Sioux City and other G. N. Eastern terminals, from 10 to 45 per cent. Average reduction about 30 per cent.

No. 11. *G. N. Ry. G. F. O. No. 7,588.* 3897

Amendment, Feb. 15, 1902.

Great Northern Ry.
Seattle & Montana Railway.

Reduction about 10 per cent on grain, flax-seed, flour and mill-stuffs, between stations, Old Mission to Spokane, inclusive (27 stations) and stations on Coast lines, north of Everett (16 stations.)

No. 12. *G. N. Ry. G. F. O. No. 7,676.* 3898

Great Northern Ry.
Duluth, Watertown & Pacific Ry.

Effective, March 7, 1902.

Makes reductions on stock cattle, from St. Paul and Minneapolis, to about 285 stations in Minnesota, North Dakota and South Dakota, averaging about 25 per cent.

No. 13. *G. N. Ry. G. F. O. No. 7,710.* 3899

Great Northern Ry.
Willmar & Sioux Falls Ry.
Duluth, Watertown & Pacific Ry.

Effective, May 29, 1902.

Makes reductions on cattle to Sioux City and Sioux Falls, from about 230 stations in Minnesota, North Dakota, and South Dakota, averaging about 10 per cent.

3900 *No. 14.* *G. N. Ry. G. F. O. No. 2,359.*

Amendment No. 4, Jan. 1, 1901.

Great Northern Ry.
Willmar & Sioux Falls Ry.
Montana Central Ry.
Butte, Anaconda & Pacific Ry.

Reduces rates on live-stock from St. Paul, Minneapolis, Duluth and West Superior, to about 65 stations in Montana, about 25 per cent.

3901 *No. 15.* *G. N. Ry. G. F. O. No. 8,180.*

Great Northern Ry.
Willmar & Sioux Falls Ry.

Effective, July 27, 1902.

Makes reductions on lime, mortar, cement and similar articles, from Duluth and West Superior to stations on Willmar & Sioux Falls Railway (55 stations) amounting to about 10 per cent.

No. 16. *G. N. Ry. G. F. O. No. 7,465.*

3902

Great Northern Ry.
Duluth, Watertown & Pacific Ry.

Effective Nov. 25, 1901.

Distance tariff, between all stations on G. N. Ry. in Montana, Idaho and Washington, and between stations in said states and stations on said railway in Minnesota, North Dakota or South Dakota, on brick, sand or stone. Makes reductions averaging about 35 per cent.

[Defendants' Exhibit 22.] 3903

MEMORANDUM

Showing principal changes in freight tariffs on Northern Pacific Railway System in the years 1901 and 1902, to date.

No. 1. *Northern Pacific Ry. No. 9,600.*

Effective January 25, 1902.

Makes average reductions of rates on all classes of merchandise, taking class rates, between Eastern terminals, viz., St. Paul, Minneapolis, Stillwater, Duluth, West Superior and Superior, and about 350 stations in Minnesota and North Dakota, of about 10 per cent. 3904

No. 2. *Northern Pacific Ry. No. 9,601.*

Effective January 25, 1902.

Distance tariff between stations on N. P. Ry. in Wisconsin, Minnesota and North Dakota, and a part of Eastern Montana.

Makes average reduction of about 10 per cent on all classes of merchandise taking class rates.

No. 3. *Northern Pacific Ry. No. 10,800.* 3905

Effective August 28, 1902.

Makes reductions in rates on grain, flax-seed, flour, mill-stuffs, millet-seed, oil-cake, and oil-meal, from about 260 points in Minnesota, North Dakota and Montana, to St. Paul, Minneapolis, Stillwater, Duluth, West Superior and Superior, averaging about 8 per cent.

No. 4. *Northern Pacific Ry. No. 10,945.*

Effective September 20, 1902. 3906

Makes reductions in rates on grain, flax-seed, flour, mill-stuffs, potatoes, onions and hay, from about 170 stations in Idaho, Washington and Oregon, to Portland, Tacoma, Seattle, and other Pacific Coast points, averaging about 10 per cent.

No. 5. *Northern Pacific Ry. No. 10,722.*

Effective August 15, 1902.

Makes reductions on grain, mill-feed, potatoes and flour, to Eastern terminal points, and points in Iowa, Illinois, Kansas

3907 and Nebraska, from about 35 points in Idaho, Washington and Oregon, averaging about 9 per cent.

No. 6. *Northern Pacific Ry.*

Amendment to No. 1, L. C. C. No. A-1617.
Effective June 26, 1902.

Makes reductions on hides, sheep-pelts, etc., from about 30 points in North Dakota, Montana, Idaho, Washington and Oregon, to Eastern terminals, averaging about 10 per cent.

No. 7. *Northern Pacific Ry. No. 9,233.*

3908 Effective October 31, 1901.

Makes reductions on hides, sheep-pelts, etc., from 8 points in Washington to Portland, averaging about 10 per cent.

No. 8. *Northern Pacific Ry. No. 10,331.*
Effective June 12, 1902.

Makes reductions on butter and eggs to Chicago, from about 25 points in Minnesota and North Dakota to Chicago, amounting to about 8 per cent.

No. 9. *Northern Pacific Ry. No. 11,004.*

3909 Reissue, October 1, 1902, of Special Joint Tariff,
Effective July 18, 1901.

Makes reductions on live-stock between Tacoma or Seattle and 23 points in Idaho and Montana, averaging about 15 per cent.

No. 10. *Northern Pacific Ry. No. 9,280.*
Effective October 28, 1901.

Makes reductions in rates on lumber and other forest products, from Portland, Tacoma, and other Pacific Coast points,
3910 to about 190 points in Montana, Wyoming, South Dakota, Nebraska, and Colorado, and the Burlington system, averaging, in the majority of instances, 20 per cent.

No. 11. *Northern Pacific Ry. No. 9,811.*

Distance tariff in Montana on lumber, lath and shingles.

Makes reductions in rates on above commodities, for distances of 130 to 730 miles, averaging about 10 per cent.

No. 12. *Northern Pacific Ry. No. 10,451.* 3911

Effective July 17, 1902.

Makes reductions in rates on coal and coke, from producing and shipping points in Oregon and Washington to about 80 points in the state of Washington, averaging about 30 per cent.

No. 13. *Northern Pacific Ry. No. 10,954.*

Effective September 22, 1902.

Makes reductions on ores from 12 points in Idaho, to Leadville, Denver and Pueblo, averaging about 25 per cent. 3912

No. 14. *Northern Pacific Ry. No. 10,953.*

Effective September 22, 1902.

Makes reductions on ores from 5 points in Idaho to Helena, averaging about 30 per cent.

No. 15. *Northern Pacific Ry. No. 10,445.*

Effective July 3, 1902.

Distance tariff on sand, clay, brick and stone.

Makes reductions on above commodities, on distance 400 to 600 miles, averaging about 10 per cent. 3913

No. 16. *Northern Pacific Ry. No. 10,058.*

Effective May 1, 1902.

Makes reductions on coal and coke, from Eastern terminals to 10 smelting points in Montana, averaging about 25 per cent.

No. 17. *Northern Pacific Ry. No. 9,543.*

Effective January 24, 1902.

Makes reductions on fruits from producing points in Washington to numerous other points in that state, averaging about 10 per cent. 3914

No. 18. *Northern Pacific Ry. No. 9,230.*

Effective October 28, 1901.

Commodity Tariff.

Reduces domestic dry goods, between stations in Minnesota and North Dakota, from second to third class.

3915

[Defendants' Exhibit 23.]

Office of the Comptroller,

St. Paul, Minnesota, September 10, 1901.

CHARLES S. MELLEN, ESQ.,

President Northern Pacific Railway Company.

Dear Sir: The results of operation of the Northern Pacific Railway Company for the fiscal year ending June 30, 1901,
3916 compared with those of the year ending June 30, 1900, were as follows:

	Year Ending June 30, 1900.	Year Ending June 30, 1901.	Increase.	Decrease.
Gross earnings	$30,021,317.72	$32,560,983.58	$2,539,665.86	
Operating expenses	14,394,628.31	16,640,143.57	2,245,515.26	
Net earnings	$15,626,689.41	$15,920,840.01	$294,150.60	
Less taxes	850,590.09	920,352.00	69,761.91	
Leaving	$14,776,099.32	$15,000,488.01	$224,388.69	
Add dividends and interest on securities owned and interest
3917 on deposits	685,521.30	743,786.90	58,265.60	
Revenue available for interest and dividends	$15,461,620.62	$15,744,274.91	$282,654.29	
Deduct:				
Interest on bonds	$5,864,950.00	$6,396,681.25	$530,731.25	
Rental of leased lines	112,851.86	134,690.12	21,838.26	
Dividends on Preferred Stock	3,000,000.00	3,000,000.00		
Dividends on Common Stock	2,400,000.00	3,200,000.00	800,000.00	
Total	$11,377,801.86	$12,730,371.37	$1,352,569.51	
Surplus for year	$4,083,818.76	$3,013,903.54		$1,069,915.22
Surplus from preceding year	1,420,986.09	2,504,804.85	$1,083,818.76	
Total Surplus	$5,504,804.85	$5,518,708.39	$13,903.54	
Less amount appropriated from income for additions and betterments of existing lines, etc.	3,000,000.00	2,011,285.00		$988,715.00
3918 Net Surplus	$2,504,804.85	$3,507,423.39	$1,002,618.54	

The usual balance sheet and statistical tables will be found appended hereto.

All of which is respectfully submitted.

HENRY A. GRAY,
Comptroller.

(Page 45 of Report.)

INCOME ACCOUNT.

FOR THE FISCAL YEAR ENDING JUNE 30, 1901.

Dr. To			Cr. By		
Operating Expenses:			Balance to credit of profit and loss June 30, 1900, as per annual report		$2,504,804.85
Maintenance of way and structures	$5,249,067.98		Gross Earnings:		
Maintenance of equipment	2,455,823.11		Freight	$23,481,713.13	
Conducting transportation	8,061,716.65		Passenger	7,247,000.22	
General expenses	873,535.83		Mail, express and miscellaneous	1,832,270.23	
		$16,640,143.57			32,560,983.58
Taxes:			Dividends and interest on securities owned, and interest on deposits		743,786.90
State and county	$896,123.56				
Revenue stamp tax	24,228.44				
		920,352.00			
Interest and Rentals:					
Interest on mortgage debt.	$6,395,681.25				
Rental of leased lines	134,690.12				
		6,530,371.37			
Dividends:					
Nos. 13, 14, 15 and 16 on preferred stock	$3,000,000.00				
Nos. 6, 7, 8 and 9 on common stock	3,200,000.00				
		6,200,000.00			
					$35,809,575.33
Appropriation for improvements, etc.		2,011,285.00			
Balance		3,507,423.39	By balance carried to the credit of profit and loss, as shown by the balance sheet of this date		$3,507,423.39
		$35,809,575.33			

We certify the above Income Account to be correct.

New York, September 16, 1901.

PRICE, WATERHOUSE & CO., Auditors.

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DEFENDANTS' EXHIBIT 23.

999

NORTHERN PACIFIC RAILWAY COMPANY.

GENERAL BALANCE SHEET, JUNE 30, 1901.

CAPITAL ASSETS.

NORTHERN PACIFIC ESTATE:		
Balance to debit of this account June 30, 1900		$290,999,678.48
To which add:		
New mileage constructed and purchased since June 30, 1900		2,515,350.13
Real estate purchased since June 30, 1900		477,781.43
		$293,992,810.04
Less:		
Net proceeds of Land Department	$3,141,854.43	
Sale of other lands	14,970.00	
Value of roads and appurtenances leased to Province of Manitoba	6,812,512.94	
Seattle & International Railway Equipment (see below)	154,490.00	
Profit and premium on sale and exchange of securities	157,721.72	
		10,281,549.09
		$283,711,260.95
EQUIPMENT:		
Balance to debit of this account June 30, 1900	$17,163,139.33	
New Equipment (purchased out of Betterment and Enlargement Fund since June 30, 1900)	2,794,247.75	
Seattle & International Railway Equipment (see above)	154,490.00	
	$20,111,877.08	
Less equipment leased to Province of Manitoba	157,034.00	
		19,954,843.08
PROPERTY LEASED TO PROVINCE OF MANITOBA:		
Value of roads and appurtenances	$6,812,512.94	
Value of equipment	157,034.00	
Value of material and supplies	30,453.06	
		7,000,000.00
CASH IN HANDS OF TRUSTEES OF SINKING FUNDS		952,943.74
SECURITIES IN HANDS OF TRUSTEE of St. Paul-Duluth Division Bonds as collateral		3,217,128.51
	Total	**$314,836,176.28**

CAPITAL LIABILITIES.

CAPITAL STOCK:			
Preferred		$75,000,000.00	
Common		80,000,000.00	
			$155,000,000.00
MORTGAGE DEBT:			
Prior Lien Bonds	$96,127,000.00		
Less Bonds Canceled	1,282,500.00		
		$94,844,500.00	
General Lien Bonds		56,000,000.00	
St. Paul-Duluth Division Bonds		8,708,000.00	
			159,552,500.00
Capital Liabilities Issued			**$314,552,500.00**
Prior Lien Bonds Available for Cash Fund; to be issued			5,000,000.00
Indebtedness of other Companies, assumed by the Northern Pacific Railway Company:			
St. Paul & Northern Pacific Railway Company General Mortgage Bonds		$8,021,000.00	
Western Railroad of Minnesota First Mortgage Bonds		352,000.00	
St. Paul & Duluth Railroad First Mortgage Bonds		1,000,000.00	
St. Paul & Duluth Railroad Second Mortgage Bonds		2,000,000.00	
St. Paul & Duluth Railroad First Mortgage Consolidated Bonds		1,000,000.00	
Taylor's Falls & Lake Superior Railroad Bonds (guaranteed by St. Paul & Duluth R. R. Co)		210,000.00	
Duluth Short Line Railway Bonds (guaranteed by St. Paul & Duluth Railroad Company)		500,000.00	
Stillwater & St. Paul Railroad Bonds (matured but not presented for payment)		2,500.00	
St. Paul & Duluth Railroad Company Car Trust Notes		287,789.28	
Capital Liabilities Assumed			**13,373,289.28**
		Total	**$332,925,789.28**

(From Pages 47-48 of Report.)

(From Pages 47-48 of Report.)

CURRENT ASSETS.

CASH ASSETS:			
Cash on hand and in banks, including $3,000,000.00 reserved for continuity of dividends on Preferred Stock		$10,680,928.35	
Accounts Receivable $2,220,086.50			
Bills Receivable..... 38,613.54			
	$2,258,700.04		
Material on hand.....	2,651,252.90		
		4,909,952.94	
TREASURY SECURITIES.....		8,493,304.00	
BETTERMENT AND ENLARGEMENT FUND ASSETS:			
Cash in hands of Treasurer.....	$185,160.48		
"Cash Fund" in hands of Trustee	15,110.90		
Bonds due "Cash Fund" to be issued	5,000,000.00		
		5,200,271.38	
INSURANCE FUND ASSETS:			
Cash	$68,627.23		
$811,000 Northern Pacific Railway Company General Lien 3 per cent bonds valued at....	487,513.20		
Interest accrued on same.....	4,055.00		
Reinsurance unexpired.....	18,130.85		
	$578,326.28		
Less amount due on adjusted claims	3,239.60		
		575,086.68	
LAND DEPARTMENT:			
Balance of Land Department's Current Assets		3,749,675.45	
		Total	**33,609,218.80**

CURRENT LIABILITIES.

PAY ROLLS, MATERIAL VOUCHERS AND MISCELLANEOUS ACCOUNTS		$4,125,114.50	
TAXES ACCRUED ON RAILROADS (partly estimated)		579,162.71	
INTEREST ON MORTGAGE DEBT:			
Accrued	$520,821.67		
Matured, including interest due July 1, 1901.....	1,034,678.75		
		1,555,500.42	
DIVIDENDS UNPAID:			
Common Stock No. 9, payable August 5, 1901.....	$800,000.00		
Preferred Stock No. 16, payable September 5, 1901.....	750,000.00		
Unpaid dividends St. Paul & Duluth Railroad Company....	2,043.50		
		1,552,043.50	
RESERVE FUNDS:			
For improvements and for replacement of equipment and other property, etc		347,945.47	
		Total	**8,159,766.60**

CONTINGENT LIABILITIES.

SPECIAL RESERVE from "Surplus Revenue" (as stated below) to insure continuity of dividends on Preferred Stock.....	$3,000,000.00	
INSURANCE FUND.....	575,086.68	
LIQUIDATION FUND:		
Reserve for possible liabilities in connection with purchase of property of Northern Pacific R. R. Co. and St. Paul & Duluth Railroad Company	277,329.13	
	Total	**3,852,415.81**

SURPLUS REVENUE.

PROFIT AND LOSS:		
Excess of earnings and miscellaneous income over operating expenses, taxes, etc., rentals, interest on mortgage debt and dividends on stock from September 1, 1896, to June 30, 1901.....	$6,507,423.39	
Less special reserve for dividends on Preferred Stock, as above.....	3,000,000.00	
	Total	**3,507,423.39**
		$348,445,395.08

$348,445,395.08

New York, Sept. 16, 1901. We certify the above Balance Sheet to be correct. PRICE, WATERHOUSE & CO., Auditors.

DEFENDANTS' EXHIBIT 23.

1001

PASSENGER, FREIGHT AND MISCELLANEOUS STATISTICS.

	June 30, 1900.	June 30, 1901.
Average Mileage for the Year.....	4,714.19	5,100.14

	1899-1900.		1900-1901.		Increase.	Per Cent.	Decrease.
	Passengers, Miles, Tons, Cars, etc.	Amount, Rate, etc.	Passengers, Miles, Tons, Cars, etc.	Amount, Rate, etc.			
PASSENGER TRAFFIC.							
Number of passengers carried	2,342,785		3,298,722		955,937	40.80	
Number of passengers carried one mile	255,680,585		308,819,605		53,139,020	20.78	
Average miles traveled by each passenger	109.1		93.6			14.21	15.5
Tariff passenger earnings		$6,006,155.76		$7,017,823.41	$1,011,667.65	16.84	
Other passenger department earnings		1,357,789.69		1,462,965.32	105,175.63	7.75	
Total passenger department earnings		7,363,945.45		8,480,788.73	1,116,843.28	15.17	
Average amount paid by each passenger		2.56		2.13		16.80	.43
Average rate per passenger per mile		.0235		.0227		3.40	.0008
Passenger earnings per mile of road (average mileage)		1,562.08		1,662.85	100.77	6.45	
Passenger earnings per train mile		1.6586		1.4226		14.28	.2360
FREIGHT TRAFFIC.							
No. tons of revenue freight carried	7,121,655		8,792,885		1,671,230	23.47	
No. tons revenue freight carried one mile	2,205,317,271		2,440,662,665		235,345,394	10.67	
Average distance haul of one ton	309.6		277.6			10.24	32.0
Tariff freight earnings		21,783,904.19		23,036,438.22	$1,252,534.03	5.75	
Other freight earnings		356,275.59		445,274.91	88,999.32	24.98	
Total freight earnings		22,140,179.78		23,481,713.13	1,341,533.35	6.06	
Average receipts from each ton revenue freight		3.06		2.62		14.38	.44
Average receipts per ton per mile revenue freight		.00988		.00944		4.45	.00044
Total freight earnings per road mile (average mileage)		4,696.50		4,604.13		1.97	92.37
Total freight earnings per train mile		3.1892		3.1208		2.14	.0684

(From Page 56 of Report.)

PASSENGER AND FREIGHT.							
Passenger and freight earnings		29,504,125.23		31,962,501.86	2,458,376.63	8.33	
Other earnings		517,192.49		598,481.72	81,289.23	15.72	
Gross earnings from operation		30,021,317.72		32,560,983.58	2,539,665.86	8.46	
Gross earnings from operation per road mile (average)		6,368.29		6,384.33	16.04	.25	
Operating expenses		14,394,628.31		16,640,143.57	2,245,515.26	15.60	
Operating expenses per road mile (average)		3,053.47		3,262.68	209.21	6.85	
Ratio of operating expenses to earnings	47.9%		51.1%		3.2%		
TRAIN AND CAR MILEAGE.*							
Mileage of revenue passenger trains	3,549,206		4,930,530		1,381,324	38.92	
Mileage of locomotives employed in "helping" passenger trains	87,243		112,128		24,885	28.52	
Percentage of "helping" to revenue train mileage	2.46%		2.27%			7.72	.19%
Mileage of revenue mixed trains	888,255		1,030,766		142,511	16.04	
Mileage of revenue freight trains	6,053,981		6,493,499		439,518	7.26	
Mileage of locomotives employed in "helping" mixed and freight trains	1,088,193		1,121,698		33,505	3.08	
Percentage of "helping" to revenue train mileage	15.67%		14.91%			4.85	.76%
Total revenue train mileage	10,491,442		12,454,795		1,963,353	18.71	
Mileage of non-revenue trains	1,698,883		1,396,909			17.77	301,974
Mileage of passenger cars	29,047,146		38,260,532		9,213,386	31.72	
Average No. of passenger cars in train	6.55		6.42			1.98	.13
Average No. of passengers in train	57.62		51.80			10.10	5.82
Average No. of passengers in each car	8.80		8.07			8.30	.73
Mileage of loaded freight cars	164,314,552		172,507,657		8,193,105	4.99	
Mileage of empty freight cars	61,486,451		63,773,435		2,286,984	2.72	
Mileage of loaded and empty freight cars	225,801,003		236,281,092		10,480,089	4.64	
Average No. of loaded freight cars in train	23.67		22.93			3.13	.74
Average No. of empty freight cars in train	8.86		8.47			4.40	.39
Average No. of freight cars in train	32.53		31.40			3.47	1.13
Percentage of empty cars to total cars in train	27.23		26.99			.38	.24
Average No. tons revenue freight in train	317.67		324.37		6.70	2.11	
Average No. tons revenue freight in each loaded car	13.42		14.15		.73	5.44	
Company freight, tons carried	1,818,389		1,996,543		177,654	9.77	
Company freight, tons one mile	424,496,639		424,121,218			.09	375,421
Tons per train, company and commercial	378.81		380.74		1.93	.51	
Tons per loaded car, company and commercial	16.00		16.61		.61	3.81	

*The train and car mileage statistics shown above have been prepared in accordance with the rules recently adopted by the Interstate Commerce Commission, and state railroad commissions, the figures for last year being revised for purpose of comparison.

(From Page 56 of Report.)

255449

3939 [Defendants' Exhibit 24.]

Office of the Comptroller,

St. Paul, Minnesota, September 24, 1902.

CHARLES S. MELLEN, ESQ.,

President Northern Pacific Railway Company.

Dear Sir: The results of operation of the Northern Pacific Railway Company for the fiscal year ending June 30, 1902, compared with those of the year ending June 30, 1901, were as follows:

3940

	Year Ending June 30, 1901.	Year Ending June 30, 1902.	Increase.	Decrease.
Gross earnings	$32,560,983.58	$41,387,379.71	$8,826,396.13	
Operating expenses	16,640,143.57	21,288,413.88	4,648,270.31	
Net earnings	$15,920,840.01	$20,098,965.83	$4,178,125.82	
Less taxes	920,352.00	1,149,890.32	229,538.32	
Leaving	$15,000,488.01	$18,949,075.51	$3,948,587.50	
Add dividends and interest on securities owned and interest on deposits	743,786.90	843,765.04	99,978.14	
Revenue available for interest and dividends	$15,744,274.91	$19,792,840.55	$4,048,565.64	
3941 *Deduct:*				
Interest on bonds	$6,395,681.25	$6,624,865.83	$229,184.58	
Rental of leased lines	134,690.12	120,742.54		$13,947.58
Dividends on Preferred Stock	3,000,000.00	1,500,000.00		1,500,000.00
Dividends on Common Stock	3,200,000.00	6,999,946.00	3,799,946.00	
Totals	$12,730,371.37	$15,245,554.37	$2,515,183.00	
Surplus for year	$3,013,903.54	$4,547,286.18	$1,533,382.64	
Surplus from preceding year	2,504,804.85	3,507,423.39	1,002,618.54	
Total Surplus	$5,518,708.39	$8,054,709.57	$2,536,001.18	
Less amount appropriated from income for additions and betterments of existing lines, etc.	2,011,285.00	3,000,000.00	988,715.00	
	$3,507,423.39	$5,054,709.57	$1,547,286.18	
Add amount reserved for dividends on Preferred Stock June 30, 1898, restored to surplus		3,000,000.00	3,000,000.00	
3942 Net Surplus	$3,507,423.39	$8,054,709.57	$4,547,286.18	

The usual balance sheet and statistical tables will be found appended hereto.

All of which is respectfully submitted.

HENRY A. GRAY,
Comptroller.

(From Page 37 of Report.)

INCOME ACCOUNT.

FOR THE FISCAL YEAR ENDING JUNE 30, 1902.

Dr.			Cr.		
To			By		
Operating Expenses:			Balance to credit of profit and loss June 30, 1901, as per annual report	$3,507,423.39	
Maintenance of way and structures	$6,767,756.94		Amount reserved for dividends on preferred stock June 30, 1898, now restored to surplus	3,000,000.00	
Maintenance of equipment	3,404,994.58				$6,507,423.39
Conducting transportation	10,139,817.36		Gross Earnings:		
General expenses	975,845.00		Freight	$30,227,013.32	
		$21,288,413.88	Passenger	9,177,508.89	
Taxes:			Mail, express and miscellaneous	1,982,857.50	
State and county	$1,103,050.17				41,387,379.71
Revenue stamp tax	46,840.15				
		1,149,890.32	Dividends and interest on securities owned, and interest on deposits		843,765.04
Interest and Rentals:					
Interest on mortgage debt	$6,624,865.83				
Rentals of leased lines	120,742.54				
		6,745,608.37			
Dividends:					
Nos. 17 and 18 on preferred stock	$1,500,000.00				
Nos. 10, 11, 12 and 13 on common stock	6,999,946.00				
		8,499,946.00			
Appropriation for improvements, etc.		3,000,000.00			
Balance		8,054,709.57			
		$48,738,568.14			$48,738,568.14
			By balance carried to the credit of profit and loss, as shown by the balance sheet of this date		$8,054,709.57

(Page 38 of Report.)

25546

NORTHERN PACIFIC RAILWAY COMPANY.

GENERAL BALANCE SHEET, JUNE 30, 1902.

CAPITAL ASSETS.

NORTHERN PACIFIC ESTATE:		
Balance to debit of this account June 30, 1901		$283,711,260.95
To which add:		
New mileage purchased and constructed since June 30, 1901		2,256,291.64
Real estate purchased since June 30, 1901		450,384.90
		$286,417,937.49
Less:		
Net proceeds of Land Department	$3,807,121.88	
Material taken from abandoned line	10,476.41	
Sale of sundry property	1,819.40	
Profit and premium on sale and exchange of securities	2,200,392.38	
		6,019,810.07
		$280,398,127.42
EQUIPMENT:		
Balance to debit of this account June 30, 1901	$19,954,843.08	
New Equipment (purchased out of Betterment and Enlargement Fund since June 30, 1901)	4,616,895.10	
		24,571,738.18
PROPERTY LEASED TO PROVINCE OF MANITOBA:		
Value of roads and appurtenances	$6,812,512.94	
Value of equipment	157,034.00	
Value of material and supplies	30,453.06	
		7,000,000.00
CASH IN HANDS OF TRUSTEES OF SINKING FUNDS		1,577,140.12
SECURITIES IN HANDS OF TRUSTEE of St. Paul-Duluth Division Bonds as collateral		2,475,326.15
COST OF SECURITIES IN HANDS OF TRUSTEE of Northern Pacific-Great Northern joint bonds as collateral (1,075,772 shares C., B. & Q. R. R. capital stock—Northern Pacific Railway Company one-half owner)		109,078,509.76
	Total	**$425,100,841.63**

CAPITAL LIABILITIES.

CAPITAL STOCK:			
Common Stock and Scrip			$155,000,000.00
MORTGAGE DEBT:			
Prior Lien Bonds	$100,627,000.00		
Less Bonds Canceled	1,758,500.00		
		$98,868,500.00	
General Lien Bonds		56,000,000.00	
St. Paul-Duluth Division Bonds		8,757,000.00	
Northern Pacific-Great Northern Joint Bonds and Scrip—Total Issue	$215,154,400.00		
Less Great Northern Railway Company's proportion	107,577,200.00		
		107,577,200.00	
			271,202,700.00
Capital Liabilities Issued			**$426,202,700.00**
Prior Lien Bonds Available for Cash Fund; to be issued			2,000,000.00
Indebtedness of other Companies, assumed by the Northern Pacific Railway Company:			
St. Paul & Northern Pacific Railway Company General Mortgage Bonds		$3,021,000.00	
Western Railroad of Minnesota First Mortgage Bonds		352,000.00	
St. Paul & Duluth Railroad First Mortgage bonds		1,000,000.00	
St. Paul & Duluth Railroad Second Mortgage Bonds		2,000,000.00	
St. Paul & Duluth Railroad First Mortgage Consolidated Bonds		1,000,000.00	
Taylor's Falls & Lake Superior Railroad Bonds (guaranteed by St. Paul & Duluth Railroad Company)		210,000.00	
Duluth Short Line Railway Bonds (guaranteed by St. Paul & Duluth Railroad Company)		500,000.00	
Minneapolis & Duluth Railroad Mortgage Bonds		280,000.00	
St. Paul & Duluth Railroad Company Car Trust Notes		232,733.40	
Capital Liabilities Assumed			**13,595,733.40**
		Total	**$441,798,433.40**

(From Pages 39-40 of Report.)

CURRENT ASSETS.

CASH ASSETS:			
Cash on hand and in banks.....		$8,377,434.90	
Accounts Receivable $4,027,849.81			
Bills Receivable..... 39,139.83			
	$4,066,989.64		
Material on hand.....	2,643,218.10		
		6,710,207.74	
TREASURY SECURITIES.....		12,774,893.56	
BETTERMENT AND ENLARGEMENT FUND ASSETS:			
"Cash Fund" in hands of Trustee	$3,364.41		
Bonds due "Cash Fund" to be issued	2,000,000.00		
	$2,003,364.41		
Less cash due Operating Department	669,125.54	1,334,238.87	
INSURANCE FUND ASSETS:			
Cash, Bonds, etc., as per details, page 34.....		593,848.88	
LAND DEPARTMENT:			
Balance of Land Department Current Assets		5,153,209.65	
		Total	**34,943,833.60**
			$460,044,675.23

(From Pages 39-40 of Report.)

CURRENT LIABILITIES.

PAY ROLLS, MATERIAL VOUCHERS AND MISCELLANEOUS ACCOUNTS.....		$4,546,623.98	
TAXES ACCRUED ON RAILROAD (partly estimated).....		552,506.42	
INTEREST ON MORTGAGE DEBT:			
Accrued	$531,658.34		
Matured, including interest due July 1, 1902.....	1,100,925.25		
		1,632,583.59	
DIVIDENDS UNPAID:			
Common Stock No. 13, payable August 1, 1902.....	$2,324,976.00		
Unpaid dividends St. Paul & Duluth Railroad Company....	2,015.50		
		2,326,991.50	
RESERVE FUNDS:			
For improvements and for replacement of equipment, etc.....		435,166.63	
		Total	**9,493,872.12**

CONTINGENT LIABILITIES.

INSURANCE FUND.....	$593,848.88	
LIQUIDATION FUND:		
Reserve for possible liabilities in connection with purchase of property of Northern Pacific R. R. Co. and St. Paul & Duluth Railroad Company.....	103,811.26	
	Total	**697,660.14**

SURPLUS REVENUE.

PROFIT AND LOSS:	
Excess of earnings and miscellaneous income over operating expenses, taxes, etc., rentals, interest on mortgage debt and dividends on stock from September 1, 1896, to June 30, 1902.....	**8,054,709.57**
	$460,044,675.23

DEFENDANTS' EXHIBIT 24. 1007

PASSENGER, FREIGHT AND MISCELLANEOUS STATISTICS.

	June 30, 1901.	June 30, 1902.
Average Mileage for the Year	5,100.14	5,019.36

	1900-1901.		1901-1902.		Increase.	Per cent.	Decrease.
	Passengers, Miles, Tons, Cars, etc.	Amount, Rate, etc.	Passengers, Miles, Tons, Cars, etc.	Amount, Rate, etc.			
PASSENGER TRAFFIC.							
Number of passengers carried	3,298,722		4,192,114		893,392	27.08	
Number of passengers carried one mile	308,819,605		406,704,017		97,884,412	31.70	
Average miles traveled by each passenger	93.6		97.0		3.4	3.63	
Tariff passenger earnings		$7,017,823.41		$8,885,635.91	$1,867,812.50	26.62	
Other passenger department earnings		1,462,965.32		1,643,904.68	180,939.36	12.37	
Total passenger department earnings		8,480,788.73		10,529,540.59	2,048,751.86	24.16	
Average amount paid by each passenger		2.13		2.12		.47	.01
Average rate per passenger per mile		.0227		.0218		3.96	.0009
Passenger earnings per mile of road (average mileage)		1,662.85		2,097.79	434.94	26.16	
Passenger earnings per train mile		1.4226		1.5422	.1196	8.41	
FREIGHT TRAFFIC.							
No. tons revenue freight carried	8,792,885		11,080,101		2,287,216	26.01	
No. tons revenue freight carried one mile	2,440,662,665		3,300,253,137		859,590,472	35.22	
Average distance haul of one ton	277.6		297.9		20.3	7.31	
Tariff freight earnings		23,036,438.22		29,709,699.55	$6,673,261.33	28.97	
Other freight earnings		445,274.91		517,313.77	72,038.86	16.18	
Total freight earnings		23,481,713.13		30,227,013.32	6,745,300.19	28.73	
Average receipts from each ton revenue freight		2.62		2.68	.06	2.29	
Average receipts per ton per mile revenue freight		.00944		.00900		4.66	.00044
Total freight earnings per road mile (average mileage)		4,604.13		6,022.09	1,417.96	30.80	
Total freight earnings per train mile		3.1208		3.1724	.0516	1.65	
PASSENGER AND FREIGHT.							
Passenger and freight earnings		31,962,501.86		40,756,553.91	8,794,052.05	27.51	

(From Page 48 of Report.)

Other earnings		598,481.72	630,625.80	32,344.08	5.40	
Gross earnings from operation		32,560,983.56	41,387,379.71	8,826,396.13	27.11	
Gross earnings from operation per mile of road (average)		6,384.33	8,245.55	1,861.22	29.15	
Operating expenses		16,640,143.57	21,288,413.88	4,648,270.31	27.93	
Operating expenses per road mile (average)		3,262.68	4,241.26	978.58	29.99	
Ratio of operating expenses to earnings	51.1%		51.4%	.3%		
TRAIN AND CAR MILEAGE.						
Mileage of revenue passenger trains	4,930,530	5,904,092	973,562	19.75		
Mileage of locomotives employed in "helping" passenger trains	112,128	174,286	62,157	55.43		
Percentage of "helping" to revenue train mileage	2.27%	2.95%	.68%	29.96		
Mileage of revenue mixed trains	1,030,766	923,307		10.43	107,459	
Mileage of revenue freight trains	6,493,499	8,604,904	2,111,405	32.52		
Mileage of locomotives employed in "helping" mixed freight trains	1,121,698	1,370,077	248,379	22.17		
Percentage of "helping" to revenue train mileage	14.91%	14.35%		3.55	.53%	
Total revenue train mileage	12,454,795	15,432,303	2,977,508	23.91		
Mileage of non-revenue trains	1,396,909	1,968,571	571,662	40.92		
Mileage of passenger cars	38,290,532	44,622,026	6,331,494	16.53		
Average No. of passenger cars in train	6.42	6.54	.12	1.87		
Average No. of passenger cars in train	51.80	59.57	7.77	15.00		
Average No. of passengers in train	8.07	9.11	1.04	12.89		
Average No. of passengers in each car	172,507,657	215,196,265	42,688,608	24.75		
Mileage of loaded freight cars	63,773,435	81,005,448	17,232,013	27.02		
Mileage of empty freight cars	236,281,092	296,291,713	59,930,621	25.36		
Mileage of loaded and empty freight cars	22.93	22.59		1.48	.34	
Average No. of loaded freight cars in train	8.47	8.50	.03	.35		
Average No. of empty freight cars in train	31.40	31.09		.99	.31	
Average No. of freight cars in train	39.99%	39.59%		1.33		
Percentage of empty cars to total cars in train	324.37	346.57		22.00		
Average No. tons revenue freight in train	14.15	16.34		6.78		
Average No. tons revenue freight in each loaded car	1,996,543	2,611,419	614,876	8.41		
Company freight, tons carried	424,121,218	519,711,557	95,590,339	30.80		
Company freight, tons one mile	380.74	400.91	20.17	22.54		
Tons per train, company and commercial	16.61	17.76	1.14	5.30		
Tons per loaded car, company and commercial				6.86		

(From Page 48 of Report.)

MAP(S) IS/ARE TOO LARGE TO BE FILMED

[Defendants' Exhibit 18-A.]

[EXTRACTS FROM POOR'S MANUAL OF RAILROADS, FOR YEARS INDICATED.]

3964

FIRST.

"BOSTON AND MAINE RAILROAD.

"Line of Road.—Boston, Mass., to Portland, Me., 115.50 miles.

"Consolidation, January 1, 1842, of the Boston and Portland, chartered in Massachusetts, March 15, 1833; the Boston and Maine, chartered in New Hampshire, June 27, 1835; and the Maine, New Hampshire and Massachusetts, chartered in Maine, March 12, 1839. Road opened from Wilmington, 3965
Mass., to South Berwick, Me., February 23, 1843. Between Wilmington and Boston the Boston and Lowell R. R. was used until July 4, 1845, when an independent line was opened. * * * The extension to Portland, Me., was opened February 15, 1873.

"On December 22, 1883, this company and the Eastern R. R. Co. entered into an agreement dating from October 1, 1883, and to run for 54 years, by the terms of which the Eastern R. R. Co. transferred to this company, under lease, all its property, rights, franchises and assets of every description, subject 3966
to mortgage dated June 22, 1876. By the terms of the lease it is agreed that the Boston and Maine R. R. Co. shall operate the two systems to the best advantage of each, and shall make such improvements upon the properties as may from time to time become necessary. To meet the cost of such improvements the lessee shall issue improvement bonds, to run for the longest period allowed by law, and to be secured by a

3967 **First—Boston & Maine R. R.**—Continued.

sinking fund of not exceeding 1½ per cent. per annum. The combined earnings of the two companies, from all sources, including dividends from investments, etc., shall be used to pay: (1) All expenses of operating both companies, such expenses to include ordinary operating expenses, taxes, interest and sinking fund of improvement bonds, interest on car trust and on loan for improvement of East Boston Wharf property, and $10,000 yearly, payable quarterly, for organization expenses of Eastern R. R. Co., such $10,000 to include $3,000 to be paid
3968 to the trustees under its mortgage. (2) Rentals of leased lines and interest on permanent debt of both companies. (3) From the surplus remaining, the Boston and Maine R. R. Co. shall retain $630,000 [changed in 1886 and subsequent years to $360,000] for its own use. (4) All surplus then remaining up to $100,000 shall be paid to the Eastern R. R. Co. (5) All surplus up to $70,000 shall be retained by the Boston and Maine R. R. Co. (6) All surplus up to $336,000 shall be paid to the Eastern R. R. Co. (7) Any surplus then remaining shall be applied to permanent improvements upon the properties of both companies, pro rata, according to mileage, in-
3969 cluding branches and leased roads, so far as such improvements may be required; and the remainder, if any, may be applied to the purchase of the improvement bonds." * * * (Poor's Manual of Railroads, 1885, pp. 51-52.)

"*Eastern Railroad of Massachusetts.*—Boston, Mass., to New Hampshire State Line, 41.45 miles. * * *

"The Eastern Railroad Company of Massachusetts, chartered April 14, 1836, completed a railroad from East Boston to the New Hampshire State Line, November 9, 1840. * * *

"On the 22d of December, 1883, the company leased its road to the Boston and Maine R. R. Co., the lease to run for 54
3970 years, from October 1, 1883." * * * (Poor's Manual of Railroads, 1885, pp. 60-61.)

"*Eastern Railroad in New Hampshire.*—Portsmouth, N. H., to Seabrook (Mass. Line), 16.08 miles. * * *

"Chartered June 18, 1836; opened November 9, 1840, and leased to Eastern R. R. Co. of Massachusetts for a term of 99 years." (Poor's Manual of Railroads, 1885, p. 63.)

First—Boston & Maine R. R.—Continued. 3971

"*Portland, Saco and Portsmouth.*—Portsmouth, N. H., to Portland, Me., 50.76 miles. * * * Chartered in 1837; opened November 21, 1842. Leased in perpetuity to the Eastern R. R. of Mass., in which all its operations are included." (Poor's Manual of Railroads, 1885, pp. 63-4.)

Poor's Manual of Railroads for 1872-3 contains the following, at page 72:

"Portland, Saco and Portsmouth Railroad.

3972

"Leased March 18, 1871, for 99 years, to Eastern Railroad Company of Massachusetts."

[Poor's Manual of Railroads, for 1886.]

The foregoing statements of the Manual for 1885 are repeated in the Manual for this and each of the following years, thus: 3973

Manual for 1885, pp. 51-2 (Lines and History of original Boston and Maine) repeated in Manuals for

1886, p. 465;
1887, pp. 13-15;
1888, p. 14;
1889, p. 7;
1890, p. 5.

Manual for 1885, p. 60 (Eastern R. R. of Mass.) repeated in Manuals for

1886, pp. 468-9;
1887, p. 18; 3974
1888, p. 16;
1889, p. 12;
1890, pp. 10-11;
1891, p. 66 (with additional statement, "Consolidated May 9, 1890, with the Boston and Maine R. R. Co., on terms given in statement of B. & M., which see.")

3975 **First—Boston & Maine R. R.—Continued.**

Manual for 1885, p. 63 (Eastern R. R. in N. H.) repeated in Manual for

1886, p. 469;
1887, p. 18;
1888, p. 17;
1889, p. 12;
1890, p. 11;
1891, p. 66;
1892, p. 76;

3976 And repeated in Manual for the following years, in which, however, the statement is: "Leased to the B. & M. R. R. Co. for 60 years and 2 months from October 1, 1878."

1893, p. 87;
1894, p. 347;
1895, p. 353;
1896, p. 412;
1897, p. 324;
1898, p. 339;
1899, p. 14.

Manual for 1885, pp. 63-4 (Portland, Saco and Portsmouth R.
3977 R.) repeated in Manual for

1886, p. 470;
1887, p. 19;
1888, p. 17;
1889, p. 14;
1890, p. 13;
1891, p. 68;

And repeated in the following years, in which, however, the statement is: "Leased in perpetuity to the B. & M. R. R. Co."

1892, p. 77;
1893, p. 89;
3978
1894, p. 348;
1895, p. 354;
1896, p. 414;
1897, p. 325;
1898, p. 340;
1899, p. 15.

(After the consolidation with the Eastern R. R. of Mass., as stated in Manual for 1891, the Manuals do not give a sep-

First—Boston & Maine R. R.—Continued. 3979

arate notice of that road; nor do they of the Eastern in New Hampshire or the Portland, Saco and Portsmouth, after the absorption of those companies by exchange of stock for that of Boston and Maine, as stated in Manual for 1900 (p. 6), as follows:

"Early in 1898 the company was authorized by law to take up the stocks of any of its leased or controlled lines, and to effect a merger with the lines thus acquired. Under this authority the Eastern R. R. in New Hampshire was absorbed on June 1, 1899, and the * * * Portland, Saco & Ports- 3980
mouth R. R. * * * on Jan. 1, 1900."

[Poor's Manual of Railroads, for 1889.]

"RAILROADS OWNED OR LEASED BY THE BOSTON AND MAINE RAILROAD COMPANY. 3981

"Eastern Railroad.	[The statements as to these
"Eastern Railroad in N. H.	roads in Manual for 1885,
"Portland, Saco & Ports-	pp. 60, 63, 64, are here repeat-
mouth R. R."	ed at pp. 12 and 14.]

"*Boston and Lowell Railroad.*—Boston, Mass., to Lowell, Mass., 26.75 miles. * * * Leased in October, 1887, to the Boston and Maine R. R. Co. for 99 years. * * * On June 1, 1884, this company leased the Boston, Concord and Montreal R. R., and its leased line, the Pemigewasset Valley R. R., 3982
for 99 years." (Poor's Manual of Railroads, 1889, p. 10.)

"*Nashua and Lowell Railroad.*—Lowell, Mass., to Nashua, N. H., 14.50 miles. * * * Consolidation (1838) of the Lowell and Nashua, chartered April 16, 1836, and the Nashua and Lowell, chartered June 23, 1835. Road completed and opened December 23, 1838; second track laid in 1845-46. On the first of October, 1880, the road was leased for 99 years to the Bos-

3983 **First—Boston & Maine R. R.**—Continued.

ton and Lowell R. R. Co." (Poor's Manual of Railroads, 1889, p. 13.)

"*Boston, Concord and Montreal Railroad.*—Concord, N. H., to Groveton Junction, N. H., 145.88 miles. * * * Chartered December 27, 1844; road opened to Wells River, 93 miles, in 1853. In 1873 the White Mountain R. R. extending from Wells River to Littleton, 20.76 miles, was purchased. On the 1st of June, 1884, the Boston, Concord and Montreal and its leased line (the Pemigewasset Valley R. R.) were leased to the
3984 Boston and Lowell R. R. Co. for 99 years." (Poor's Manual of Railroads, 1889, p. 11.)

"*Connecticut and Passumpsic Rivers Railroad.*—White River Junction to Canada line, 110.30; Massawippi Valley Ry. (leased) Vermont State Line to Lennoxville, Canada, 36.75 miles. Total length of line 147.05 miles. * * * Leased for 99 years from January 1, 1887, to the Boston and Lowell R. R. Co. * * * The Massawippi Valley Ry. leased for 99 years from July 1, 1870, continues this line into Canada to a junction with the Grand Trunk Ry." (Poor's Manual of Railroads, 1889, p. 11.)

3985 "*Northern (N. H.) Railroad.*—Concord, N. H., to White River Junction, Vt., 69.50 miles. * * * On June 19, 1884, the road and property of this company * * * were leased to the Boston and Lowell R. R. Co. for 99 years (see Manual for 1887); but in March, 1887, this lease was declared void, and on July 1, 1887, the roads reverted to their corporate owners, by which they were operated until January 1, 1888, when they passed under the control of the Boston and Maine R. R. Co." (Poor's Manual of Railroads, 1889, p. 15.)

"*Newport and Richford Railroad.*—Newport, Vt., to Canada line, 22 miles; total track 23 miles. * * * The road is
3986 mainly owned by the C. & P. Rs. R. R. Co." (Poor's Manual of Railroads, 1889, p. 13.)

The foregoing statements of the Manual for 1889 as to leased lines of the *Boston and Maine* are repeated in subsequent Manuals as follows:

Manual for 1889, p. 10 (Boston and Lowell R. R.), is repeated
1890, pp. 8-9;

First—Boston & Maine R. R.—Continued. 3987

1891, p. 64;
1892, p. 75;
1893, p. 86;
1894, pp. 345-6;
1895, p. 351;
1896, p. 411;
1897, p. 321;
1898, p. 336;
1899, p. 11;
1900, p. 10. 3988

Manual for 1889, p. 13 (Nashua and Lowell R. R.), is repeated

1890, p. 12;
1891, p. 67;
1892, p. 76;
1893, p. 88;
1894, p. 347;
1895, p. 353;
1896, p. 413;
1897, p. 322;
1898, p. 337; 3989
1899, p. 12;
1900, p. 11.

Manual for 1889, p. 11 (Boston, Concord and Montreal), is repeated 1890, p. 9. (And see 1898, p. 338, and subsequent years, for successor, the "Concord and Montreal.")

Manual for 1889, p. 11 (Connecticut and Passumpsic Rivers R. R.), is repeated

1890, p. 10;
1891, p. 65;
1892, p. 75; 3990
1893, p. 87;
1894, p. 346;
1895, p. 352;
1896, p. 412;
1897, p. 322;
1898, p. 337;
1899, p. 11;
1900, p. 11.

3991 **First—Boston & Maine R. R.**—Continued.

Manual for 1899, p. 13 (Newport and Richford R. R.), is repeated

1890, p. 12;
1891, p. 68;
1892, p. 77;
1893, p. 88;
1894, p. 348;
1895, p. 354;
1896, p. 413;
3992 1897, p. 325;
1898, p. 340;
1899, p. 14;
1900, p. 13.

Manual for 1889, p. 15 (Northern New Hampshire R. R. System), is repeated 1890, p. 14, with the addition "In 1889 a lease was made for 99 years to the Boston and Lowell R. R. Co. from January 1, 1890, and by that company assigned to the Boston and Maine R. R. Co.," and with the addition quoted is repeated in

1891, p. 69;
3993 1892, p. 78;
1893, p. 89;
1894, p. 349;
1895, p. 355;
1896, p. 413;
1897, p. 325;
1898, p. 340;
1899, p. 14;
1900, p. 13;
1901, p. 11.

3994

"**Boston and Maine Railroad Company.**

"*History.* Consolidation, May 9, 1890, of the Boston and Maine, the Eastern and the Portsmouth, Great Falls and Con-

First—Boston & Maine R. R.—Continued. 3995

way R. R. Cos. For history of those companies, see Manual for 1890. In the consolidation, the preferred stock of the Eastern became preferred of the consolidated company; stockholders of Boston and Maine received $14.68 per share additional in new stock; and Portsmouth, Great Falls and Conway stock, and Eastern common stock received $83.28 in new stock for every $100 turned in; so that the total stock of the Boston and Maine R. R. equals the combined stock of the three roads before consolidation. On October 1, 1890, the company took possession of the Northern R. R. in New Hampshire and its 3996
leased lines, the Concord and Claremont, and the Peterboro and Hillsboro, under the terms of a lease made to the Boston and Lowell R. R. Co. for 99 years from January 1, 1890, and assigned to the Boston and Maine." (Poor's Manual of Railroads, 1891, p. 61.)

"General Balance Sheet, September 30, 1890.

* * * * *

"Stocks, Bonds and Investments..... $5,384,329.56

* * * * * 3997

"'Stocks, Bonds and Investments' in above balance sheet are as follows. * * *

"Stocks—*Maine Central R. R. stock*, $1,811,500." (Poor's Manual of Railroads, 1891, p. 63.)

Manual of 1891, p. 301: "*Maine Central Railroad Company.*

		Miles.
	* * *	
Leased:	Portland & Ogdensburg Ry., Portland, Me., to Lunenburg, Vt.....	109.03
	Upper Coos R. R., North Stratford to Beecher Falls, Vt.....	22.87
	Hereford Ry., Beecher Falls, Vt., to Lime Ridge, P. Q.....	52.63

3998

"General Balance Sheet, September 30, 1890.

* * * * *

"Capital stock .....$3,603,500."

(Poor's Manual, 1891, p. 302.)

3999 **First—Boston & Maine R. R.—Continued.**

[Poor's Manual of Railroads for 1892.]

"Railroads owned or leased by the Boston and Maine Rail road Co.," pp. 75-78. Repetition of statements in Manual o 1885, except as to the Eastern of Mass., which had become consolidated.

4000 "**Boston and Maine Railroad Company.**

* * * * *

"General Balance Sheet.
"September 30, 1891.
* * * * *

"Stocks, Bonds and Investments.....$6,271,612.97
* * * * *

"'Stocks, Bonds and Investments' in above balance sheet are as follows: * * *

Stocks—*Maine Central R. R.*..... 2,264,400.00"

4001 (Poor's Manual for 1892, pp. 73-74.)

"*Maine Central Railroad Company.*

"Main Line of Road.—Portland, Me., to Bangor, Me., 136.60 miles.

* * * * *

4002

		Miles.
Leased:	* * *	
	Portland & Ogdensburg Ry., Portland, Me., to Lunenburg, Vt.....	109.10
	Upper Coos R. R., Quebec Junction to Beecher Falls, Vt.....	55.37
	Herefore Ry., Beecher Falls, Vt., to Lime Ridge, P. Q.....	52.63
	* * * * *	

First—Boston & Maine R. R.—Continued. 4003

"General Balance Sheet.

"September 30, 1891.

* * *

"Capital Stock and Scrip ($2,800).....$4,482,400.00"

(Poor's Manual, 1892, pp. 354-5.)

The above statements of the Manual for 1892, in regard to the Boston and Maine and the Maine Central R. R. Co., are repeated in subsequent volumes, as follows: 4004

History of Boston and Maine R. R., Manual 1893, p. 83;
1894, p. 342;
1895, p. 348;
1896, p. 407;
1898, p. 332;
1899, p. 7.

Holding of stock in Maine Central, Manual for 1893, p. 85, where holding is stated at $2,264,400; 1894, p. 344, where the holding is stated at $2,516,000. Repeated, 4005
1895, p. 349;
1896, p. 409;
1897, p. 320;
1898, p. 334;
1899, p. 10;
1900, p. 9.

Leased lines of Maine Central:
1893, p. 386; repeated,
1894, p. 12;
1895, p. 12; 4006
1896, p. 9;
1897, p. 13;
1898, p. 11;
1899, p. 20;
1900, p. 20.

4007 **First—Boston & Maine R. R.—Continued.**

Capital stock of Maine Central, Manual for 1892, p. 355, amount is stated at..... $4,482,400
Manual for 1893, p. 388, amount is stated at..... 4,490,500
Manual for 1894, p. 13, amount is stated at..... 4,984,800
Manual for 1895, p. 13, amount is stated at..... 4,983,500
Repeated in Manuals for 1896, p. 10;
1897, p. 10;
1898, p. 11;
Manual for 1899, p. 20, amount is stated at..... 4,995,800
4008 Manual for 1900, p. 20, amount is stated at..... 4,987,800

[Poor's Manual of Railroads, 1899.]

"Boston and Maine Railroad.

"*History.*—Consolidation May 9, 1890, of the Boston and Maine, the Eastern, and the Portsmouth, Great Falls and Con-
4009 way R. R. Cos. * * * Early in 1898 this company was authorized by law to take up the stock of any of its leased or controlled lines, and effect a merger with the lines thus acquired." (P. 7.)

Repeats statements as before indicated, of leased and controlled lines, and holding of majority of stock in Maine Central as before indicated, and adds to the "Railroads leased to the Boston and Lowell R. R. Corporation and Lease Assigned to the Boston and Maine R. R." (p. 11), the following (p. 12),
4010 repeated from Manual for 1898, p. 338:

"Concord and Montreal R. R.—Nashua to Groveton Junction, N. H., 181.07 miles. * * * Consolidation, Sept. 19, 1889, of the Boston, Concord and Montreal R. R., and the Concord R. R. Corporation. * * * On June 29, 1895, the property of this company was leased to the Boston and Maine R. R. Co., for 91 years from April 1, 1895." Repeated,
1900, p. 11;
1901, p. 10.

First—Boston & Maine R. R.—Continued. 4011

[Poor's Manual of Railroads, for 1900.]

Manual for 1900 makes the repetitions already noted as to the Boston and Maine and its leased lines, and the Maine Central's lines and stock, and adds the following (p. 6):

"*History.*—Consolidation, May 9, 1890, of the Boston and Maine, the Eastern, and the Portsmouth, Great Falls and Conway R. R. Cos. * * * Early in 1898 the company was authorized by law to take up the stocks of any of its leased or controlled lines and to effect a merger with the lines thus acquired. Under this authority the Eastern R. R. in New Hampshire was absorbed on June 1, 1899, and the Portsmouth and Dover R. R., Portland, Saco and Portsmouth R. R., and Portland and Rochester R. R." Repeated in Manual for 1901, p. 4. 4012

[Poor's Manual of Railroads, for 1901.]

Manual for 1901, p. 4, repeats matter quoted from Manual for 1900, p. 6, also statements already noted as to lines of Boston and Maine and Maine Central, and stock of Maine Central.

4013

[Defendants' Exhibit 18-B.]

SECOND.

"NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY.

[Poor's Manual of Railroads, 1870-1, p. 22.]

New York and New Haven Railroad.

"Line of Road: New Haven to Williamsbridge, N. Y., 62.29
4014 miles. From Williamsbridge to New York, a distance of 14.50 miles, the trains of the New York and New Haven Railroad are run over the New York and Harlem Railroad under a permanent contract."

The foregoing extract from the Manual of 1870-1 is repeated in the Manuals for 1871-2 and 1872-3, which adds (p. 23): "On September 7, 1870, the New York and New Haven and the Hartford and New Haven Railroad Companies concluded an agreement whereby their business and roads were, in effect, consolidated. * * * * (p. 24). On November 1, 1870, the New York and New Haven Company took a lease of the Shore
4015 Line Railroad for a period of 99 years."

[Manual 1870-1, p. 24:]

	1863	1869
"Capital Stock	3,000,000	6,000,000."

[Poor's Manual of Railroads, 1885, pp. 101-4.]

"New York, New Haven & Hartford Railroad Company.

			(Miles.)
Line of Road—Williamsbridge, N. Y., to			
4016 Springfield, Mass			123.20
Branches	New Britain: Berlin to New Britain, Ct	3.00	
	Middletown: Berlin to Middletown, Ct	10.00	
	Suffield: Windsor Locks to Suffield, Ct	4.50	
			17.50

Second—New York, New Haven & Hartford R. R. Co.—Continued. 4017

Leased:	*Boston and New York Air-Line R. R*	50.00	
	Colchester Railway	3.59	
	Harlem River and Portchester R. R	11.80	
	Shore Line R. R.	50.97	
	Stamford and New Canaan R. R	8.31	
			124.67
Total length of all lines operated September 30, 1884			265.37

"Consolidation, July 24, 1872, of the New York and New Haven and the Hartford and New Haven R. R. Companies, the former chartered in Connecticut in May, 1844, and in New York in January, 1846, and its road opened in January, 1849. The Hartford and New Haven R. R. Co. was chartered in Connecticut in May, 1833; the road was opened in 1839. The Massachusetts portion of the road was built under the charter of the Hartford and Springfield R. R. Co., April 5, 1839, and completed in December, 1844. By an agreement dated March 17, 1848, the New York and New Haven R. R. uses the New York and Harlem R. R. from Williamsbridge into the City of New York. The rental is paid directly from earnings as they accrue, and does not appear in the operating accounts. The Shore Line R. R. is leased in perpetuity at an annual rental of $100,000, from November 1, 1870. The accounts of this road were kept separately previous to the year 1882. The Harlem River and Portchester R. R. is leased for 99 years from October 1, 1873. On the 1st of October, 1882, the company leased the Boston and New York Air-Line R. R. (which see), and purchased toward the close of that fiscal year a controlling interest in the Hartford and Connecticut Valley R. R. It also owns a majority of the stock of the New Haven and Northampton R. R. Co." (P. 101.) 4019 4020

"*Boston and New York Air-Line Railroad.*—New Haven to Willimantic, Ct., 51.4 miles. * * * Chartered in 1846 as

4021 **Second—New York, New Haven & Hartford R. R. Co.**—Continued.

New York and Boston R. R. Co.; in 1867, as New Haven, Middletown and Willimantic R. R. Co., and in 1875 under existing title. Road opened August 13, 1873. On October 1, 1883, was leased to the N. Y., N. H. & H. Co. for 99 years." * * * (Poor's Manual of Railroads, 1885, p. 103.)

"*Shore Line Railway.*—New Haven to New London, 50.97 miles. Total track (steel 50.56), 59.45 miles. Chartered as New Haven and New London R. R. Co., May, 1848; opened July, 1852. Leased to New York and New Haven R. R. Co.,
4022 November 1, 1870, at an annual rental of $100,000. Lease transferred to present company (as successor of the latter)." * * * (Manual, 1885, p. 104.)

The foregoing extracts from the Manual for 1885 are repeated in the Manuals for

1886, pp. 97, 99, 100;
1887, pp. 66, 67, 69;
1888, pp. 63, 64, 66.

"General Balance Sheet, October 1, 1884.
"Capital Stock, $15,500,000."

4023

(Poor's Manual of Railroads, 1885, p. 103.)

[Poor's Manual of Railroads, 1889, p. 52.]

"**New York, New Haven & Hartford Railroad Company.**

4024

	Miles.
Main Line of Road—Woodlawn, N. Y., to Springfield, Mass	122.44
Branches * * *	19.04
Length of leased lines	366.60
Total length of all lines operated September 30, 1888	508.08"

Second—New York, New Haven & Hartford R R. Co.—Continued. 4025

The foregoing extracts from the Manual for 1889 are repeated in the Manuals for

1890, p. 51;
1891, p. 375;
1892, p. 430;
1893, p. 468.

The Manual for 1889, pp. 54-5, repeats the extracts from the Manual of 1885, p. 103, regarding the "Boston and New York Air-Line Railroad," as do also the Manuals for

1890, p. 53; 4026
1891, p. 377;
1892, p. 432;
1893, p. 471;
1894, p. 588;
1895, p. 602;
1896, p. 675;
1898, p. 584;
1899, p. 31;
1900, p. 32;
1901, p. 28;
1902, p. 27. 4027

The Manual for 1889, p. 57, "Shore Line Railway," is a repetition of the statements of the Manual for 1885, p. 56; also repeated in the Manual for 1890, p. 55; 1891, p. 378; 1892, p. 433; 1893, p. 472; 1894, p. 589; 1895, p. 605; 1896, p. 678.

"*Hartford and Connecticut Valley Railroad.*—Hartford, Ct., to Fenwick, Conn., 46.20 miles. Road opened * * * to Fenwick in 1872. * * * Towards the close of 1882, the New York, New Haven and Hartford R. R. Co. purchased a controlling interest in the capital stock of this company." 4028

(Poor's Manual of Railroads, 1889, p. 55.)

The foregoing statement from the Manual of 1889 is repeated in the Manual for

1890, p. 54;
1891, p. 378;
1892, p. 433;
1893, p. 471.

4029 **Second—New York, New Haven & Hartford R. R. Co.**—Continued

"*Holyoke and Westfield Railroad.*—Holyoke to Westfield, 10.32; total track, 17.22 miles. Chartered in 1870. Opened 10.32 miles in October, 1871, and to present terminus in 1879. Leased in perpetuity to N. H. & N. R. R. Co." (Poor's Manual of Railroads, 1889, p. 55.)

The foregoing statement from the Manual for 1889 is repeated in the Manuals for

1890, p. 54;
1891, p. 378;
4030 1892, p. 433;
1893, p. 471;

and in the following years, with the change of "N. H. & N. R. R." to "N. Y., N. H. & H. R. R. Co.":

1894, p. 588;
1895, p. 603;
1896, p. 676;
1898, p. 584;
1899, p. 32;
1900, p. 33;
4031 1901, p. 30;
1902, p. 20.

"*Naugatuck Railroad.*—Stratford Junction, Ct., to Winsted, Conn., 56.55 miles. * * * Chartered May, 1845. Road opened through, September 24, 1849. Leased for 99 years from April 1, 1887, to the New York, New Haven and Hartford R. R. Co." (Poor's Manual of Railroads, 1889, p. 55.)

4032 The foregoing statement from the Manual for 1889 is repeated in the Manuals for

1890, p. 54;
1891, p. 378;
1892, p. 433;
1893, p. 472;
1894, p. 589;
1895, p. 603;
1896, p. 676;
1898, p. 584;

Second—New York, New Haven & Hartford R. R. Co.—Continued 4033

1899, p. 32;
1900, p. 32;
1901, p. 28;
1902, p. 27.

"*New Haven and Northampton Railroad.*—New Haven, Conn., to Conway Junction, Mass., 94.64 miles. * * * Total length of all lines (owned, 127.35; leased, 22.56) 149.91 miles. * * * Chartered in May, 1836. * * * Road opened * * * to Northampton in 1857; to Williamsburg, February, 1868. The *Holyoke and Westfield R. R.* is leased in perpetuity. The extension to North Adams over the Troy and Greenfield R. R. was opened July 13, 1881, and to Turners Falls October 31, 1881. In 1887 the road was leased for 99 years to the New York, New Haven and Hartford R. R. Co., which owns a majority of the stock." (Poor's Manual of Railroads, 1889, p. 55.) 4034

The foregoing statement from the Manual of 1889 is repeated in the Manuals for

1890, p. 54;
1891, p. 378; 4035
1892, p. 433;
1893, p. 472;
1894, p. 589;
1895, p. 603;
1896, p. 677;
1898, p. 585;
1899, p. 32;
1900, p. 33;
1901, p. 29;
1902, p. 28.

4036

"The Company took a lease of the *New York, Providence & Boston R. R.*, in May, 1892. * * * In accordance with the terms of the lease, an issue of $5,000,000 stock was made in exchange for stock of the New York, Providence and Boston,

4037 **Second—New York, New Haven & Hartford R. R. Co.—Continued.**

share for share. The lease of the *Providence and Worcester R. R.* to the New York, Providence and Boston has been annulled, and a new lease of that road, providing for the payment of the same dividends, has been made direct to this company." (Poor's Manual of Railroads, 1893, p. 468.)

"The company has taken leases for 99 years from June 30, 1892, of the *Housatonic R. R.* and its leased lines. * * * The leases contain provisions allowing the lessors to exchange their stock." (Poor's Manual of Railroads, 1893, p. 468.)

4038 "In January and February, 1893, capital stock of the company was issued in exchange for stocks of certain of the leased lines on the following basis: For New Haven and Northampton stock, two shares for five; for Naugatuck stock, share for share; for preferred stock of the Boston and New York, Air Line, two shares for five; for Shore Line stock, three shares for four; and share for share for stock of the Hartford and Connecticut Valley.

"An agreement for the lease of the *Old Colony System* to this company was entered into between the directors of the two corporations in February, 1893, and was subsequently 4039 ratified by the stockholders. It is proposed to issue New Haven shares in exchange for stock of the Old Colony at the rate of nine shares of the former for every ten of the latter.

"On March 1, 1893, a resolution passed the Connecticut Legislature authorizing an increase of the capital stock of this company to $100,000,000.

* * * * *

4040 "An amendment to the charter, authorized March 23, 1880, allows the company to acquire and use steamboats and car floats." (Poor's Manual of Railroads, 1893, p. 470.)

Second—New York, New Haven & Hartford R. R. Co.—Continued. 4041

[Poor's Manual of Railroads, 1892, p. 439.]

"New York, Providence and Boston Railroad Company.

		Miles.
Main Line of Road.—*Providence, R. I.*, to *New London, Conn*		62.11
(Branches named),		18.17
Leased: Pawtucket Valley R. R.	5.67	4042
Leased: Providence and Worcester R. R.	50.40	
		56.07
Total length of all lines operated, June 30, 1891		136.35

* * * * *

"This company owns a controlling interest in the *Providence and Stonington Steamboat Line*, a consolidation (April 1, 1875) of the *New York and Stonington* and the *Providence and New York* lines, with a capital of $1,500,000." (Poor's Manual of Railroads, 1892, p. 439.) 4043

"Financial Statement, June 30, 1891.—Capital Stock, $5,000,000. * * *

"Providence and Stonington S. S. Stock, $958,200. * * *

"In June, 1891, this company was authorized to issue $4,000,000 4 per cent bonds, of which * * * $500,000 for new stock in the *Providence and Stonington S. S. Co.* to be issued for two new steamers now under contract." (Poor's Manual of Railroads, 1892, p. 440.) 4044

"*Providence and Worcester Railroad:* Providence, R. I., to Worcester, Mass., 43.41; Valley Falls to East Providence, 7; total, 50.41 miles. * * * Leased for 99 years from May 1, 1888, to the New York, Providence and Boston R. R. Co."

(Poor's Manual of Railroads, 1892, p. 441.)

4045 **Second—New York, New Haven & Hartford R. R. Co.—Continued.**

[Poor's Manual of Railroads, 1893, p. 477.]

"*New York, Providence and Boston Railroad Company.*

"This company has a controlling interest in the *Providence and Stonington Steamboat Line*, a consolidation (April 1, 1875) of the *New York and Stonington* and the *Providence and New*
4046 *York* lines, with a capital of $1,500,000. In March, 1892, the control of this property passed into the hands of the New York, New Haven and Hartford R. R. Co., under a lease ratified in May, 1892, which provided for a subsequent exchange of stocks, share for share, and the assumption by the lessee of all liabilities of the company. Under this agreement all of this company's shares have been exchanged for New Haven stock."

4047

[Poor's Manual of Railroads, 1893, pp. 298-9.]

"*Housatonic Railroad Company.*

		(Miles.)
Main Line of Road—Bridgeport, Ct., to Conn. State Line	74.46	
Danbury Branch—Brookfield Junction, Ct., to
4048 Danbury, Ct	5.36	
Huntington Branch—Botsford, Ct., to Huntington, Ct	9.79	
Connecting Track to Hawleyville	0.33	
		89.94

Second—New York, New Haven & Hartford R. R. Co.—Continued 4049

Leased:	*Berkshire R. R.*—Sheffield to W. Stockbridge, Mass	21.03		
	West Stockbridge R. R.—West Stockbridge to N. Y. State Line.	2.64		
	Stockbridge and Pittsfield R. R.—Stockbridge to Pittsfield, Mass..	22.93		
	Danb'y & Norwalk R. R. N. Haven & Derby R. R.	and branches (see statement on page 300)	16.69	
			——	99.49 4050
Total length of road (owned, 89.94; leased, 99.49), September 30, 1892.....				189.43

* * * * *

"*History.*—Chartered in May, 1836; completed December 1, 4051
1842. (See Manual for 1892.) On October 18, 1892, this company's property was leased for 99 years from July 1, 1892, to the New York, New Haven and Hartford R. R. Co., and on November 1 following the lessee took formal possession under the lease, and has since operated the road. Under the terms of the lease, the lessee agrees to pay 1 per cent. per annum upon the preferred stock of the lessor company. The lease also provided for a termination of the leases of the New Haven and Derby and the Danbury and Norwalk R. Rs. to the Housatonic, and those two roads are now leased to the New York, New Haven and Hartford R. R. on terms given in their 4052
respective statements. The leases contain provisions allowing the lessors to exchange their stock upon the basis of eight shares of Housatonic for one share of New Haven, thirteen shares of New Haven and Derby for four of New Haven, and four of Danbury and Norwalk, for one of New Haven." (Poor's Manual of Railroads, 1893, pp. 298-9.)

4053 **Second—New York, New Haven & Hartford R. R. Co.**—Continued.

[Poor's Manual of Railroads, 1894, pp. 583-4.]

"New York, New Haven and Hartford Railroad Company.

"On October 19, 1892, the company leased, for 99 years from July 1, 1892, the *Housatonic R. R.* and its leased lines, the Danbury and Norwalk, New Haven and Derby, Berkshire, Stockbridge and Pittsfield, and West Stockbridge R. Rs. A new
4054 lease of the Providence and Worcester has been made direct to this company, superceding the one to the New York, Providence and Boston R. R. Co. The terms of the leases are shown in the companies' lessor statements.

"The company during the past year offered its shares in exchange for stocks of its leased lines, at the rate of share for share of New York, Providence & Boston and Hartford & Connecticut Valley, one share for eight of Housatonic preferred, four shares for thirteen of New Haven & Derby, one share for four of Danbury & Norwalk, two shares for five of New Haven & Northampton and Boston & New York Air-
4055 Line, share for share of Naugatuck, and three shares for four of Shore Line stock. In accordance with this offer the New York, Providence & Boston and Hartford & Connecticut Valley have exchanged all of their stocks, and shares of the other companies named have been exchanged as follows: New Haven and Northampton, 24,035 shares out of a total of 24,600; B. & N. Y. Air-Line, 15,725 shares out of a total of 29,985; Shore Line, 8,068 shares out of a total of 10,000; Naugatuck, 9,551 shares out of a total of 20,000; Housatonic, 22,504 out of a total of 28,756 shares preferred stock; Danbury & Norwalk, 8,928 shares out of a total of 12,000; New Haven & Derby,
4056 3,497 shares out of a total of 4,470. Stocks of leased lines held in the company's treasury were also converted into New Haven stock, resulting in $1,332,400. This stock has been sold and the proceeds, amounting to $3,398,555.61, used for the improvement of the property.

"On Feb. 28, 1893, the company entered into an agreement for the lease for 99 years from Mar. 1, 1893, of the *Old Colony R. R. System*, assuming all obligations of the Old Colony R.

Second—New York, New Haven & Hartford R. R. Co.—Continued. 4057

R. Co., and agreeing to pay annual dividends of 7 p. c. on Old Colony stock. An agreement was also entered into for an exchange of stocks on the basis of nine shares of New Haven for every ten shares of Old Colony.

"The exchanges for stock of leased lines before mentioned, together with the issue of convertible debenture certificates, referred to hereafter, and which are convertible at the expiration of ten years into capital stock at par, practically exhausted the authorized capital stock. In order to comply with the terms of the lease of the Old Colony the company, 4058 therefore, obtained authority to increase its capital stock to $100,000,000 (by Act approved Mar. 2, 1893). The total number of shares of Old Colony stock received for exchange is 55,180. The privilege expired Dec. 19, 1893. This company began operating the Old Colony system on July 1, 1893." (Poor's Manual of Railroads, 1894, pp. 583-4.)

[Poor's Manual of Railroads, 1894, p. 590.]

"**New York, New Haven and Hartford System.** 4059

OLD COLONY R. R. CO.

Main Lines of Road—

		(Miles.)
Boston, Mass., to Provincetown, Mass.....	120.01	
South Braintree, Mass., to Plymouth, Mass..	26.04	
Braintree, Mass., to Kingston, Mass.....	32.34	
Mayflower Park, Mass., to Newport, R. I.....	55.02	
Middleborough, Mass., to Somerset Junc., Mass	14.96	4060
Raynham, Mass., to Whittenton Junction, Mass	3.38	
New Bedford, Mass., to Fitchburg.....	91.02	
Framingham to Lowell	26.12	
		248.88
Total length of main lines.....		368.89

4061 **Second—New York, New Haven & Hartford R. R. Co.—Continued.**

Branches: * * *			126.66
	Boston and Providence R. R. and Branches (see page 593).....	63.69	
	Nantasket Beach R. R. (see page 593)	6.95	
	Fall River R. R. (see page 593)...	12.25	
	Attleborough Branch R. R. (see page 592)	4.00	
Leased Lines:			
4062	Chatham R. R.—Harwich to Chatham, Mass	7.07	
	Plymouth and Middleborough R. R.—Plym. to Mid., Mass.....	15.03	
	Providence, Warren, and Bristol R. R. (see page 593)	14.35	
		——	123.34
Total length of lines owned and leased, June 30, 1893			618.89

4063

* * * * *

"The Old Colony R. R. Co., in addition to its railroad, owns a controlling interest in the *Old Colony* and the New Bedford, Martha's Vineyard and Nantucket *Steamboat Cos.*"

(Poor's Manual of Railroads, 1894, p. 590.)

"Assets, June 30, 1893, included in balance sheet as 'Stocks Owned': *Old Colony Steamboat Stock*, $967,300." * * *
4064 (Poor's Manual of Railroads, 1894, p. 591.)

"*Boston and Providence R. R.*—Boston, Mass., to Providence, R. I., 44 m. * * * Branches * * * 19.69 m. Total length of lines, 63.69 miles. * * * Chartered July 22, 1831, opened in August, 1835. * * * Leased to the Old Colony R. R. Co. for 99 years from April 1, 1888." (Poor's Manual of Railroads, 1894, p. 593.)

Second—New York, New Haven & Hartford R. R. Co.—Continued. 4065

[Poor's Manual of Railroads, 1895, p. 596.]

"New York, New Haven & Hartford Railroad Company.

		(Miles.)	
Main Line of Road—Woodlawn, N. Y., to Springfield, Mass		122.44	
* * * * *			
Valley Division, Hartford to Fenwick, Ct.	46.20		4066
Stonington Division, New London, Ct., to Providence, R. I.	62.11		
(Other divisions) * * *	51.60		
		159.91	
"Length of leased lines		1,164.60	
"Lines operated under trackage arrangements		22.33	
"Total length of all lines operated June 30, 1894		1,469.28	

(P. 597.) "General Balance Sheet, June 30, 1894. 4067
"Leased Lines Stock Exchanged, $8,767,900.00.
Common Stock Paid in, $37,942,900.00."

(P. 601.) "Statement of stocks and bonds owned, the stocks shown being exclusive of those received in exchange for N. Y., N. H. & H. R. R. stock.

Stocks.	No. of Shares.	Par Value.
* * * * *		
Prov. & Stonington S. S. Co.	12,776	1,277,600.
* * * * *		
Total		2,264,375."

4068 **Second—New York, New Haven & Hartford R. R. Co.—Continued.**

[Poor's Manual of Railroads, 1896, p. 669.]

"New York, New Haven & Hartford Railroad Company.

"History. * * * The following statement shows the stocks of leased lines received in exchange for stock of this company under the terms of that plan:

4069 Roads not Merged.	Total Stock.	Amount Exchanged.	N. Haven Stock Issued.
Old Colony R. R.	$15,089,100	$5,518,000	$4,966,200
New Haven & Northamp'on.	2,460,000	2,403,500	961,400
Naugatuck	2,000,000	955,100	955,100
B. & N. Y. A. L. (Pref.)	2,998,500	1,572,500	629,000
Shore Line	1,000,000	806,800	605,100
Housatonic (Preferred)	2,875,800	2,550,400	318,800
Danbury & Norwalk	1,200,000	892,800	223,200
New Haven & Derby	447,000	349,700	107,600
Stockbridge & Pittsfield	448,700	1,500	900
Berkshire	600,000	1,000	600
Total	$29,119,100	$15,051,300	$8,767,900
4070 Roads Merged.			
N. Y., Prov. & Boston	$5,000,000	$5,000,000	$5,000,000
Hartford & Conn. Val.	800,000	800,000	800,000
Stamford & New Canaan	100,000	100,000	100,000
Total	$5,900,000	$5,900,000	$5,900,000
Grand total	$35,019,100	$20,951,300	$14,667,900"

(P. 674.)

4071 "Statement of Stocks and Bonds owned, the stocks shown being exclusive of those received in exchange for N. Y., N. H. & H. R. R. stock:

Stocks.	No. of Shares.	Par Value.
* * * * *		
Prov. & Stonington S. S. Co.	18,233	$1,823,300
* * * * *		
Total		3,864,875."

Second—New York, New Haven & Hartford R. R. Co.—Continued. 4072

[Poor's Manual of Railroads, 1898, p. 577.]

"New York, New Haven & Hartford Railroad Company.

History.— * * * The following statement shows the stocks of leased lines received in exchange for stock of this company, under the terms of that plan:

Roads not Merged.	Total Stock.	Amount Exchanged.	
Old Colony R. R.	$16,508,900	$5,518,000	4073
New Haven & Northam'n	2,460,000	2,403,500	
Naugatuck	2,000,000	972,200	
B. & N. Y. A. L. (Pref.)	2,998,500	1,594,500	
Housatonic (Preferred)	2,875,800	2,723,200	
Danbury & Norwalk	1,200,000	892,800	
New Haven & Derby	447,000	353,600	
Stockbridge & Pittsfield	448,700	1,500	
Berkshire	600,000	1,000	
Total	$29,538,900	$14,460,300	
Roads Merged.			
N. Y., Prov. & Boston	$5,000,000	$5,000,000	4074
Shore Line	1,000,000	1,000,000	
Hartford & Conn. Val.	800,000	800,000	
Stamford & New Canaan	100,000	100,000	
Total	$6,900,000	$6,900,000	
Grand total	$36,438,900	$21,360,300	

"On March 18, 1897, the *Shore Line Ry. Co.*, and in March, 1898, the *Housatonic R. R. Co.* were fully consolidated into this company.

"On June 15, 1898, the stockholders voted approval of a lease of the *New England R. R.*, for 99 years from July 1, 1898, and of a lease of the Shepaug, Litchfield and Northern R. R., for 75 years from July 1, 1898." (P. 577.) 4075

"In connection with these leases provision has been made for an issue of $7,100,000 additional capital stock, of which $6,500,000 is to be exchanged for the stock of the *New England R. R. Co.* on the basis of five shares of common stock or two

4076 **Second—New York, New Haven & Hartford R. R. Co.—Continued.**

shares of preferred stock of the New England R. R. Co. for one share of the stock of the New York, New Haven and Hartford R. R. Co., and the remaining $600,000 is to be exchanged share for share for the stock of the Shepaug, Litchfield and Northern R. R. Co.

"The company owns the entire capital stock of the Shepaug, Litchfield and Northern R. R. Co., besides $12,053,400 of the common stock and $1,476,500 of the preferred stock of the New England R. R. Co., so that of the $7,100,000 of new stock
4077 provided, only $3,351,100 other than treasury stock will have to be issued in exchange for outstanding stock of the New England R. R. Co.

* * * * *

"During the past fiscal year full ownership of the capital stock of the *Providence and Stonington Steamship Co.* was se-
4078 cured through the acquisition of the 449 shares held by private parties." (p. 578.)

"General Balance Sheet, June 30, 1897.

"Leased Lines stock exchanged, $8,211,500." (p. 580.)

"Statement of stocks and bonds owned, the stocks shown being exclusive of those received in exchange for N. Y., N. H. & H. R. R. stock:

Stocks.	Number.	Par Value.
* * * * *		
New England R. R. Co., Com.....	117,700	$11,770,000
New England R. R. Co., Pref.....	12,549	1,254,900
4079 Old Colony R. R. Co.....	2,395	239,500
* * * * *		
B. & N. Y., A. L. R. R. Co., Com.....	6,807	680,700
B. & N. Y., A. L. R. R. Co., Pref.....	95	9,500
* * * * *		
Prov. & Stonington S. S. Co.....	20,000	2,000,000
* * * * *		$18,891,470

(p. 582.)

Second—New York, New Haven & Hartford R. R. Co.—Continued. 4080

"The following stocks and bonds are held by the company as lessee of the Old Colony R. R.

Stocks:

12,000 shares of *Old Colony S. B. Co.*"

* * * (p. 583.)

"The Norwich & Worcester R. R. Co., under date of Feb. 9, 1869, leased its property for 99 years to the Boston, Hartford & Erie R. R. Co., to which the New England R. R. Co. is successor. Under an agreement, dated Dec. 31, 1896, this lease has been amended so as to provide for an extension of the Norwich and Worcester R. R. from Norwich to Groton, Ct., and for subjecting that extension, and also the property of the *Norwich and New York Transportation Co.* (all of whose share capital, $500,000, is now owned by the Norwich and Worcester R. R. Co.), to the terms of the lease to the New England R. R. Co." (p. 588.) 4081

"General Balance Sheet, June 30, 1897.

"Capital Stock, Common.....	$20,000,000	4082
"Preferred	5,000,000	
	$25,000,000"	

(p. 588.)

(p. 590.) "*Norwich and Worcester R. R.*—Length of line 66.16 m. * * * The company owns the entire capital stock ($500,000) of the *Norwich and New York Transportation Co.*" (Repeated, 1899, p. 37.)

"Under date of Dec. 31, 1896, the lease of Feb. 9, 1869, was amended so as to include a proposed extension from Norwich to Groton, together with the property of the Norwich and New York Transportation Co., under the terms of the lease to the New England R. R. Co." (Poor's Manual of Railroads, 1899, p. 37.) 4083

"Under date of July 1, 1898, a lease for 99 years was taken of the *New England R. R.*, and, in connection with the lease, $6,500,000 of this company's capital stock was offered in ex-

4084 **Second—New York, New Haven & Hartford R. R. Co.**—Continued. change for the common and preferred stock of the New England R. R. Co., on the basis of one share for every five shares of common stock, and one share for every two shares of preferred stock; the right to make the exchange to continue until Jan. 1, 1900, but a bonus of $4.50 being offered with every share of stock exchanged for preferred stock of the New England R. R. Co. from July 1, 1898, to Jan. 1, 1899. Up to Jan. 1, 1899, there was issued in accordance with this offer $3,202,370 New Haven stock in exchange for $7,576,600 common
4085 stock and $3,374,100 preferred stock of the New England R. R. Co., which, together with the $12,053,400 common stock and $1,501,500 preferred stock owned by the company on June 30, 1898, left outstanding only $370,000 of the common stock and $124,400 of the preferred stock. * * *

"On July 1, 1898, the company assumed the direct management of the *New England R. R.*, the Shepaug, Litchfield and Northern R. R., the *Norwich and New York Transportation Co.*, the *Old Colony Steamboat Co.*, and the *Providence and Stonington Steamship Co.*, and their earnings will be included hereafter in the accounts of this company."

4086 (Poor's Manual of Railroads, 1899, p. 26.)

[Poor's Manual of Railroads, 1900, p. 25.]

"New York, New Haven & Hartford Railroad Company.

"The following statement shows, as of June 30, 1899, the
4087 stocks of leased lines received in exchange for stock of this company, under the terms of that plan.

"Roads not Merged:	Total Stock.	Amount Exchanged.
"Old Colony R. R.....	$16,608,900	$5,518,000
N. Eng. R. R. (Pref.).....	5,000,000	4,891,200
N. Eng. R. R. (Com.).....	20,000,000	13,813,000

Second—New York, New Haven & Hartford R. R. Co.—Continued. 4088

N. Haven & Northam'n.....	2,460,000	2,403,500
Naugatuck	2,000,000	972,200
B. & N. Y. A. L. (Pref.).....	2,998,500	1,594,500
Danbury & Norwalk.....	600,000	446,400
New Haven & Derby.....	447,000	353,600
Stockbridge and Pittsfield.....	448,700	1,500
Berkshire	600,000	1,000
"Total	$51,163,100	$35,994,900
"Roads Merged:		4089
N. Y. Prov. & Boston.....	$5,000,000	$5,000,000
Shore Line	1,000,000	1,000,000
Hartford & Conn. Val.....	800,000	800,000
Shep., Litchfield & No. R. R....	600,000	600,000
Housatonic (Preferred)	2,891,200	2,891,200
Stamford & N. Canaan.....	100,000	100,000
"Totals	$10,391,200	$10,391,200
"Grand Totals	$61,554,300	$46,386,100"

4090

[Poor's Manual of Railroads, 1901, pp. 21-2-3.]

"New York, New Haven and Hartford Railroad Company.

	(Miles.)	
"Main Line of Road.—Woodlawn Junction, N. Y., to Providence, R. I.	173.77	4091
"Branches owned absolutely—		
"Bridg., Ct., to Mass., State Line.....	74.97	
N. Hav., Ct., to Spring., Mass.....	60.17	
Hawleyville to Litchfield, Ct.....	32.28	
Hartwood to Fenwick, Conn.....	46.20	
Stamford to New Canaan, Ct.....	7.66	
Botsford to Huntington, Ct.....	9.79	

4092 **Second—New York, New Haven & Hartford R. R. Co.—Continued**

Brookfield Jc. to Danbury, Ct.	5.36	
N. Hav. Un. Dep. to N. H. & D. R. R.	1.66	
Berlin to Middletown, Conn.	9.70	
Berlin to New Britain, Conn.	3.18	
Windsor Locks to Suffield, Ct.	4.32	
Loop at Stonington, Conn.	0.97	
Auburn to Pontiac, R. I.	4.69	
Auburn to Providence, R. I.	3.58	
		264.53

4093 "Leased Lines (see separate statements therefor; also summary, page 27) 1,569.78

"Lines operated under contracts for trackage rights:

N. Y. & Harlem R. R.—Woodlawn Jc. to Grand Cent. Sta., N. Y.		12.03	
Boston Terminal Co.—Fort Point Channel to Station, Boston, Mass.		0.42	
Boston & Albany R. R.	Junction to Station, Ashland, Mass.	0.22	
	Junction to Station, Worcester, Mass.	0.15	
4094	Junction to Station, Springfield, Mass.	0.59	
Boston & Maine R. R.—Junction to Station, Lowell, Mass.		0.57	
Fitchburg R. R.—Conway Junc. to Shelburne Falls, Mass.		4.67	
N. D. & C. R. R.—Hopewell Junc. to Wicopee, N. Y.		10.95	
			29.60

"Total length of railroad operated, June 30, 1900, 2,037.68"

4095

* * *

"*History.*—Consolidation, Aug. 6, 1872, of the Hartford and New Haven and the New York and New Haven R. R. (see Manual for 1893, page 468). The main line of the consolidated road extended from Springfield, Mass., to Woodlawn, N. Y., 122.44 miles, and there were several short branches aggregating 19.04 miles. The company inherited from the

Second—New York, New Haven & Hartford R. R. Co.—Continued 4096

New York and New Haven R. R. Co. a lease of the *Shore Line Ry.*, from New Haven to New London, 48.53 miles, and the right to run trains in perpetuity over the New York and Harlem R. R., between Woodlawn and the Grand Central Station in the City of New York, 12.03 miles. The Harlem River and Port Chester R. R., 11.5 miles, was leased Oct. 1, 1873; the *Boston and New York Air-Line R. R.*, 55.85 miles, on Oct. 1, 1882; the Stamford and New Canaan R. R., 7.66 miles, on Oct. 1, 1884; the *New Haven and Northampton R. R.*, *Naugatuck R. R.* and *Hartford and Connecticut Valley R. R.*, aggre- 4097
gating 243.82 miles, on April 1, 1887; the *Housatonic R. R.*, 89.94 miles, and the leased lines thereof, aggregating 99.49 miles, on June 30, 1892; the *New York, Providence and Boston R. R.*, 80.28 miles, and the leased lines thereof, aggregating 56.07 miles, on July 1, 1892; the *Old Colony R. R.* and its leased lines, aggregating 617.53 miles, on March 1, 1893; the *New England R. R.* and its leased lines, aggregating 505.74 miles, and the Shepaug, Litchfield and Northern R. R., 32.28 miles, on July 1, 1898; and the Middletown, Meriden and Waterbury R. R., 29.5 miles, on Nov. 1, 1898. The Berkshire, the Danbury and Norwalk, the New Haven and Derby, the 4098
Stockbridge and Pittsfield, and the West Stockbridge were the leased lines of the Housatonic R. R. Co., while the Pawtuxet Valley and the *Providence and Worcester* were the New York, Providence & Boston R. R. Co.'s leased lines. New leases of those branches have been made direct to the New York, New Haven and Hartford R. R. Co., and the old ones have been canceled.

"The company absorbed the Stamford and New Canaan R. R., on Oct. 1, 1890, and in 1893, with the purpose of acquiring the rest of the leased lines, offered shares of its capital stock in exchange for their shares on the terms stated in the Manual 4099
for 1894, on page 583. Additional capital stock was issued in July, 1898, to be exchanged for the capital stocks of the New England, and the Shepaug, Litchfield and Northern R. R. Cos., on the terms outlined in the Manual for 1889, on pages 25 and 26. The following statement shows, as of June 30, 1900, the progress made in the acquisition of the leased lines, and the amount of capital stock issued for the purpose:

4100 **Second—New York, New Haven & Hartford R. R. Co.—Continued**

"Roads not Merged:	Total Stock.	Amount Exchanged.
Old Colony R. R.	$16,608,900	$5,518,000
N. England R. R. (Pref.)	5,000,000	4,925,800
N. England R. R. (Com.)	20,000,000	19,946,500
N. Haven & Northam'n	2,460,000	2,403,500
Naugatuck	2,000,000	972,200
B. & N. Y. A. L. (Pref.)	2,998,500	1,594,500
Danbury & Norwalk	600,000	446,400
4101 New Haven & Derby	447,000	353,600
Stockbridge & Pittsfield	448,700	1,500
Berkshire	600,000	1,000
Totals	$51,163,100	$36,163,000
"Roads Merged:		
N. Y., Prov. & Boston	$5,000,000	$5,000,000
Shore Line	1,000,000	1,000,000
Hartford & Conn. Val.	800,000	800,000
Shep., Litch. & No. R. R.	600,000	600,000
4102 Housatonic (Preferred)	2,891,200	2,891,200
Stamford & N. Canaan	100,000	100,000
"Totals	$10,391,200	$10,391,200
"Grand Totals	$61,554,300	$46,554,200"

"The *Hartford and Connecticut Valley R. R. Co.* was absorbed on Dec. 21, 1892; the *New-York, Providence and Boston R. R. Co.* on Feb. 3, 1893; the *Shore Line R. R. Co.* on March 18, 4103 1897; the *Housatonic R. R. Co.* on March 28, 1898; and the Shepaug, Litchfield and Northern R. R. Co. on July 8, 1898."

* * *

"The Company owns the *Providence and Stonington* and the *New Haven Steamship Cos.*, and controls the *Old Colony Steamboat Co.* and the *Norwich and New York Transportation Co.*,

Second—New York, New Haven & Hartford R. R. Co.—Continued. 4104

through the leases, respectively, of the Old Colony R. R. and the Norwich and Worcester R. R. The New Haven Steamship Co. was acquired as of May 1, 1900, this company assuming its outstanding bonds, amounting to $364,500, as part of the purchase price. (See page 25.) The steamboat lines are under the direct management of the company, but their earnings (amounting to $3,985,700.88 during the year ending June 30, 1900) are not included in this statement."

(p. 26.) "Stocks and Bonds owned.—The following is a detailed statement of the stocks and bonds owned by the company June 30, 1900. * * * The stocks are exclusive of those received in exchange for N. Y., N. H. & H. R. R. stock. 4105

Stocks.	No.	Par Value.	Bonds.	No.	Par Value
B. & N. Y. A. L. R. R. Com	7438	743,800			
Prov. & Springfield R. R. Co	4383½	438,350			
Prov. & Stonington SS. Co	20,000	2,000,000			
N. Haven Steamboat Co	5,000	500,000			
Totals		7,347,450			

4106

* * * * *

"The following stocks and bonds are held by the company as lessee of the Old Colony R. R.: 12,000 shares of Old Colony S. B. Co." (p. 26.)

[Poor's Manual of Railroads, 1901, pp. 28-29-30-31.]

4107

"RAILROADS OWNED OR LEASED BY THE N. Y., N. H. & H. R. R. CO.

Berkshire R. R.—West Stockbridge to Conn. State Line, 20.53 m. Total track, 25.56. Chartered April 13, 1837; opened Dec. 1, 1842. Leased to the N. Y., N. H. & H. R. R. Co. for 99 years from April 1, 1893.

4108 **Second—New York, New Haven & Hartford R. R. Co.—Continued.**

Boston and New York Air-Line R. R.—New Haven to Willimantic, Conn., 52.26 m. * * * Reorganization of the New Haven, Middletown and Willimantic R. R. Co., after foreclosure in 1875. Leased to the N. Y., N. H. & H. R. R. Co. for 99 years from Oct. 1, 1882.

Danbury & Norwalk R. R.—Danbury to Wilson's Point, Conn., 26.28 m. Chartered May, 1849. Leased to the N. Y., N. H. & H. R. R. Co. for 99 years from July 1, 1892.

Harlem River and Port Chester R. R.—New Rochelle to Har-
4109 lem River, N. Y., 11.5 m. * * * Chartered April 23, 1866; road opened Nov. 24, 1873. Leased to the N. Y., N. H. & H. R. R. Co. from Sept. 30, 1873.

Naugatuck R. R.—Naugatuck Junc. to Winsted, Conn., 56.55 m.; Watertown to Waterbury, Conn., 4.44 m.; total, 60.99 m. * * * Chartered in May, 1845; opened through Sept. 24, 1849. Leased for 99 years from April 1, 1887, to the N. Y., N. H. & H. R. R. Co.

New Haven & Derby R. R.—New Haven to Ansonia, Conn., 12.90 m.; Derby to Huntington, Conn., 3.79 m.; total, 16.69 miles. * * * Chartered in May, 1864; main line opened
4110 Aug. 1, 1871; branch, Nov. 14, 1888. Leased for 99 years, from July 1, 1892, to N. Y., N. H. & H. R. R. Co.

New Haven and Northampton R. R.—New Haven, Conn., to Conway Junc., Mass., 94.64 m.; Farmington to New Hartford, Conn., 14.09 m.; Northampton to Williamsburg, Conn., 7.51 m.; South Deerfield to Turner's Falls, Mass., 10.07 m.; total, 126.31 m. * * * Leased for 99 years, from April 1, 1887, to the N. Y., N. H. & H. R. R. Co.

Holyoke and Westfield R. R.—Holyoke to Westfield, 10.32 miles. * * * Chartered in 1870; opened throughout in 1879. Leased in perpetuity to N. H. & N. R. R. Co., and lease
4111 assigned to the N. Y., N. H. & H. R. R. Co.

Providence and Worcester R. R.—Providence, R. I., to Worcester, Mass., 43.41; Valley Falls to East Providence, 7 m.; total, 50.41 miles. * * * Leased for 99 years from July 1, 1892, to the N. Y., N. H. & H. R. R. Co.

Stockbridge and Pittsfield R. R.—Vandeusenville to Pittsfield, Mass., 22.02 m. * * * Chartered March 20, 1847; opened

Second—New York, New Haven & Hartford R. R. Co.—Continued. 4112

Jan. 1, 1850. Leased to N. Y., N. H. & H. R. R. Co. for 99 years from April 1, 1893.

West Stockbridge R. R.—West Stockbridge to State Line of New York, 2.64 m. Total track, 3.53 miles. Chartered April 5, 1836; road opened Aug. 10, 1838. Leased to the N. Y., N. H. & H. R. R. Co.

New England R. R.—Boston, Mass., to Hopewell Junc., N. Y., 213.56 m.; Wicopee to Fishkill Landing, N. Y., 1.71 m.; * * * Newton, Mass., to Woonsocket, R. I., 28.67 m.; * * * Providence, R. I., to Willimantic, Conn., 57.76 m.; 4113
East Thompson, Conn., to Southbridge, Mass., 17.36 m.; East Hartford, Conn., to Springfield, Mass., 28.31 m.; Melrose to Rockville, Conn., 7.22 m. Total, 359.16 m. * * * Reorganization, Aug. 26, 1895, of the N. Y. & N. E. R. R. Co. Leased to the N. Y., N. H. & H. R. R. Co. for 99 years from July 1, 1898.

Milford and Woonsocket R. R.—Bellingham to Ashland, Mass., 15.35 m. * * * Chartered May 2, 1855. Road opened (Milford to Bellingham, 3.96 m.) June 2, 1866. Leased to the N. E. R. R. Co., for 5 years from April 1, 1897.

Milford, Franklin and Providence R. R.—Franklin to Bellingham, Mass., 4.65 m. Total track, 5.03 miles. Road opened 4114
Aug. 1, 1883. Leased to the N. E. R. R. Co. for 5 years from April 1, 1897.

Norwich and Worcester R. R.—Groton, Conn., to Worcester, Mass., 70.97 m.; connection at Norwich with N. L. N. R. R., 0.63 m.; total, 71.60 m. Total track * * * 107.82 miles. * * * Consolidation in May, 1836, of the Boston, Norwich and New London and the Worcester and Norwich R. R. Cos. * * * The company owns the capital stock ($500,000) of the *Norwich and New York Transportation Co.* The entire property is leased to the N. E. R. R. Co. for 99 years from Feb. 9, 4115
1869; lease assumed by the N. Y., N. H. & H. R. R. Co.

Providence and Springfield R. R.—Providence to Douglas Junc., 27.73 m. * * * Chartered 1853; road opened Aug. 11, 1873; extension from Pascoag to Douglas Junc., 6.84 m., opened June 11, 1893. Leased to the New England R. R. Co., for 93 years from July 1, 1896.

4116 **Second—New York, New Haven & Hartford R. R. Co.**—Continued.

Rhode Island and Massachusetts R. R. (In Mass.).—Franklin, Mass., to R. I. State Line, 6.52 miles. Operated by the N. Y., N. H. & H. R. R. Co. at a rental of $10,000 per annum, but there has been no formal adoption of the old lease.

Rhode Island and Massachusetts R. R. (In R. I.).—Valley Falls, R. I., to Mass. State Line, 7.07 miles. Chartered Jan., 1865; road opened in Sept. 1877. Operated by the N. Y., N. H. & H. R. R. Co., but without a lease.

Old Colony R. R.—Boston, Mass., *to Newport*, R. I., 67.60 m.;
4117 Mayflower Park to Somerset Junc., Mass., 36.31 m.; Middleborough to Provincetown, Mass., 85.66 m.; * * * Braintree to Kingston, Mass., 32.34 m.; South Braintree to Plymouth, Mass., 26.04 m.; Framingham to Lowell, Mass., 26.12 m.; New Bedford to Fitchburg, Mass., 91.25 m.; Neponset to Mattapan, Mass., 3.3 m.; Stoughton Branch Junc. to Stoughton, Mass., 1.65 m.; Harrison Square, Mass., to Shawmut and Milton Junc., 2.39; Whitman, Mass., to Bridgewater Iron Works, 6.12 m.; Elmwood to Westdale, Mass., 0.75 m.; Atlantic to Braintree, Mass., 5.41 m.; South Yarmouth to Hyannis, Mass., 5.05 m.; Buzzard's Bay to Woods Holl, Mass., 17.54 m.;
4118 Tremont to Fairhaven, Mass., 15.17 m.; North Abington to Hanover, Mass., 7.8 m.; Matfield to Easton, Mass., 7.56 m.; extension to Plymouth and Middleborough R. R., in Middleborough, Mass., 0.42 m.; Middleborough, Mass., to Middleborough and Taunton Junc., 8.04 m.; Attleboro' Branch Junc. to Attleborough, Mass., 8.60 m.; Attleboro' Branch Junc. to Whittenton, Mass., 0.98 m.; Pratt's Junc. to Sterling Junc., Mass., 5.03 m.; Lancaster Branch Junc. to Lancaster Mills, Mass., 1.63 m.; Marlborough Junc. to Marlborough, Mass., 1.47 m.; South Framingham to Woman's Reformatory, Mass., 0.62 m.; Walpole Junc. to North Attleborough, Mass., 12.85 m.;
4119 Walpole Junc. to Norwood Junction, Mass., 5.76 m.; New Bedford to Fall River, Mass., 12.25 m.; Fall River, Mass., to Warren, R. I., 7.95 m.; connection with P. & W. R. R., 0.22 m.; connection with N. E. R. R., Boston, Mass., 0.23 m.; total, 507.49 miles. * * * The company owns a controlling interests in the *Old Colony S. B. Co.*, and in the New Bedford, Martha's Vineyard and Nantucket S. B. Co. The system is

Second—New York, New Haven & Hartford R. R. Co.—Continued. 4120

leased to the N. Y., N. H. & H. R. R. Co., for 99 years from *March 1, 1893.*

Boston and Providence R. R.—Boston, Mass., to Providence, R. I., 41.5 m.; East Junc., Mass., to India Point, Providence, R. I., 8.05 m.; Forest Hills to Dedham, Mass., 5.37 m.; Readville to Dedham, Mass., 2.47 m.; connection with N. E. R. R., Readville, Mass., 1.20 m.; Canton Junc. to Stoughton, Mass., 4.05 m.; total, 62.64 miles. * * * Chartered July 22, 1831; opened in Aug. 1835. Leased to the Old Colony R. R. Co., for 99 years from April 1, 1888. 4121

Plymouth and Middleborough R. R.—Plymouth to Middleborough, Mass., 15.03 m.; total track, 16.05 miles. * * * Chartered March 20, 1890; road opened Dec. 4, 1892. Leased for 99 years from Jan. 1, 1892, to the Old Colony R. R. Co."

4122

[Defendants' Exhibit 18-C.]

Extracts from Poor's Manual of Railroads, for years Indicated.

THIRD.

"NEW YORK CENTRAL AND HUDSON RIVER RAILROAD.

Line of Road.—New York City, N. Y., to Buffalo, N. Y., 441.75 miles.

4123

		Miles.	
Branches	Athens: Schenectady Junction to Athens	40.29	
	Troy and Schenectady: Troy to Schenectady	21.00	
	Syracuse, Auburn and Rochester: Syracuse to Rochester	104.00	
	Attica: Batavia to Attica	11.00	
	Niagara Falls: Rochester to Niagara Falls	74.75	
	Tonawanda: Lockport Junction to Tonawanda	12.25	
	Charlotte: Rochester Junction to Charlotte	6.88	
	Lewiston: Buffalo to Lewiston..	29.15	
	unction: East Buffalo to North Buffalo	7.67	
			306.99

4124

4125

Leased:	Spuyten Duyvil and Port Morris R. R	6.04	
	Troy and Greenbush R. R.	6.00	
	Niagara Bridge and Canandaigua.	98.46	
	New York and Harlem R. R.	126.96	
	New York and Mahopac R. R.	7.09	
			244.55

Total length of all lines (owned, 758.74; leased, 244.55) 993.29 miles." (Poor's Manual of Railroads, 1885, p. 151.)

Third—New York Central & Hudson River R. R. Co.—Continued 4126

The foregoing statements of the Manual for 1885 are repeated in subsequent Manuals as follows:

Repeated in Manual for

1886, pp. 1-2;

1887, pp. 195-6, with addition of West Shore, making total mileage *1441.31* miles. Repeated in Manual of

1888, pp. 203-4, with minor changes, making total mileage *1446.80* miles. Repeated in Manual of

1889, p. 192, with minor changes, making 4127
total mileage *1420.64* miles. Repeated in Manual for

1890, p. 110;

1891, p. 352;

1892, p. 404, with the addition of

Rome, Watertown & Ogdensburg R. R. and branches.....	412.55	miles.
Utica & Black River.....	149.81	"
Carthage, Watertown & Sackett's Harbor R. R.....	29.59	"
Oswego & Rome R. R.....	28.49	"
Niagara Falls Branch R. R.....	8.74	" 4128

And some minor changes, making the total mileage *2096.46* miles. Repeated in Manual for

1893, p. 441;

1894, p. 550, with addition of 477.15 miles of leased lines, making total mileage *2573.61* miles. Repeated in

1895, p. 565, with minor changes, making total mileage *2636.05* miles. Repeated in Manual for

1896, p. 653;

1897, p. 541;

1898, p. 562; 4129

1899, pp. 147-8, with minor changes, and with the addition of the following, on p. 148:

4130 **Third—New York Central & Hudson River R. R. Co.—Continued.**

"IV. Lines Owned or Controlled by N. Y. C. & H. R. R. R. Co., but Operations Reported Separately:

"*Lake Shore & Michigan Southern Ry.* System.	1403.91	miles.
"*New York, Chicago & St. Louis Ry*.....	512.52	"
"*Michigan Central R. R.* System.....	1657.59	"
"Wallkill Valley R. R.: Montgomery to Kingston, N. Y	32.88	"
	3606.90	"

4131 "Total length of lines owned, leased and controlled, June 30, 1898, 6309.77 miles." Repeated in Manual for 1900, pp. 125-6, with the addition to "Controlled Railroads, operated as independent organizations," of "*Pittsburg & Lake Erie R. R., 179.82* miles," and minor changes, bringing the total mileage to *6744.69* miles.

Subsequently the New York Central & Hudson River R. R. acquired by lease the Boston & Albany R. R., and stock of the *Cleveland, Cincinnati, Chicago & St. Louis*, ("Big Four"), so that in 1901 and 1902 its mileage was as follows:

4132

"New York Central and Hudson River Railroad Company.

		Miles.
"Main Line of Road Owned.—New York, N. Y., to Buffalo, N. Y.....		441.75
"Branch Lines Owned Absolutely:		
Troy to Schenectady, N. Y	21.00 m.	
Syracuse to Rochester, N. Y.....	104.00 m.	
Batavia to Attica, N. Y.....	11.00 m.	
Canand. to Niag. Riv., N. Y.....	87.58 m.	
Roch. to Niag. Falls, N. Y.....	74.75 m.	
4133 Lockp't Jc. to N. Ton'da, N. Y.....	12.25 m.	
Roches. Jc. to Charlotte, N. Y.....	6.88 m.	
Buffalo to Lewiston, N. Y.....	30.29 m.	
East Buffalo to N. Buff., N. Y.....	7.67 m.	
Geneva to Lyons, N. Y.....	14.00 m.	
De Witt to Geddes, N. Y.....	8.28 m.	
		377.70
"Leased Lines		2009.23

Third—New York Central & Hudson River R. R. Co.—Continued 4134

"Total length of lines operated by N. Y. C. & H. R. R. Co., June 30, 1900..... 2828.68

"Railroads Controlled by N. Y. C. & H. R. R. Co., but whose Operations are not included in this Statement:

"(A) Control held on June 30, 1900:

Dunkirk, Allegheny Valley and Pittsburg R. R.....	90.60 m.	
St. Lawrence and Adirondack Ry	56.40 m.	
Terminal Ry. of Buffalo: Blaisdell to Depew, N. Y.....	11.00 m.	4135
Pittsburgh and Eastern R. R.: Mahaffey to Hooverhurst, Pa.	12.00 m.	
Lake Shore & Michigan Southern Ry	*1413.44 m.*	
Michigan Central System.....	*1657.78 m.*	
New York, Chicago and St. Louis R. R	*512.52 m.*	
Lake Erie and Western R. R.....	*725.00 m.*	
Northern Ohio Ry., Delphos to Akron, O	165.00 m.	4136
Pittsburgh and Lake Erie R. R...	*180.09 m.*	
Clev., Cin., Chicago & St. Louis System	*2234.19 m.*	
Boston and Albany R. R.....	393.95 m.	
		7451.97

"(B) Control acquired after June 30, 1900:

Toronto, Hamilton and Buffalo Ry	83.87 m.	
Susquehanna and Clearfield R. R.	23.10 m.	
		106.97
		4137

"Total mileage owned and controlled by N. Y. C. & H. R. R. Co., Mar. 31, 1901..... 10387.62"

(Poor's Manual, 1901, p. 119.)

Total on June 30, 1901, 10,560.60 miles. (Manual, 1902, p. 113.)

4138 **Third—New York Central & Hudson River R. R. Co.—Continued.**

[Poor's Manual of Railroads, for 1885.]

"New York Central and Hudson River Railroad.

History.—"The New York Central and Hudson River Railroad Company was organized by the consolidation, November 1, 1869, of the New York Central and the Hudson River Railroad Companies.

4139 "The New York Central R. R. Co. was organized under a special law passed April 2, 1853, authorizing the consolidation of the railroads between Albany and Buffalo, viz.: the Albany and Schenectady, the Schenectady and Troy, the Utica and Schenectady, the Syracuse and Utica, the Syracuse and Utica Direct, the Rochester and Syracuse, the Buffalo and Lockport, the Mohawk Valley, the Rochester, Lockport and Niagara Falls, and the Buffalo and Rochester. Articles of agreement taking effect as of May 1st, 1853, were filed May 17, 1853; the first board of directors elected July 6, and the whole line delivered to the new company August 1, 1853.

4140 "*The Albany and Schenectady R. R.*, chartered in 1826 as the Mohawk and Hudson, was opened September 12, 1831, and was the first railroad built in the State of New York. The name was changed to A. & S., in 1847. *The Schenectady and Troy* was chartered in 1836, and opened in 1842. *The Utica and Schenectady*, chartered in 1833, was opened August 1, 1836. *The Syracuse and Utica*, chartered in March, 1836, was opened July 3, 1839. *The Syracuse and Utica Direct* was organized under the general law, and filed articles January 26, 1853. Merged in the N. Y. C. R. R. Co. under the act of 1853. *The Rochester and Syracuse* was a consolidation (August 1, 1850) of
4141 the Auburn and Rochester and the Auburn and Syracuse. The Auburn and Rochester, chartered in 1836, was opened in August, 1841, and the Auburn and Syracuse, chartered in 1834, was opened in June, 1838. The Direct Line was opened in 1853. *The Buffalo and Lockport* filed articles April 27, 1852, and was in progress at the date of consolidation. The road was opened in 1854. *The Mohawk Valley* filed articles January 21, 1851, and December 28, 1852. The company was merged

Third—New York Central & Hudson River R. R. Co.—Continued 4142

in the New York Central R. R. Co. under the act of 1853. The *Rochester, Lockport and Niagara Falls* was originally the Lockport and Niagara Falls, chartered in 1834, and opened in 1838. In December, 1850, the R. L. & N. Falls R. R. Co. was organized, and rebuilt the road. *The Buffalo and Rochester* was a consolidation (December 7, 1850) of the Attica and Buffalo and the Tonawanda. In 1852 this company opened a direct road from Buffalo to Batavia, keeping that part of the Attica and Buffalo line between Attica and Batavia as a branch. The A. & B. was chartered in 1836, and opened in 1842; and 4143
the Tonawanda, chartered in 1832, was opened in 1842.

"The following roads were leased and subsequently merged in the consolidation: *The Rochester and Lake Ontario* in 1855, for $150,000; *The Buffalo and Niagara Falls* in 1855, for $658,-921.56; the *Lewiston* in 1855, for $400,000; and the *Saratoga and Hudson River* (Athens Branch) in 1867, for $2,000,000. The stock of the consolidated company was issued at par in exchange for the stocks of the lessor companies respectively. The last named road was leased on the 2d of November, 1881, to the New York, West Shore and Buffalo R. R. Co. for 475 years, the rental for the entire period having been commuted 4144
for $400,000.

"*The Niagara Bridge and Canandaigua R. R.*, originally the Canandaigua and Niagara Falls, filed articles March 1, 1851, was opened April 1, 1854, and leased to the New York Central, September 1, 1858, at 6 per cent. on $1,000,000 capital stock.

"*The Hudson River R. R. Co.* was chartered May 12, 1846, and road opened through its entire length from New York to East Albany, October 3, 1851. Prior to its consolidation in the New York Central and Hudson River R. R. Co. it had taken a lease of the Troy and Greenbush R. R. Co., June 1, 4145
1851, for 7 per cent. on $295,000 capital stock. The lease, which runs during the time of the charter or any extension thereof, was assumed by the consolidated company.

"The New York Central and Hudson River R. R. Co. has added the following lines:

"*The New York and Harlem*, chartered April 25, 1831; leased for 400 years from April 1, 1873, the rental being 8 per cent.

4146 **Third—New York Central & Hudson River R. R. Co.—Continued.**

on stock and interest on bonds. This lease covers the N. Y. and Mahopac; lease dated June 17, 1872; expires Dec. 31, 1971. Rental nominal.

"*The Spuyten Duyvil* and Port Morris R. R., chartered April 24, 1867; lease dated November 1, 1871; expires December 31, 1970; rental, 8 per cent. on cost, $989,000.

"*The Dunkirk, Allegheny Valley and Pittsburgh R. R.*; lease dated January 3, 1874; expires January 3, 2273. Rental, 7 per cent. on $2,900,000 bonds, and 3 per cent. on $1,300,000 stock."

4147 (Poor's Manual of Railroads, 1885, pp. 152-3.)

The foregoing historical statements are repeated in the Manual for 1886, pp. 1-3, with the addition of the following:

"The Company has taken a lease of the *West Shore Ry.* for a period of 475 years from January 1, 1886, at a yearly rental of 4 per cent. on $50,000,000 bonds; the West Shore also, under the terms of the lease, depositing its entire issue of stock, $10,000,000, with this company." (P. 3.) And, with this addition, repeated in Manual for

1887, p. 195;

4148 1888, p. 203;

1889, p. 192;

1890, p. 110;

1891, p. 353;

1892, p. 404;

1893, p. 414;

1894, p. 550;

1895, p. 565;

1896, p. 653;

1897, p. 541;

1898, p. 562;

4149 1899, p. 146;

1900, p. 125;

1901, p. 119.

DEFENDANTS' EXHIBIT 18-C. 1061

Third—New York Central & Hudson River R. R. Co.—Continued. 4150

[Poor's Manual of Railroads, for 1886.]

"WEST SHORE RAILROAD.

		Miles.	
Line of Road, *Weehawken, N. J., to Buffalo, N. Y*.....		425.96	
"Branches:	Albany: Cooymans, N. Y., to Albany, N. Y	11.46	
	Middletown: Cornwall, N. Y., to Middletown, N. Y.....	24.60	4151
	Athens: Coxsackie, N. Y., to Athens, N. Y	6.16	
	Guilderland: Fuller's Station, N. Y., to Rotterdam, N. Y.....	4.44	
"Trackage: Suspension Bridge and Erie Junc. R. R., 21.3; Erie Int. R. R. 4.25.....		25.55	
"Total length of railroad, September 30, 1885.....		498.17	

* * * * *

4152

"On October 1, 1883, the road was opened from Weehawken to Syracuse, and on the 1st of January, 1884, through trains were run to Buffalo." * * *

"On November 24, 1885, the property was sold under foreclosure and purchased by a committee of the bond holders. * * * The sale was confirmed December 5, 1885, and the property transferred to the purchasers, who on that day filed articles of incorporation under the title of the West Shore Railroad Company. Capital stock, $10,000,000; funded debt, 4153
$50,000,000. * * * On the same day an agreement was entered into for the lease of the entire property, rights and franchises of the company to the *New York Central and Hudson River Railroad Company* for 475 years from January 1, 1886, the rental being interest on bonds. * * * The stock was surrendered to the lessee as a consideration for the lease and guarantee." (Poor's Manual of Railroads, 1886, pp. 489-90.)

4154 **Third—New York Central & Hudson River R. R. Co.—Continued.**

The above statement is repeated in Manual for

1887, p. 203;
1888, p. 210;
1889, p. 199;
1890, p. 118;
1891, p. 359;
1892, p. 413;
1893, p. 450;
1894, p. 558;
4155 1895, p. 574;
1896, p. 662;
1897, p. 549;
1898, p. 571;
1899, p. 155;
1900, p. 134;
1901, p. 129.

"*West Shore and Ontario Terminal Company of New York and New Jersey.*

4156 "This company was formed on the 13th of June, 1883, by the consolidation of the National Stock Yard Co., and the Midland Terminal and Ferry Co. * * * The Ferry Co. * * * had been organized with powers * * * to operate a ferry between Weehawken and New York. * * * In the consolidation the stocks of the Stock Yard and Ferry companies were exchanged for the stocks of the new corporation, the Ontario and Western and the West Shore Railway companies being equal owners. On July 13, 1883, the property was leased to the two railway companies for 99 years." (Poor's
4157 Manual of Railroads, 1886, p. 491.)

The above statement is repeated in Manual for

1887, p. 204;
1888, p. 211;
1889, p. 200;
1890, p. 119;
1891, p. 359;
1892, p. 414;

Third—New York Central & Hudson River R. R. Co.—Continued 4158

1893, p. 451;
1894, p. 558;
1895, p. 574;
1896, p. 663;
1897, p. 549;
1898, p. 572;
1899, p. 156;
1900, p, 134;
1901, p. 129.

4159

[Poor's Manual of Railroads, for 1889. (P. 194.)]

"New York Central and Hudson River R. R. Co.

"Stocks and Bonds of Other Companies Owned:

4160

* * * * *

	Number of shares.	Par value.
"*West Shore R. R. Co*	100,000	$10,000,000

* * * * *

Total					$15,968,100
The above statement is repeated in Poor's Manual for					
1890, p. 114,	with additions	making	total	of	17,157,100
1891, p. 355,	"	"	"	"	16,080,850 4161
1892, p. 407,	"	"	"	"	20,895,146
1893, p. 443,	"	"	"	"	20,858,500
1894, p. 553,	"	"	"	"	25,083,500
1895, p. 568,	"	"	"	"	31,723,050
1896, p. 656,	"	"	"	"	31,859,750
1897, p. 544,	"	"	"	"	31,860,050
1898, p. 568,	"	"	"	"	31,861,450

4162 **Third—New York Central & Hudson River R. R. Co.**—Continued.

[Poor's Manual of Railroads, for 1899. (P. 152.)]

"New York Central and Hudson River R. R. Co.

"Stocks and Bonds of other Companies owned by N. Y. C. & H. R. R. R. Co., June 30, 1898:

	Stocks.	No. of Shares.	Total par value.
4163	* * * * * * *	* * *	* * * *
	L. S. & M. S. Ry. Co......	449,693 1-8	44,969,312.50
	* * * * * * *	* * *	* * * *
	Mich. Cen. R. R. Co......	149,021	14,902,100.00
	* * * * * * *	* * *	* * * *
	West Shore R. R. Co......	100,000	10,000,000.00
	Total Par Value		91,733,062.50

4164 [Poor's Manual of Railroads, for 1900. (P. 131.)]

"New York Central and Hudson River R. R. Co.

"Stocks and Bonds of other Companies owned or held in trust by the N. Y. C. & H. R. R. R. Co., June 30, 1899.

	Stocks.	No. of Shares.	Total Par Value.
	* * * * * * *	* * *	* * *
	L. S. & M. S. Ry. Co......	452,696	45,269,600
	* * * * * * *	* * *	* * *
4165	*Mich. Cen. R. R. Co.*.....	161,275	16,127,500
	* * * * * * *	* * *	* * *
	W. Shore R. R. Co......	100,000	10,000,000
	Total Par Value		94,955,000

Third—New York Central & Hudson River R. R. Co.—Continued. 4166

[Poor's Manual of Railroads, for 1901. (P. 126.)]

"New York Central and Hudson River R. R. Co.

"Stocks and Bonds of other companies owned or held in trust by the N. Y. C. & H. R. R. R. Co., on June 30, 1900:

Stocks.	No. of Shares.	Total Par Value.	
Beech C. R. R. R. Co	25	1,250.00	
B. Crosst'n Ry. Co	800	80,000.00	4167
B. T. I., J. & P. R. R. Co	2500	250,000.00	
Car. & Ad. Ry. Co	5000	500,000.00	
C. W. & S. H. R. R.	4838	483,800.00	
C. D. & T. R. R. Co	1354	135,400.00	
Ches. & O. Ry. Co	*50000*	*5,000,000.00*	
Chest. C'k. R. R. Co	200	20,000.00	
Cl'f'd Bit. C. Co	16500	825,000.00	
C. C. C. & St. L. Ry	*67027*	*6,702,700.00*	
D. A. V. & P. R. R	10676	1,067,600.00	
G. & O. R. R. Co	3500	350,000.00	
Hud. R. Bridge Co	3750	375,000.00	4168
J. C. & B. R. R. Co	135	13,500.00	
L. E. & W. R. R. pref	*29650*	*2,965,000.00*	
L. E. & W. R. R. com	*29700*	*2,970,000.00*	
L. S. & M. S. Ry. Co	*452892*	*45,289,200.00*	
Mah. F'ls. R. R. Co	1000	100,000.00	
Mer. Des. Tr. Co	25974	2,597,400.00	
Mich. Cen. R. R. Co	*164119*	*16,411,900.00*	
M. & Mal. Ry. Co	45000	4,500,000.00	
M. R. C'l Min. Co	562	56,200.00	
N. J. Jc. R. R. Co	1000	100,000.00	
N. J. S. H. R. R. Co	310	31,000.00	4169
N. Y. & P. R. R. Co	65000	6,500,000.00	
N. Y. O. & W. Ry. pf	10	1,000.00	
N. F. Br. R. R. Co	2500	250,000.00	
Os. Ag. Fair Asso	20	500.00	
Os. & Ro. R. R. Co	2022	202,200.00	
Pa. West. R. R. Co	2000	100,000.00	

4170 **Third—New York Central & Hudson River R. R. Co.—Continued.**

Pine C'k Ry. Co	19980		999,000.00
Pitts. & E. R. R. Co	3950		197,500.00
Queenst'n Sus. Br. Co. (£25 each)	335	1-5	40,000.00
Ry. Educat'l Assn	15		1,500.00
St. L. & St'y Pt. R. R. Co. (10 p. c. pfd.)	185		1,850.00
S. G. & C. Ry. Co	8218		821,800.00
Term. Ry. of Buff	5000		500,000.00
Tiv. Hol. R. R. Co	325		32,500.00
4171 Tona'da Is. B. Co	2000		50,000.00
Troy Un. R. R. Co	150		15,000.00
U. & B. R. R. R. Co	11200		1,120,000.00
Wal. Vy. R. R. Co	3300		330,000.00
West Br. Coal Co	1050		105,000.00
West. Transit Co	10000		1,000,000.00
W. S. & O. Ter. Co	29		2,900.00
W. Shore R. R. Co	*100000*		*10,000,000.00*
"Total par value			113,095,700.00"

4172

"ROME, WATERTOWN AND OGDENSBURG RAILROAD COMPANY.

	Miles.
Main Line of Road—Suspension Bridge to Massena Springs, N. Y.	299.03
Messena Springs, N. Y.	299.03
4178 Richland, N. Y., to Rome, N. Y.	41.07
Cape Vincent Branch: Watertown Junc. to Cape Vincent, N. Y.	24.20
Ogdensburg Branch: De Kalb Junction to Ogdensburg, N. Y.	19.00
Syracuse Branch: Syracuse to Pulaski, N. Y.	37.40
Lewiston Branch: Lewiston Junction to Lewiston, N. Y.	3.60
Fulton Branch: Woodard's to Fulton	17.11

Third—New York Central & Hudson River R. R. Co.—Continued.				4174
Terminal R. R. Branch: Rochester to Ontario Beach, N. Y.		8.37		
			109.68	
Leased, Included in Main Line:	Oswego and Rome R. R.: Richland to E. Oswego, N. Y.	28.49		
	Niagara Falls Br. R. R.: Lewiston Jc. to Suspen. Brg.	8.74		
Leased:	Utica and Black River Railroad and Clayton Branch		149.81	4175
	Carthage, W'town and Sack. Har. R. R.: Carthage to Sack. Har., N. Y		29.59	
Trackage:	N. Y. C. & H. Riv. R. R.: Suspension Brg. to Niagara Falls	1.81		
	N. Y., Ontario & Western Ry.: Fulton to East Oswego, N. Y.	12.20		
			14.01	
"Total length of lines owned, leased and operated, June 30, 1890			643.19"	4176

"On March 14, 1891, the property of this company was leased in perpetuity to the *New York Central and Hudson River R. R. Co.* The stockholders received a stock dividend of 20 per cent., and 5 per cent. per annum is guaranteed by the lessee on the whole amount of stock thus increased." (Poor's Manual of Railroads, 1891, pp. 482-3.)

4177

[Poor's Manual of Railroads, 1901, p. 266.]

"New York Central and Hudson River Railroad System.

"The following railroads, domiciled in the Central Northern Group of States, are controlled by the New York Central and

4178 **Third—New York Central & Hudson River R. R. Co.—Continued.**

Hudson River R. R. Co., but operated separately by their own organizations:

			Miles.
	"Cleveland, Cincinnati, Chicago & St. Louis System:		
	Lines Owned	1,683.99 m.	
	Proprietary Roads	120.75	
	Joint Trackage	86.28	
	Controlled Roads	396.08	
4179			2,287.10
	"Lake Erie and Western R. R.:		
	Lines Owned	717.57	
	Joint Trackage	7.43	
	Northern Ohio Ry. (controlled)	165.00	
			890.00
	"Lake Shore and Michigan Southern Ry.:		
	Lines Owned	862.15	
4180	Proprietary Roads	231.33	
	Leased Lines	319.96	
			1,413.44
	"New York, Chicago and St. Louis R. R.:		
	Lines Owned	494.72	
	Leased Lines	17.80	
	Joint Trackage	10.50	
			523.02
4181	*"Michigan Central Ry.:*		
	Lines Owned	270.07	
	Leased and Proprietary Lines	916.41	
	Lines Operated	457.30	
	Joint Trackage	14.00	
			1,657.78
	"Total		6,771.34"

Third—New York Central & Hudson River R. R. Co.—Continued. 4182

"LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY.

		Miles.	Miles.
Line of Road—Buffalo, N. Y., to Chicago, Ill..			540.49
Branches:	Milbury: Elyria to Milbury, O.	72.95	
	Elkhart: Junction to Elkhart, Mich	130.83	
	Jackson: Junction to Jackson, Mich	41.98	
	Monroe: Junction to Monroe, Mich	29.37	
	Jamestown: Ashtabula, O., to Jamestown, Pa	35.98	
	Sandusky Pier, 3.72; Adrian, 5.72; Ashtabula Harbor, 2.33; Dunkirk, 1.50	13.27	
			324.38
Proprietary Roads:	Detroit, Monroe and Toledo R. R.	62.36	
	Kalamazoo and White Pigeon R. R	36.57	
	Northern Central Michigan R. R.	61.14	
			160.07
Leased Lines:	Kalamazoo, Allegan and Grand Rapids R. R.	58.42	
	Jamestown and Franklin R. R..	50.91	
	Mahoning Coal R. R. (and 4.74 miles branches)	43.05	
	Detroit, Hillsdale and Southwestern	65.20	
	Fort Wayne and Jackson R. R.	97.83	
			315.41
Total length of road operated			1,340.35

4183

4184

4185

(Poor's Manual of Railroads, 1885, p. 548.)

4186 **Third—New York Central & Hudson River R. R. Co.—Continued.**

The foregoing statements of the Manual for 1885 are repeated in subsequent Manuals as follows: Repeated in Manual for

1886, p. 709;
1887, p. 474;
1888, p. 473;
1889, p. 465;
1890, p. 785 (with slight addition); repeated in

4187 1891, p. 739;
1892, p. 756;
1893, p. 800;
1894, p. 483;
1895, p. 494;
1896, p. 581;
1898, p. 488;
1899, p. 159.

"This company is controlled by the *New York Central and Hudson River R. R. Co.*, by ownership of a majority of the capital stock." (Poor's Manual, 1899, p. 160.)

4188 "Statement of stocks and bonds held, and advances made to other companies:

Description of Securities.		Value at Par.
* * * * * * * *		* * * *
New York, Chicago and St. Louis Ry.	(Preferred)..	14,050,000
	(Common) ..	12,480,000"
* * * * * * * * *		* * * *

(Poor's Manual of Railroads, 1885, p. 554.)

The foregoing statements of the Manual for 1885 are repeated in subsequent Manuals, as follows: Repeated in Manual for

4189 1886, p. 709;
1887, p. 478;
1888, p. 477, New York, Chicago & St. Louis Ry... 1st preferred, 2,503,000
2nd preferred, 6,275,000
Common, 6,240,000

Repeated,
1889, p. 469;

Third—New York Central & Hudson River R. R. Co.—Continued. 4190

1890, p. 789;
1891, p. 741;
1892, p. 758;
1893, p. 801;
1894, p. 484;
1895, p. 495;
1896, p. 582;
1897, p. 477;
1898, p. 490;
1899, p. 161. 4191

"Statement of stock and bonds held, and advances made to other companies, Dec. 31, 1899:

"Description of Securities.		Value at Par.
Pittsburgh and Lake Erie R. R., 40,001 shares.....		———
New York, Chicago and St. Louis R. R	(1st preferred)	2,503,000
	(2nd preferred)	6,275,000
	(Common)	6,240,000"

* * * * *

(Poor's Manual of Railroads, 1900, p. 140.) 4192

Pittsburgh and Lake Erie Railroad Company.

		Miles.
Main Line of Road—Pittsburgh, Pa., to Youngstown, O		68.00
Newcastle Branch: New Castle Junction to Newcastle, Pa		2.93
Lowellville Branch: Lowellville, O., to Bentley, O		0.38
Leased:	Mahoning State Line R. R.: Bentley, O., to Shaw Junction, Pa.....	3.16
	Pittsburgh, McKeesp't and Youghiogheny R. R	100.79
	Youghiogheny Northern R. R.....	1.92
	Beaver & Ellwood R. R.: Ellwood City to Elwood Junction, Pa.....	2.91
Total length of lines owned, leased, and operated Dec. 31, 1899.....		180.09"

4193

* * * * *

4194 **Third—New York Central & Hudson River R. R. Co.—Continued.**

"General Balance Sheet, December 31, 1899.

* * * * *

"Capital Stock ($50 shares)..... $4,000,000"
(Poor's Manual of Railroads, 1900, p. 144.)

4195

"Lake Shore and Michigan Southern Railway.

(Poor's Manual, 1899, p. 160):

"General Balance Sheet, December 31, 1898:

"Capital Stock Guaranteed.....	533,500
Common	49,466,500
4196	$50,000,000"

Repeated in Manual for
1900, p. 139;
1901, p. 277.

[Poor's Manual of Railroads, 1901.]

"New York Central System.

4197 "Lake Shore and Michigan Southern Railway Company."

(P. 276.)

"Statement of Stocks and Bonds owned by the Company on Dec. 31, 1900.

* * * * *

Third—New York Central & Hudson River R. R. Co.—Continued. 4198

"N. Y. C. & St. L. R. R., 1st Pref	2,503,000
2nd Pref	6,275,000
Common	6,240,000
"Pittsburgh and Lake Erie R. R.	2,000,050
"Lake Erie and Western, Preferred	5,930,000
Common	5,940,000
"Clev., Cin. Ch. & St. Louis Ry	11,224,000

(P. 279.)

4199

"New York, Chicago and St. Louis Railway.

		Miles.
Line of Road—*Buffalo, N. Y., via Fort Wayne, Ind., to Grand Crossing, Ill*		512.52
Trackage: New York, Lake Erie & Western R. R.: In Buffalo, N. Y.	1.60	
Trackage: Lake Shore & Mich. So. Ry.: Grand Crossing, Ill., to Chic., Ill	8.90	4200
		10.50
Total length of line operated		523.02"

(Poor's Manual of Railroads, 1885, p. 559.)

The foregoing statement is repeated, in substance, in each year to and including Manual for 1901, p. 285, where it appears as follows:

"New York Central System.

4201

"The New York, Chicago and St. Louis Railroad Company.

		Miles.
"Lines of Road:	Buffalo, N. Y., to Silver Creek, N. Y	494.72
	Dunkirk, N. Y., to Indiana-Illinois Line	

4202 Third—New York Central & Hudson River R. R. Co.—Continued.

"Leased:	Chicago & State Line R. R.: Indiana Line to Grand Crossing, Ill	9.96	
	Lake Shore & Mich. So. Ry.: Silver Creek, N. Y., to Dunkirk	7.84	
			17.80
"Trackage:	Erie R. R.: In Buffalo, N. Y.	1.60	
	Lake Shore & Mich. So. Ry.: Grand Crossing to Chicago, Ill	8.90	10.50
4203			
"Total length of lines operated, Dec. 31, 1900			523.02"

"This company is under the control of the *Lake Shore & Michigan Southern R. R. Co.*, through ownership by that company of $14,050,000 of its common, and $12,480,000 of its preferred stock." (Poor's Manual of Railroads, 1885, p. 559.)

"Financial Statement, December 31, 1884.—Common stock,
4204 $28,000,000; preferred, $22,000,000." (Poor's Manual of Railroads, 1885, p. 560.)

"New York, Chicago and St. Louis Railway.

* * * * *

"This company was organized, April 13, 1881, under the
4205 General Railroad Law of New York by the consolidation of the Buffalo, Cleveland and Chicago Ry. Co. of New York, the Buffalo and Chicago Ry. Co. of Pennsylvania, the New York and Chicago Ry. Co. of Ohio, the New York and Chicago Ry. Co. of Indiana, and the New York and Chicago Ry. Co. of Illinois. These several corporations had been previously organized under the laws of their respective states in order to secure the right to build the portions of this line within each

Third—New York Central & Hudson River R. R. Co.—Continued. 4206

state. Shortly after this consolidation the construction of the road was placed under contract, and on October 23, 1882, the whole line was brought into operation. Later in the same year a controlling interest in the capital stock of this company was acquired by the *Lake Shore and Michigan Southern R. R. Co.* In 1885, the company becoming embarrassed, * * * Suits are now pending for foreclosure of the first and equipment mortgages." (Poor's Manual of Railroads, 1886, pp. 335-6.)

4207

"General Balance Sheet, December 31, 1885:

"Common Stock $28,000,000
"Preferred Stock ..... 22,000,000"

(Poor's Manual of Railroads, 1886, p. 336.)

"On May 19, 1887, the road was sold under foreclosure and the company is now being organized under the terms of a plan of reorganization which calls for an issue of $5,000,000 new first preferred stock, $11,000,000 second preferred, and $14,000,000 common stock." (Poor's Manual of Railroads, 1887, p. 505.) 4208

"Company's General Balance Sheet, December 31, 1887:

"Common Stock paid in..... 14,000,000
"Preferred Stock paid in..... 16,000,000"

(Poor's Manual of Railroads, 1888, p. 504.)

(This statement of capital stock appears in each succeeding balance sheet. See Manual 1901, p. 285.)

4209

"Michigan Central Railroad Company."

	Miles.
Main Line of Road—*Kensington, Ill., to Detroit, Mich*	270.07
Trackage: Illinois Central R. R.: *Kensington to Chicago, Ill*.....	14.00

4210 **Third—New York Central & Hudson River R. R. Co.—Continued.**

4211	Leased and Proprietary:	Michigan Air-Line R. R.: Jackson, Mich., to South Bend, Ind.	115.16	
		Jackson, Lansing and Saginaw R. R.	322.90	
		Grand River Valley R. R.: Rives Junction to Grand Rapids	83.79	
		Kalamazoo & South Haven R. R.: Kalamazoo to South Haven	39.50	
		Joliet and Northern Indiana R. R.: Lake, Ind., to Joliet, Ill.	45.00	
		Saginaw Bay & Northwestern and Branches	85.13	
		Detroit and Bay City R. R. and Branches	155.00	
		Bay City and Battle Creek Ry.: West Bay City to Midland	18.00	
		Battle Creek & Sturgis Ry.: Battle Creek to Findlay	33.80	
				898.28
4212	Operated	*Canada Southern Ry.: Windsor, Ont., to Suspension Bridge*	226.18	
		Tol., Can. Sout'rn & Det. Ry.: West Detroit to Can. So. Jc.	55.87	
		Toledo Belt Line	3.05	
		Canada Southern Bridge: Slocum Jc. to Stony Island	3.66	
		Michigan, Midland & Canada Ry.: Ridgeway to St. Clair	14.68	
		Canada Southern Railway Branches	101.33	
4213		Sarnia, Chatham & Erie Ry.: Petrolia Junc. to Petrolia	7.00	
		Erie and Niagara Ry.: Niagara to Old Fort Erie	30.60	
		Leamington and St. Clair Ry.: Comber to Leamington	13.80	
				456.17
		"Total length of lines operated, December 31, 1892		1,638.52

Third—New York Central & Hudson River R. R. Co.—Continued. 4214

"*History.*—The construction of the Michigan Central R. R. was begun in 1836 by the Detroit and St. Joseph R. R. Co., chartered June 29, 1832, but before completing any portion of the line, that company sold its property and franchises to the State of Michigan, April 22, 1837. Under the auspices of the State the road was opened from Detroit to * * * Kalamazoo * * * February 2, 1846—in all, 144 miles. * * * In 1846 the Michigan Central R. R. Co. was chartered, and purchased the road and property from the State, taking possession September 25, 1846. * * * It completed the road 4215
to Kensington in May, 1852. At Kensington it connects with the Illinois Central R. R., using 14 miles of that line to reach Chicago." (Poor's Manual of Railroads, 1893, pp. 816-817.)

"*Canada Southern System*—Operated by the M. C. R. R. Co.

Canada Southern Railway.—Windsor, Ont., to Suspension Bridge, 226.18 miles. * * * Total length of line operated, 456.17 miles. Chartered in Canada February 28, 1868; entire line opened November 15, 1873. * * * An agreement to run for 21 years, from January 1, 1883, has been made with 4216
the Michigan Central R. R. Co., by the terms of which the M. C. Co. is to operate this company's roads in connection with its own, the gross earnings of the whole system to be applied first to the payment of the operating expenses and fixed charges of both companies, and the net surplus to be then divided in the proportion of two-thirds to the M. C. and one-third to this company; the proportion being subject to readjustment at the end of the fifth, tenth and fifteenth years." (Poor's Manual of Railroads, 1893, p. 821.)

The foregoing statements of the Manual for 1893 are repeated in the Manuals for 1894, 1895, 1896, 1897, in regard to 4217
the Michigan Central Railroad Company and the Canada Southern Railway, respectively.

In Poor's Manual of Railroads, 1898, pp. 528-532, the statement of the mileage is substantially the same as in 1893, including the 457.30 miles of the Canada Southern, the total mileage being 1,657.59 miles, and is repeated in the Manuals for 1899, p. 165; 1900, p. 146; 1901, p. 280.

4218 **Third—New York Central & Hudson River R. R. Co.—Continued.**

"In April, 1898, an agreement was entered into providing for the exchange of this company's capital stock for *New York Central and Hudson River R. R. Co.'s* 3½ p. c. 100 yr. gold bonds, on the basis of $115 in bonds for $100 in stock." (Poor's Manual of Railroads, 1898, p. 528.)

"General Balance Sheet, Dec. 31, 1897:

"Capital Stock (par $100), $18,738,000." (Poor's Manual of Railroads, 1898, p. 530.) Repeated in Manuals for 1899, p. 167; 1900, p. 146; 1901, p. 282.

4219

[Poor's Manual of Railroads, 1901.]

"New York Central System.

"*Cleveland, Cincinnati, Chicago and St. Louis Ry. Co.*

4220

Main Lines Owned:	Cleveland via Columbus to Ludlow Grove, O		254.78
	Galion, O., to East St. Louis, Ill		464.45
	Cincinnati, O., to La Fayette, Ind		174.20
	Templeton, Ind., to Kankakee, Ill.		56.72
	Cairo to Tilton, Ill		257.63
	Hagerstown, Ind., to Harrison, O.		62.36
	Sandusky to Springfield, O		131.07
	Benton Harbor, Mich., to Rushville, Ind		203.68
	Delaware Branch: Springfield to Delaware, O.	49.00	
4221	Alton Branch: East Alton to Alton, Ill	4.20	
	Vincennes Branch: St. Francisville, Ill., to Vincennes, Ind	8.02	
	Lawrenceburg Branch: Lawrenceburg Jc. to Lawrenceburg, Ind	2.54	
	Findlay Branch: Carey to Findlay, O	15.34	
			79.10

Third—New York Central & Hudson River R. R. Co.—Continued			4222
Proprietary Railroads:	Columbus, Hope & Greensburg R. R.: Columbus to Greensburg, Ind	26.21	
	Fairland, Frank. & Martinsville R. R.: Fairl. to Martinsv., Ind....	37.84	
	Cincinnati & Southern Ohio River R. R.: Law. to Aurora, Ind....	3.90	
	Harrison Branch R. R.: Harrison to Valley Junction, O.....	7.70	
	Vernon, Greensburg & Rushville R. R.: Rushv. to Vernon, Ind.....	45.10	
		120.75	4223
Operated under Contracts for Trackage Rights.			
B. & O. S. W. R. R.:	North Vernon to Jefferson, Ind.	52.91	
	Ludlow Grove to Cincinnati, O	6.15	
Wabash R. R.: Tilton to Danville Junction, Ill.		2.86	
Lake Erie & Western R. R.: LaFayette to Templeton, Ind		8.44	
Cleveland Union Depot: In Cleveland, O...		0.25	4224
Columbus Union Depot: In Columbus, O...		0.30	
Indianapolis Union Depot: In Indianapolis, Ind		1.32	
Cincinnati Union Depot: In Cincinnati, O...		0.41	
Louisville & Nashville R. R.: At Carmi, Ill..		0.54	
Pennsylvania Company: At Vincennes, Ind.		1.25	
Lake Erie & Western R. R.: At Rushville, Ind.		0.25	
P. C. C. & St. L. Ry.: At Dayton, O.....		1.60	
		86.28	
Total length of lines operated as C. C. C. & St. L. Ry., June 30, 1900.....		1,891.02	4225
The company controls the operation of the following:			
Kankakee and Seneca R. R.: Kankakee to Seneca, Ill		42.08	
Mount Gilead Short Line R. R.: Mount Gilead to Edison, O.....		2.00	
Peoria and Eastern Ry.: Springfield, O., to Pekin, Ill	342.80		

4226 **Third—New York Central & Hudson River R. R. Co.**—Continued.

Trackage, Peoria & Pekin Union Ry.: Pekin to Peoria, Ill	9.20	
		352.00
Total length of C. C. C. & St. L. Ry. System, June 30, 1900		2,287.10

(Poor's Manual of Railroads, 1901, p. 267.)

"General Balance Sheet, June 30, 1900.

"Common Stock ($100 shares) $27,989,310.00

4227 "Preferred Stock ($100 shares) ..... 10,000,000.00"

(Poor's Manual of Railroads, 1901, p. 268.)

[Poor's Manual of Railroads, 1901.]

"New York Central System.

"Lake Erie & Western Railroad Company.

		Miles.	
Main Lines of Road:	Sandusky, O., to Peoria, Ill.		417.57
	Indianapolis, Ind., to Michigan City, Ind		160.65
4228	Fort Wayne, Ind., to Connersville, Ind		105.22
Minster Branch: St. Mary's, O., to Minster, O.			10.00
Rushville Branch: New Castle, Ind., to Rushville, Ind			24.13
Trackage:	Peoria & Pekin Union R. R.: L. E. & W. Jc., to Peoria, Ill.	2.43 m.	
	Indianap. Union Ry.: Wash'n St. to Union Depot, Indianap.	0.79	
	P. C. C. & St. L. Ry.: New Castle Junc. to New Castle, Ind.	2.25	
4229	Michigan Cen'l R. R.: Mich. Cent. Jc. to Depot, Michigan City	0.56	
	L. S. & M. S. Ry.: P. F. W. & C. Cross'g to Dep., Ft. Wayne	1.40	
			7.43
Total length of all lines (owned 710.61 m.) operated, Dec. 31, 1900			725.00"

* * * * *

Third—New York Central & Hudson River R. R. Co.—Continued. 4230

"A majority of each class of the capital stock of this company is held by the Lake Shore and Michigan Southern Ry. Co." (Poor's Manual of Railroads, 1901, p. 273.)

"General Balance Sheet, December 31, 1900.

"Capital Stock (see below) $23,680,000

* * * * *

"Capital stock consists of preferred and common shares, $11,840,000 of each." (Poor's Manual of Railroads, 1901, p. 275.)

4231

[Defendant's Exhibit 18-D.]

FOURTH.

PENNSYLVANIA RAILROAD.

(Including, also,

I. United Railroads of New Jersey;

4232 II. Lines between Pittsburg and Chicago;

III. Baltimore and Ohio and other recent acquisitions.)

[Extracts from Poor's Manual of Railroads, 1870-1.]

"Pennsylvania Railroad.

		Miles.
"Main Line, Philadelphia, Pa., to Pittsburg, Pa., (incl. H. & L. R. R.)		354.9
4233 "Branch lines:	Altoona (238 m. W. Philadelphia) to Hollidaysburg	7.6
	Blairsville Intersection (301 m. W. Philadelphia) to Indiana	19.0
	Delaware Extension (in Philadelphia)	5.5
	Steubenville Extension (in Pittsburg)	1.3
	Tyrone (224 m. W. Philadelphia) to T. & C. R. R.	3.1
		36.5
4234 "Total length of main and branch lines (incl. H. & L. R. R.)		391.4

Second track, 352.9; sidings, 133.7 miles. Gauge, 4 feet 9 inches. Rail, iron 64 and 67 lbs.; and steel, 56, 65 and 67 lbs. to yard.

"Railroads leased and operated by Pennsylvania Company, viz.:

Fourth—Pennsylvania R. R. Co.—Continued. 4235

East Brandywine and Waynesburg R. R., Waynesburg to Downingtown	17.5	
Mifflin and Centre County R. R., Lewiston Station to Milroy	12.9	
Tyrone and Clearfield R. R., Tyrone Junction to Clearfield	40.6	
Bald Eagle Valley R. R., Tyrone Junction to Lockhaven	51.2	
Ebensburg and Cresson R. R., Ericson to Ebensburg	11.0	4236
Newry Branch R. R., Hollidaysburg Branch to Newry	3.1	
Western Pennsylvania R. R., Blairsville to Pittsburg	63.7	
Philadelphia and Erie R. R., Sunbury to Erie City	287.5	
Pittsburg, Fort Wayne and Chicago	468.0	
		1,346.9

"Upon the roads owned by the company there are 352.9 miles of double track and 133.7 miles of sidings.

"In addition to the above the Pennsylvania Company have 4237 leases of and operate the following lines:

Pittsburg, Cincinnati and St. Louis	200.5
Little Miami, Columbus and Xenia	196.6
Columbus, Chicago and Indiana Central	600.5
Indianapolis and Vincennes	114.0

"The Pennsylvnia Railroad Company owns a major part of the share capital of the *Pittsburg, Cincinnati and St. Louis Railroad.* The latter has taken a lease of the Little Miami and Columbus and Xenia Railroad, which is guaranteed by 4238 the Pennsylvania Company." (Poor's Manual of Railroads, 1870-1, p. 145.)

(I) "*The United Companies of New Jersey.*

"(Union of Delaware and Raritan Canal, the Camden and Amboy Railroad and the New Jersey Railroad.)

"The United Companies, including the Philadelphia and Trenton, own the following property:

4239 **Fourth—Pennsylvania R. R. Co.—Continued.**

"1. Sixty-five miles of canal, connecting the Delaware with the harbor of New York, and forming a part of the chain of inland navigation from Chesapeake Bay to Long Island Sound and the Northern Lakes, and also forming the main water outlet from the Schuylkill and Lehigh Coal Fields to the Eastern States. It is navigable for vessels of 250 tons.

"2. Two main lines of railroad, forming two routes between New York and Philadelphia, one of which connects with the railroads leading south and west from Philadelphia,
4240 and the other with the railroads through southern New Jersey. These lines and their branches consist of 165 miles of railroad, of which 104 miles are double track, and with which are connected 60 miles of sidings and terminal tracks.

"3. Terminal, station, wharf and ferry property, shops, dwellings for employes and other real estate outside of the right of way, worth now upward of $6,000,000.

"4. Rolling and floating stock, including upward of 30 steamboats.

"5. A controlling interest in 260 miles of auxiliary railroads, of which 35 miles are also leased, and in bridges, fer-
4241 ries, horse-railroads, etc., used in connection with the main lines. They also lease and operate 31 miles of other railroad, including the "Connecting Railroad to West Philadelphia and the line from Camden, via Pem'on, to Hightstown, N. J."

(Poor's Manual of Railroads, 1870-1, p. 419.)

Pittsburg, Cincinnati and St. Louis Railway.

"Consolidation, May 1, 1868, of Steubenville and Indiana,
4242 Holliday's Cove and Pan Handle Railroads.

	Miles.
"*Line of Road*—Pittsburg, Pa., via Steubenville, O., to Columbus, O	193.0
Branch: Cadiz Junction (68 miles W. Pittsburg), to Cadiz, O	7.5

Fourth—Pennsylvania R. R. Co.—Continued. 4243

Leased:	Little Miami, Columbus & Xenia Railroad...	196.6
	Columbus, Chicago & Indiana Central Railway	600.5
	"Total length of road owned, leased and operated by Company	997.6

* * * * *

"The Pittsburg, Cincinnati and St. Louis Road is operated in close connection with the Pennsylvania Road, the management of the former being vested in an officer who, by appointment, represents the latter. The accounts, however, of the Pittsburg, Cincinnati and St. Louis Road are not included in the returns of the Pennsylvania Company, for the reason that, with the consent of the Pennsylvania Company, which owns a majority of its stock, the P., C. and St. L. Company maintains its own organization and management. 4244

"The Columbus, Chicago and Indiana Central Railroad and the Little Miami Railroad are leased by this Company, the Pennsylvania Company guaranteeing the leases; for terms of which, see statements of those companies." 4245

(Poor's Manual of Railroads, 1870-1, p. 275.)

"*Pittsburg, Fort Wayne and Chicago Railway.*

(Leased to Pennsylvania Railroad Company for 999 years, from July 1, 1869.)

		Miles.
Line of Road—Pittsburg, Pa., via Fort Wayne, Ind., to Chicago, Ill.....		468.30
Leased lines:	Newcastle & Beaver Val. R. R., Homewood to Newcastle	14.92
	Lawrence R. R.: Lawrence Junc. to Youngstown, O	17.40
	"Total length of lines owned, leased and operated	480.62

4246

* * * * *

4247 **Fourth—Pennsylvania R. R. Co.—Continued.**

"By the terms of the lease dated June 7, and approved by the stockholders June 24, the property of the P. F. W. & C. Company was surrendered to the Pennsylvania Railroad Company, and has since been managed and controlled by that Company." (Poor's Manual of Railroads, 1870-1, pp. 353-4.)

"*Columbus, Chicago & Indiana Central Railway.* (Consolidation, February 12, 1868, of the Columbus and Indiana Central Railway and the Chicago and Great Eastern Railway. Leased, February 1, 1869, to the Pittsburg, Cincinnati and St. Louis
4248 Co. and the Pennsylvania Co. for 99 years.)

		Miles.
Lines:	Columbus, O., via Union Junc. and Logansport to Chicago, Ill.	313.0
	Bradford Junc. (83 m. W. Columbus) via Richmond to Indianapolis.	105.5
	Richmond (119 m. W. Columbus) via Logansport to State Line, Ill.	169.5
	"Total length of lines owned by the consolidated company	588.0

4249

* * * * *

"The entire road is under perpetual lease to the Pittsburg, Cincinnati and St. Louis Railway Company, guaranteed by the Pennsylvania Railroad Company." (Poor's Manual of Railroads, 1870-1, pp. 138-9.)

4250

[Poor's Manual of Railroads, 1872-3, p. 472.]

"**Pennsylvania Railroad.**

"Names of Railroads and Branches.

* * * * *

Fourth—Pennsylvania R. R. Co.—Continued. 4251

	Miles of R. R.
"Total length of main and branch lines owned.....	423.9
* * * * *	
"Total length of leased railroads.....	275.1
"Aggregate length of all roads operated.....	699.0"

"The Pennsylvania Railroad Company also lease and operate the Philadelphia and Trenton Railroads and the railroads 4252
of the United Companies of New Jersey. The lease is perpetual, the lessees receiving all their assets and assuming all their obligations, and paying, in addition, $1,948,500 per annum for division among the stockholders of said companies. The lessees took possession of these roads December 1, 1871. Accounted for separately.

"The leased railroads west of Pittsburg, including the Pittsburg and Erie Railroad, have been transferred to the charge of the 'Pennsylvania Company,' a separate organization, having its domicile in Pittsburg. The transfer was completed April 1, 1871." (Poor's Manual of Railroads, 1872-3, p. 472.) 4253

"PENNSYLVANIA COMPANY.—This is a corporation chartered by the State of Pennsylvania, April 7th, 1870, for the purpose of managing, in the interest of the Pennsylvania R. R. Co., the railroads running west from Pittsburg, and the connecting lines thereof extending west and south, lately owned, leased and operated by the Pennsylvania R. R. Co.

"Its capital stock is $12,000,000, of which $8,000,000 is preferred stock—is held by the Pennsylvania R. R. Co.—upon 4254
which is guaranteed a dividend, from January 1, 1872, of six per cent per annum, and an equal division with the common stock of the profits, after paying a six per cent dividend on the common stock. The $8,000,000 of preferred stock was issued to the Pennsylvania R. R. Co. in payment of that amount of securities transferred to the Pennsylvania Co., to enable it to control the lines of roads which were to be managed by

4255 **Fourth—Pennsylvania R. R. Co.—Continued.**

it—said securities consisting of the stock, bonds, leases, etc., of those roads, whereby the control of the same vests in the Pennsylvania Co., and of other valuable assets appraised at a total aggregate sum of $8,000,000.

"The following named roads are operated *directly* by the Pennsylvania Company—through leases to the Pennsylvania R. R. Co., viz.:

		Miles.
4256	*Pittsburg, Fort Wayne and Chicago*, extending from Pittsburg to Chicago	468
	New Castle and Beaver Valley R. R., extending from Hammond, on the P. F. W. & C. Ry., to New Castle, Pa.	15
	Lawrence R. R., extending from a point one mile south of New Castle to Youngstown, O.	17
	Erie and Pittsburg R. R., extending from New Castle to Girard, Pa., on the Lake Shore and Michigan Southern R. R., with right to use the latter road from Girard to Erie	100
4257	*Cleveland and Pittsburg R. R.*, extending from Rochester, on P. F. W. and C. Ry., to Cleveland, with branches from Wellsville to Bellaire, and from Bayard to New Philadelphia, with right to use the P. F. W. and C. Ry. from Rochester to Pittsburg	228
	Total	828

"The following named roads are controlled by the Pennsylvania Company through a stock ownership, and are oper-
4258 ated by the officers of the respective corporations, the principal ones of which are the same as those of the Pennsylvania Co., viz.:

	Miles.
Pittsburg, Cincinnati and St. Louis Ry., extending from Pittsburg to Columbus, O., with branch from Cadiz Junction to Cadiz, O.	201

Fourth—Pennsylvania R. R. Co.—Continued. 4259

"Also its (the P. C. and St. L. Co.) leased roads, as follows:

Chartiers Railway, extending from Mansfield, on the P. C. and St. L. Ry., to Washington, Pa..... 26

Little Miami, Columbus, and Xenia R. R., extending from Columbus to Cincinnati, O., with branches from Xenia to Richmond, and from Xenia to Springfield with right to use the bridge over the Ohio River at Cincinnati 197

Columbus, Chicago and Indiana Central Ry., extending 4260
from Columbus to Indianapolis, and from Bradford to Chicago, and from Richmond via Logansport to Indiana State Line 587

Jeffersonville, Madison and Indianapolis R. R., extending from Indianapolis to Jeffersonville, with right to use the bridge over the Ohio River at Louisville—also owned by the Pennsylvania Co.—with branches from Columbus to Madison and from Columbus to Cambridge City, on the C. C. and I. C. Ry..... 210

"Total P. C. and St. L. Ry. and leased lines..... 1218 4261
(Poor's Manual of Railroads, 1872-3, pp. 561-2.)

"*The United New Jersey Railroad and Canal Companies.* (Union of Delaware and Raritan Canal, the Camden and Amboy Railroad and the New Jersey Railroad.)

"In May, 1871, the canal, railroads and works of the united companies were leased for 999 years to the Pennsylvania Company for a rental of 10 per cent per annum on the share capital of the former, and assuming all their obligations. The lessees took possession of the properties December 1, 1871.

"The united companies, including the Philadelphia and 4262
Trenton, owned the following property:

"1. Sixty-five miles of canal, connecting the Delaware with the harbor of New York. Navigable for vessels of 250 tons.

"2. Two main lines of railroad, forming two routes between New York and Philadelphia, consisting of 165 miles of railroad, of which 104 miles are double track, and with which are connected 60 miles of sidings and terminal tracks.

4263 **Fourth—Pennsylvania R. R. Co.—Continued.**

"3. Terminal, station, wharf and ferry property, shops, dwellings for employes and other real estate outside of the right of way.

"4. Rolling and floating stock, including upward of 30 steamboats.

"5. A controlling interest in 260 miles of auxiliary railroads, of which 35 miles are also leased, and in bridges, ferries, horse-railroads, etc., used in connection with the main lines. They also lease and operate 31 miles of other railroad, including the 'Connecting Railroad' to West Philadelphia and the
4264 line from Camden, via Pemberton, to Hightstown, N. J.

"The following is a summary of the miles of railroad owned, operated or controlled by the United Companies:

1. Owned directly by the Companies.

	Miles.
Philadelphia, (Kensington), Pa., to Trenton, N. J., all double track	26.6
Trenton, N. J., to Jersey City, N. J., all double track	57.1
4265 Camden, N. J., to South Amboy, N. J., 20 miles double track	61.2
Bordentown, N. J., to Trenton, N. J.	6.1
Jamesburg, N. J., to Monmouth Junction, N. J.	5.5
Monmouth Junction, N. J., to Kingston, N. J.	4.0
Princeton Branch, 3 miles; other branches, 1.5	4.5
"Total owned directly	165.0

2. Railroads in which the Companies have a controlling interest.

4266 * * * * *

"Total in which the companies have a controlling interest	259.6

3. Other leased railroads.

* * * * *

Fourth—Pennsylvania R. R. Co.—Continued. 4267

"Total railroad line owned, leased and controlled..... 455.9
"The 'Delaware and Raritan Canal,' forming an important part of the United Companies:

Bordentown, (Delaware River), N. J., to New Brunswick, (Raritan River), N. J.....	43.0
Bull's Island, (Delaware River), N. J., to Trenton, N. J.	22.5
Total	65.0

4268

"Thus the United Companies own, operate or control 65 miles of canal and 456 miles of railroad, and, including double track, 131 miles, and sidings, etc., 97 miles, in all 684 miles of track." (Poor's Manual of Railroads, 1872-3, pp. 603-4.)

[Poor's Manual of Railroads, 1885, (pp. 282-3.)]

"List of stocks * * * owned by the Pennsylvania R. R. Co. 4269

Name of Companies.	No. of Shares.	Par Value.
* * *	* * *	* * *
Baltimore and Potomac R. R.....	60852	3,042,600.00
* * *	* * *	* * *
Pennsylvania Company, Common.....	400000	20,000,000.00
* * *	* * *	* * *
Philadelphia, Wilmington & Baltimore R. R	217819	10,890,950.00
Pittsburgh, Cincinnati & St. Louis Ry., Preferred	60000	3,000,000.00
* * *	* * *	* * *
Total		82,464,046.50" 4270

A similar list is printed in the Manuals for

1886, pp. 260-261,	total	85,408,446.50
1887, pp. 254-255,	"	87,631,426.50
1888, pp. 256-258,	"	93,149,206.50

4271 **Fourth—Pennsylvania R. R. Co.—Continued.**

And in the Manual for each following year, that for 1901 (pp. 690-1) being:

"Name of Security.	Shares.	Par Value.
* * *	* * *	* * *
B. & O. R. R. Vo. Trs. Cers. pr.....	160,000	16,000,000.00
Balt. & Po. R. R. Co.....	96,461	4,823,050.00
* * *	* * *	* * *
C. & O. Ry. Common	70,000	7,000,000.00
* * *	* * *	* * *
4272 N. & W. Ry. Com	125,000	12,500,000.00
N. & W. Ry. Pref	75,000	7,500,000.00
* * *	* * *	* * *
Penn. Co. Com	420,000	21,000,000.00
* * *	* * *	* * *
P. W. & B. R. R. Co.....	217,819	10,890,950.00
Total		208,225,809.18

"*United New Jersey Railroad and Canal Companies.*—Main
4273 lines railroad owned: Jersey City to Trenton, 56.66 miles, and South Amboy to Camden, 61.15 miles; branches owned, 27.03 miles; total, 144.84 miles. Canal owned: Bordentown to New Brunswick, and feeder, 66 miles. The Delaware and Raritan Canal Co. and the Camden and Amboy Railroad Co. were both chartered in February, 1830, the former to construct a canal to connect the Delaware and Raritan Rivers, and the latter to build a line of railroad from the Delaware River to Raritan Bay. In February, 1831, an act was passed authorizing the consolidation of the capital stocks of these two companies, the companies being thus practically consoli-
4274 dated, although nominally distinct corporations. The affairs of the companies were managed jointly, by the directors of both, and each was to share equally in profits. Under this joint management, the construction of the works was begun. The main lines of the railroad and canal were completed in 1834, and the branches in 1838. In 1836 the United Companies acquired a controlling interest in the stock of the Philadelphia and Trenton R. R. Co., and entered into an agree-

Fourth—Pennsylvania R. R. Co.—Continued. 4275

ment with that company for an equal division of their joint profits.

"In January, 1867, an agreement was entered into between the United Companies and the New Jersey Railroad and Transportation Co., which owned the line between New Brunswick and Jersey City, forming a link in the through New York-Philadelphia route, for a consolidation of interests; and under this agreement the profits were equally divided between the four companies—the Delaware and Raritan Canal Co., the Camden and Amboy, the New Jersey, and the Philadelphia 4276 and Trenton Railroad Companies." (Poor's Manual of Railroads, 1885, p. 292.)

The foregoing extract from the Manual of 1885 is repeated in the Manuals for

1886, p. 271;
1887, p. 262;
1888, p. 266;
1889, p. 257;
1890, p. 695;
1891, p. 850;
1892, p. 863; 4277
1893, p. 901;
1894, p. 639;
1895, p. 651;
1896, p. 734;
1898, p. 634;
1899, p. 775;
1900, p. 694;
1901, p. 703.

"*Philadelphia and Trenton Railroad.*—Trenton to Frankford 4278 Junction, 23.66 miles. * * * Total owned and leased, 38.75 miles. Opened in 1834, and from 1836 operated under traffic contract by the Camden and Amboy R. R. Company. In 1871 it was leased in connection with the United New Jersey R. R. to the Pennsylvania R. R. Co., and since operated as a part of the New York Division." (Poor's Manual of Railroads, 1885, p. 290.) Repeated in Manuals for

4279 **Fourth—Pennsylvania R. R. Co.—Continued.**

1886, p. 269;
1887, p. 261;
1888, p. 265;
1889, p. 255;
1890, p. 693;
1891, p. 848;
1892, p. 861;
1893, p. 899;
1894, p. 637;
4280 1895, p. 650;
1896, p. 732;
1898, p. 632;
1899, p. 774;
1900, p. 692;
1901, p. 701.

II.

4281

PENNSYLVANIA COMPANY AND LINES BETWEEN PITTSBURG AND CHICAGO.

(Poor's Manual of Railroads, 1885, pp. 294-5.)

"PENNSYLVANIA COMPANY.—This company was chartered by the Legislature of Pennsylvania April 7, 1870, for the purpose
4282 of managing, in the interest of the Pennsylvania Railroad Company, the railroads leased and controlled by it west of Pittsburgh. The organization of the company dates from April 1, 1872.

"Of the railroads now managed by the Pennsylvania Company, the following were originally leased to the Pennsylvania Railroad Company, and the leases transferred to the Pennsylvania Company:

Fourth—Pennsylvania R. R. Co.—Continued. 4283

	Miles.
Pittsburgh, Fort Wayne and Chicago Railway	468.3
Lawrence Railroad and Branch — Branches of and	22.0
New Castle and Beaver Valley R. R — leased to P. Ft.	14.9
Massillon and Cleveland R. R. — W. & C. Ry.	12.2
Erie and Pittsburgh Railroad, with Branch	100.0
Cleveland and Pittsburgh Railroad and Branches	225.4
"Total length of line acquired through Pennsylvania R. R. Co	842.8

4284

"Leased directly by Pennsylvania Company:

Jefferson, Madison and Indianapolis R. R. and Branches	224.9
Indianapolis and Vincennes Railroad	116.6
Ashtabula and Pittsburgh Railway	62.6
Northwestern Ohio Railway	85.7
Alliance, Niles and Ashtabula Railroad	24.9
New Brighton and New Castle R. R	12.5

4285

"Total	527.2
"Total length of lines leased to Pennsylvania Company	1,370.0

"The following roads are operated by the Pennsylvania Company, through the control given by holding a majority of the stock:

Pittsburgh, Cincinnati and St. Louis Railway		201.1
Leased to P. C. & St. L. Ry.:	Chartiers Railway	22.8
	Pittsburgh, Wheeling & Kentucky Railroad	24.0
	Cincinnati and Muskingum Valley Railway	148.5
	Little Miami Railroad and its leased lines	196.1
Chicago, St. Louis and Pittsburgh Railroad		580.5
St. Louis, Vandalia and Terre Haute R. R. (operated by T. H. & I. R. R. Co.)		157.8

4286

4287 **Fourth—Pennsylvania R. R. Co.—Continued.**

Cincinnati, Richmond and Fort Wayne R. R. (operated by G. R. & I. R. R. Co.)	90.9
East St. Louis and Carondelet Railway	11.5
Total	1,433.2

"Through advances and guarantees by Pennsylvania R. R. Co.:

Grand Rapids and Indiana Railroad		388.8
4288 Operated by G. R. & I. R. R.:	Traverse City Railroad	26.0
	Bay View, Little Traverse & Mackinaw R. R.	5.7
Total		420.5

"Total length of line leased to Pennsylvania Co	1,370.0
"Total length of line through stock ownership	1,433.2
"Total length of line through advances and guarantees by P. R. R. Co.	420.5
4289 "Aggregate length of lines operated	3,223.7"

The foregoing statements from the Manual of 1885 are repeated (with successive additions of mileage and with changes of names of controlled companies, owing to consolidations) in subsequent volumes of the Manual, as follows:

4290
1886, p. 273;
1887, p. 265;
1888, p. 269;
1889, p. 260;
1890, p. 698;
1891, p. 853;
1892, p. 865;
1893, p. 903;
1894, p. 664;
1895, p. 675;
1896, p. 758;

Fourth—Pennsylvania R. R. Co.—Continued. 4291

1898, p. 654;
1899, p. 798;
1900, p. 718;
1901, p. 730; (total mileage 4390.24).

"General Balance Sheet, Pennsylvania Company.

December 31, 1884.

"Securities, $30,483,548.31; Capital Stock, $20,000,000." 4292
(Poor's Manual of Railroads, 1885, p. 297.)

The foregoing statement from the Manual of 1885, is repeated (with gradual increase in "securities") in the Manuals for

1886, p. 276;
1887, p. 267;
1888, p. 271;
1889, p. 262;
1890, p. 701;
1891, p. 856; 4293
1892, p. 869, with change of "capital stock" to $20,000,000, and continued as thus changed in Manuals for

1893, p. 907;
1894, p. 668;
1895, p. 680;
1896, p. 763, where "securities" are stated at $41,642,257.70;
1898, p. 662;
1899, p. 805;
1900, p. 725; 4294
1901, p. 737.

"General Balance Sheet, December 31, 1901.

"Securities, $92,377,012.53; Capital Stock, $40,000,000.

* * * * *

4295 **Fourth—Pennsylvania R. R. Co.—Continued.**

"The capital stock was increased from $21,000,000 to $40,000,000 during the year ending Dec. 31, 1901. The stock so issued, $19,000,000, was sold to the Pennsylvania R. R. Co. at par, and the proceeds used in the purchase of a large amount of securities of roads connected with the Pennsylvania Co.'s system and which had heretofore been held in the treasury of the Pennsylvania R. R. Co. The stock is all held by the Pennsylvania R. R. Co." (Poor's Manual of Railroads, 1902, p. 713.)

4296 Poor's Manual of Railroads, 1888, p. 270: "The stock is all held by the Pennsylvania Railroad Company." This statement is repeated in the Manuals for

1889, p. 261;
1890, p. 700;
1891, p. 854;
1892, p. 869;
1893, p. 908;
1894, p. 669;
1895, p. 681;
1896, p. 763;
4297 1898, p. 662;
1899, p. 805;
1900, p. 725;
1901, p. 737;
1902, p. 713.

"Pittsburgh, Fort Wayne and Chicago Railway.

4298

	Miles.
"Line of Road, *Pittsburgh, Pa.*, to *Chicago, Ill.*.....	467.97
"Leased * * *	37.02
"Total length of line operated, December 31, 1884.	504.99

* * * On the 27th of June, 1869, its road was leased in perpetuity to the Pennsylvania R. R. Co. It is now operated

Fourth—Pennsylvania R. R. Co.—Continued. 4299

by the Pennsylvania Company." (Poor's Manual of Railroads, 1885, p. 568.)

This statement of termini and mileage is repeated, with trifling change in each year, including 1902, which states them as follows: (Manual for 1902, p. 714.)

"Mileage operated Dec. 31, 1901.

"A. Lines owned (total, 469.89 miles).

	Miles.
Main Line, Pittsburgh, Pa., to Chi'go., Ill....	468.32
Cummings Branch—South Chi'go to Cummings, Ill	1.57
"B. Leased Lines (total 27.21 miles) * * *	27.21
	497.10"

4300

The statement as to lease and operation is repeated annually until 1898. In the Manual for 1898, p. 663, it is stated, "Leased for 999 years from July 1, 1869, to the Pennsylvania R. R. Co. and subsequently assigned by that company to the Pennsylvania Company," and this statement is repeated in the Manual for 1899, p. 806; 1900, p. 726; 1901, p. 739; 1902, p. 714. 4301

[Poor's Manual of Railroads, 1886, p. 803.]

"General Balance Sheet, December 31, 1885:

"Capital Stock—Common	$19,714,285.71
"Guaranteed Special	10,776,800.00
	$30,491,085.71"

4302

* * * * *

"The guaranteed special stock ($10,776,800) was issued to the lessee under the terms of the lease, which provides that for betterments made by lessee (with approval of lessor) as required by increased business, payments should be made in

4303 **Fourth—Pennsylvania R. R. Co.**—Continued.

issues of stock or bonds, such issues to be agreed upon by both parties."

Repeated in Manuals for

1887, pp. 518-19;
1888, pp. 516-17;
1889, pp. 507-508, "Guaranteed Special" being $12,022,000.

4304

1890, pp. 895-6;
1891, p. 878;
1892, pp. 892-3, "Guaranteed Special" being $14,374,288.91.
1893, p. 931;
1894, pp. 670-1, "Guaranteed Special" being $16,967,200.
1895, p. 683, "Guaranteed Special" being $18,883,400.
1896, p. 764;
1898, p. 663;

4305

1899, p. 807;
1900, p. 727, "Capital stock, Common," being $19,714,285.71; "Guaranteed Special" being $20,321,200.
1901, p. 740, "Guaranteed Special" being $21,323,800.
1902, p. 715, "Guaranteed Special" being $22,615,000.

4306

[Poor's Manual, 1885, p. 565.]

"Pittsburgh, Cincinnati and St. Louis Railway.

	Miles.
"Line of Road, *Birmingham, Pa., to Columbus, O*.....	189.42

Fourth—Pennsylvania R. R. Co.—Continued. 4307

Trackage:	Cadiz Branch—Cadiz Junction to Cadiz, O.	7.85	
	Monongahela Ex. P. R. R., *Pittsburgh to Birmingham*	1.23	
	Union Depot, Yard tracks in Columbus, O	.25	
			1.48

"Total length of Pittsburgh, Cincinnati & St. Louis Ry. proper..... 198.75 4308

Miles.

"This company leases the Chartiers Ry..... 22.76
The Pittsburgh, Wheeling & Kentucky Ry..... 28.04
The Little Miami Ry. and leased lines..... 198.68
The Cincinnati & Muskingum Valley Ry..... 148.45
The St. Louis, Vandalia and Terre Haute R. R.. 158.3."

The foregoing statements of the Manual for 1885 (with small additions) are repeated in the Manuals for
1886, p. 495;
1887, p. 514; 4309
1888, p. 513;
1889, p. 503;
1890, p. 813.

"Total length of Pittsburgh, Cincinnati and St. Louis Ry. proper, 215.26 miles." (Poor's Manual of Railroads, 1890, p. 813.)

[Poor's Manual of Railroads, 1885, p. 624.]

4310

"*Chicago, St. Louis and Pittsburgh Railroad.*

"Line of Road:

Miles.

First Division, Columbus, Ohio, to Indianapolis, Ind. 187.15

4311 **Fourth—Pennsylvania R. R. Co.—Continued.**

Second Division,	*Bradford Junction, O., to Chicago, Ill*	230.98	
	Branch in Chic'go, 58th St. to connecting track	2.34	
Third Division,	Richmond, Ind., to Anoka Junction, Ind	102.22	
Fourth Division,	Peoria Junction, Ind., to Illinois State Line	60.19	
			395.73
4312 *Trackage:*	Union Railroad, In Indianapolis..		0.53
	"Total length of line operated.....		583.41"

The foregoing statements from the Manual of 1885 (except as to "Branch * * * 2.34") are repeated in the Manuals for

1886, p. 586;
1887, p. 403;
1888, p. 400;
1889, p. 383;

4313 and 1890, p. 866 (with addition of lines operated under contract, and trackage,) making

"Total of all lines operated (of which owned 580.52 miles) 710.60 miles." (Poor's Manual of Railroads, 1890, p. 866.)

[Poor's Manual of Railroads, 1891, pp. 874-5.]

"Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company.

4314

		Miles.
Main Lines of Road.	*Birmingham, Pa., to Indianapolis, Ind*.....	376.53
	Bradford Junc., O., to Chicago, Ill.....	230.98
	Logansport, Ind., to State Line, Ind.....	60.19
	Indianapolis, Ind., to *Louisville, Ky*.....	108.40
	Rendcomb Junc., O. to Anoka Junct. Ind..	168.65
Rend's Mines Branch: Bridgeville, Pa., to Rend's Mines, Pa.....		6.96

DEFENDANTS' EXHIBIT 18-D. 1103

Fourth—Pennsylvania R. R. Co.—Continued.			4315
New Cumberland Branch: New Cumberland Junct., W. Va., to New Cumberland, W. Va.	9.55		
Cadiz Branch: Cadiz Junction, O., to Cadiz, O.	7.85		
Madison Branch: Columbus, Ind., to Madison, Ind	44.90		
Cambridge City Branch: Columbus, Ind., to Cambridge City, Ind	63.04		
New Albany Branch: Jeffersonville, Ind., to New Albany, Ind	6.01		
State Line Branch: Indiana State Line to Junction Richmond Div	1.97		4316
		140.28	
Leased: Monongahela Ext. P. R. R.: *Pittsb., Pa., to Birmingham, Pa*	1.23		
Chartiers Ry.: Mansfield to Washington, Pa	22.76		
Chartiers Connecting Ry.: Con. Ch. Ry. & W. & W. R. R.	0.72		
Pitts. Wheel. & Kent R. R.: Wheel. Jc. to Benw'd, W. Va.	28.04		
Little Miami R. R. and branches	195.22		4317
		247.97	
Total length of all lines owned and leased, December 31, 1890		1,333.00	

* * * * *

"In addition to the above mileage, the company uses the following trackage: Lake Erie and Western R. R., between Indianapolis and Kokomo, 55; Union Depot tracks at Columbus, O., 0.25; Union Depot tracks at Indianapolis, Ind., 0.77; Cincinnati, Hamilton and Dayton R. R., between Hamilton and New River Junction, 1.53; Louisville Bridge, from Jeffersonville, Ind., to Louisville, Ky., 2.63: *Total, 60.18 miles*, making the total length of all lines operated, December 31, 1890, 1,393.18. 4318

4319 **Fourth—Pennsylvania R. R. Co.—Continued.**

"History.—Consolidation, October 1, 1890, of the Pittsburgh, Cincinnati and St. Louis Ry., the Chicago, St. Louis and Pittsburgh, the Cincinnati and Richmond, and the Jeffersonville, Madison and Indianapolis R. R. Cos. For history of these constituent companies, see Manual for 1890. For terms of consolidation, see Manual for 1890, page 1,103. Controlled by the Pennsylvania Co. through ownership of stock." (Poor's Manual of Railroads, 1891, pp. 874-5.)

The foregoing extracts from the Manual for 1891 are repeat-
4320 ed in the Manual for

1892, pp. 888-9;
1893, pp. 926-7;
1895, p. 687;
1896, pp. 775-6;
1898, p. 671;
1899, p. 815;
1900, p. 735;
1901, p. 748;
1902, p. 723.

4321

III.

BALTIMORE AND OHIO, CHESAPEAKE AND OHIO, AND NORFOLK AND WESTERN RAILWAYS.

(A) [Poor's Manual of Railroads, 1901, p. 42.]

4322

"BALTIMORE AND OHIO RAILROAD COMPANY.

	Miles.
Main Line of Road: Baltimore, Md., to Wheeling, W. Va.	379.80
Parkersburg Bridge: Parkersburg, W. Va., to Belpre, O.	1.40

DEFENDANTS' EXHIBIT 18-D. 1105

Fourth—Pennsylvania R. R. Co.—Continued. 4323

Benwood Bridge: Benwood, W. Va., to Bellaire, O		1.10	
			382.30
Branches Owned:	Curtis Bay	5.3	
	Metropolitan	42.8	
	Frederick	3.5	
	Philadelphia	52.6	
	Locust Point	5.6	
	Sea Wall	1.5	
	South Baltimore	2.0	
	Patuxent	1.3	4324
	Sparrow's Point	1.6	
	Camden Cut-Off	1.5	
	Highlandtown	0.9	
	Alexandria	12.5	
Total			131.10

Proprietary Roads:

Covered by B. & O. Mortgages. 4325

	m.
Akron & Chic. Junction R. R.	76.66
Balt. & Ohio & Chicago R. R.	264.90
Baltimore & Philadelphia R. R.	59.32
Baltimore Belt R. R.	7.16
Berkeley Sps. & Potomac R. R.	5.95
Berlin R. R	8.00
Central Ohio R. R.	137.30
St. Clairsville R. R.	6.53
Clev., Woos. & Musk. Vy. R. R.	36.26
Colu. & Cincin. Midland R. R.	69.80 4326
Confluence & Oakland R. R.	19.70
Fairm., Morgan & Pittsb. R. R.	57.60
Grafton and Belington R. R.	46.73
Lancaster, Cecil & South. R. R.	4.00
Metropolitan Southern R. R.	2.25
Mt. Pleasant & Broad Fd. R. R.	9.70
Newark, Som. & Straitsv. R. R.	46.70

4327 **Fourth—Pennsylvania R. R. Co.—Continued.**

O. & B. Short Line R. R.	9.30	
Parkersburg Branch R. R.	103.30	
Pittsburg & Connellsv. R. R.	148.80	
Salisbury R. R	16.17	
Sandusky, M. & Newark R. R.	116.25	
Somerset & Cambria R. R.	45.10	
South Branch R. R.	16.00	
Wash. Branch of B. & O. R. R.	31.00	
Washington County R. R.	24.20	
4328 Wheel., Pitt. & Balt. R. R.	65.50	

Not cov'd by B. & O. Mtgs.

Baltimore & New York Ry.	5.30	
Bay Bridge & Annap. R. R.	4.50	
Eastern Ohio R. R.	16.92	
Monongahela River R. R.	31.20	
Schuylk. Riv. E. Side R. R.	11.00	
Smithfield & Masontown R. R.	7.91	
West Virginia & Pitts. R. R.	167.01	
4329 Winchester & Potomac R. R.	32.00	
Winchester & Strasburg R. R.	20.38	
		1,730.40
Leased line: Fayette County R. R.: Gibson Junction to Uniontown, Pa.		11.80

Lines Operated under Trackage Rights:

Cumberland & Pennsylvania R. R.: Cumberland to Mt. Savage, Md.	3.50	
Chic. Rock Isl & Pac. R. R.: R. I. Connection to Brainerd Junc., Ill.	6.27	
4330 Chic. Term. Trans. R. R.: Forest Hill *to Grand Central Station, Chic.*	11.20	
Clev. Cin. Chic. & St. Louis R. R.: I. B. & W. Junc., to Columbus, O.	1.40	
		22.37
Total length of lines owned, leased, and operated, June 30, 1900		2,277.97

Fourth—Pennsylvania R. R. Co.—Continued. 4331

Baltimore & Ohio Southwestern R. R. (added July 1, 1900)..... 921.91

Total mileage operated by B. & O. R. R. Co., July 1, 1900 ..... 3,199.88

(Poor's Manual of Railroads, 1901, p. 42.)

"The line from Baltimore to Philadelphia was opened Sept. 19, 1886, and the Schuylkill River East Side R. R., affording connection at Philadelphia with the Philadelphia & Reading, 4332
on Dec. 7, 1886. On Dec. 15, 1886, the 'Blue Line' was opened between New York, Washington and the Southwest, the Central R. R. of New Jersey tracks being used between Jersey City and Bound Brook, then those of the Philadelphia & Reading to Philadelphia, and the tracks of the Baltimore & Ohio and its controlled lines to Baltimore, Washington, Cincinnati, Louisville and St. Louis.

"In 1890 the company secured a direct line from Pittsburgh to the heart of the lumber and mining district of West Virginia * * * and by acquiring a controlling interest in the Pittsburgh & Western Ry. Co., and completing the Akron & 4333
Chicago Junction R. R. in the following year, a new and more direct line from Pittsburgh to Chicago was secured. * * * At the same time the company got additional outlets on Lake Erie at Cleveland and Fairport, and entrance to the coal and oil fields of Western Pennsylvania and Ohio."

(Poor's Manual of Railroads, 1898, p. 298.)

The foregoing extracts from the Manual for 1898 are referred to in the Manual for 1899, p. 51; 1900, p. 49; 1901, p. 44.

"General Balance Sheet, B. & O. R. R. Co., June 30, 1900. 4334

"Capital Stock: Preferred $59,357,167.31
Common ..... 45,000,000.00"

(Poor's Manual, 1901, p. 49.)

"General Balance Sheet, B. & O. R. R. Co., June 30, 1901.

"Capital Stock: Preferred $59,361,267.31
Common ..... 45,000,000.00"

(Poor's Manual, 1902, p. 49.)

4335 **Fourth—Pennsylvania R. R. Co.—Continued.**

(B) [Poor's Manual of Railroads, 1901, p. 339.]

"CHESAPEAKE AND OHIO RAILWAY COMPANY.

		Miles.
Main Lines of Road Owned:	Fort Monroe, Va., to Big Sandy River, Ky	512.0
	Fulton to Clifton Forge, Va	231.4
		743.4

Branches Owned: Lexington, 20.1 m.; Craig Valley,
4336 26.4 m.; Warm Springs, 24.7 m.; Buckingham, 20.8 m.; Hawk's Nest, 3.4 m.; Gauley, 14.2 m.; Cabin Creek, 14.6 m.; Loup Creek, 9.9 m.; total 134.1

Proprietary Roads, Controlled Through Ownership of Stock:

	Maysville and Big Sandy R. R.: Ashland Jc. to Licking River, Ky	142.7
	Covington Short Route Trans. Ry.: Licking River to K. C. Jc., Ky	0.8
4337	Covington and Cincin. Elev. R. R. and Transfer Bridge (see p. 345)	2.1
	Elizabethtown, Lexington and Big Sandy R. R., (see p. 345)	109.2
	Ohio and Big Sandy R. R.: Hampton to Peach Orchard, Ky	48.2
	O. River and Charleston Ry. of Ky.: Richardson to White House, Ky	8.1
	Kinniconnick and Freestone R. R.: Garrison to Carter, Ky	19.8
	Kentucky & South Atlantic Ry.: Mt. Sterling to Rothwell, Ky	19.5
4338	Greenbrier and New River R. R.: Butchers' Br. to Thurmond, W. Va	12.6
		363.0
Leased Lines:	Southern Ry.: Gordonsville to Orange, Va	9.0
	Lexington Belt Line Ry.: At Lexington, Ky	4.2
		13.2

Fourth—Pennsylvania R. R. Co.—Continued. 4339

Roads Operated for Account of Owners:

Sulphur Mines R. R.: Mineral City to Sulphur Mines, Va	4.0	
Alberene R. R.: Warren to Alberene, Va	11.1	
Quinnimont Short Line R. R.: Quinnimont to Coal Mines, W. Va	4.2	
Keeney's Creek R. R.: Nuttall to Lookout, W. Va	7.8	4340
Deepwater R. R.: Deepwater to Robson, W. Va	3.8	
		30.9
Trackage Rights: Southern Ry. — Orange to Alexandria, Va	77.8	
Trackage Rights: Southern Ry. — At Richmond, Va.,	0.4	
Trackage Rights: Washington Southern Ry.: Alexandria, Va., to Baltimore and Potomac R. R.: Washington, D. C.	6.7	
Trackage Rights: Baltimore & Ohio R. R: At Lexington, Ky	1.0	4341
Trackage Rights: Ashland Coal & Iron Ry.: Ashland to Denton, Ky	21.3	
Trackage Rights: Louisville & Nash. R. R.: Lexington to Louisville, Ky	84.4	
		191.6
"Total length of lines operated (owned 877.5 miles), June 30, 1900		1,476.2

* * * * *

4342

"*History.* * * * The line to Washington, operated jointly with the Southern Ry. Co., and the Philadelphia, Wilmington and Baltimore R. R. Co., was opened on April 1, 1891. The Elizabethtown, Lexington and Big Sandy, the Ohio and Big Sandy, and the Kentucky and South Atlantic R. Rs. were acquired in 1892. In the following year a controlling interest

4343 **Fourth—Pennsylvania R. R. Co.**—Continued.

was acquired in the Chesapeake and Ohio Steamship Co., and that company's line was opened from Newport News to Liverpool and London. In 1895 arrangements were made for running trains into Louisville, Ky., and connecting with the Cleveland, Cincinnati, Chicago and St. Louis Ry., by the purchase of a one-third interest in the Louisville and Jeffersonville Bridge Co. (the C. C. C. & St. L. Ry. Co. acquiring the other two-thirds), and by acquiring trackage rights over the Louisville and Nashville R. R. between Lexington and Louisville.

4344 The Louisville Line was opened on April 1, 1896. * * *

"During the year ending June 30, 1900, the company purchased the securities of the Ohio River and Charleston Ry. Co. of Ky., and of the Coastwise Steamship Co. The latter owns 3 ocean tugs and 15 barges, and leases three steamers engaged in the coal-carrying trade between Newport News and New England." (Poor's Manual of Railroads, 1901, pp. 339-40.)

General Balance Sheet, June 30, 1900:

4345	First Preferred Stock	$13,000,000	
	Less Deposited in Trust	12,986,400	
			13,600
	Second Preferred Stock	12,000,000	
	Less Deposited in Trust	11,998,300	
			1,700
	Common Stock		60,527,800

(C) [Poor's Manual of Railroads, 1901, p. 352-3.]

4346

"Norfolk and Western Railway Company.

		Miles.
Main Line of Road, Norfolk, Va., to Bristol, Tenn	412.32	
Other Divisions and Branches Owned....	1,138.82	
		1,551.14

Fourth—Pennsylvania R. R. Co.—Continued.		4347
Leased: Columbus Connecting and Terminal R. R., In Columbus, O.	3.51	
Total length of lines operated, June 30, 1900	1,554.65	

Statement of mileage as operated by divisions, June 30, 1900:

Norfolk Division:		4348
Lambert's Point, Norfolk, to Roanoke, Va.	259.62	
Lynchburg, Va., to Durham, N. C.	114.10	
Branches and Spurs	20.08	
Shenandoah Division:		
Roanoke, Va., to Hagerstown, Md.	238.00	
Roanoke, Va., to Winston-Salem, N. C.	121.30	
Branches to Ore Mines, etc.	12.96	4349
Radford Division:		
Roanoke, Va., to Bluefield, W. Va.	106.80	
Radford, Va., to Bristol, Tenn.	106.21	
North Carolina Junction to Iron Ridge.	45.19	
Branches and Spurs	38.49	
Pocahontas Division:		
Bluefield to Gray, W. Va.	80.60	4350
Graham to Norton, Va.	100.40	
Branches and Spurs to Mines.	41.36	
Scioto Valley Division:		
Gray, W. Va., to Columbus, O.	260.96	
Branches and Spurs	5.07	

4351 **Fourth—Pennsylvania R. R. Co.—Continued.**

Columbus Connecting & Terminal R. R.:

Main Line	2.31
Branches and Spurs	1.20

* * * * *

4352 "The company uses the track of the Richmond and Petersburg R. R. to gain entrance into Richmond, and leases to the Norfolk Southern R. R. Co. trackage facilities over the N. & W. R. R. into Norfolk, and the use of the terminal facilities at that point.

"Effective Jan. 22, 1901, the company has acquired control of the Cincinnati, Portsmouth and Virginia R. R. Co., by purchase of practically the entire capital stock of that company. The Norfolk & Western Ry. Co. is now operating the Cincinnati, Portsmouth and Virginia R. R. separately from its own property, but will eventually absorb it by consolidation. (See
4353 statement for C. P. & V. R. R. Co. on page 356.) On April 9, 1901, the stockholders of the Cincinnati, Portsmouth and Virginia R. R. Co. and the Cincinnati Connecting Belt Ry. Co. voted to merge these properties preparatory to transferring them to the Norfolk and Western Ry. Co. The Columbus and Maysville R. R. was acquired by the Cincinnati, Portsmouth and Virginia R. R. Co., previous to the acquirement of the latter company by the Norfolk and Western Ry. Co." (Poor's Manual of Railroads, 1901, pp. 352-3.)

"General Balance Sheet, June 30, 1900:

4354

"Capital Stock—Adjustment Preferred	$23,000,000
"Capital Stock—Common	66,000,000"

(Poor's Manual of Railroads, 1901, p. 353.)

DEFENDANTS' EXHIBIT 18-E. 1113

4355

[Defendants' Exhibit 18-E.]

FIFTH.

PHILADELPHIA AND READING RAILROAD.

[Poor's Manual of Railroads, 1885, p. 302.]

"Philadelphia and Reading Railroad. 4356

	Miles.
Line of Road—Philadelphia, Pa., to Mt. Carbon, Pa..	98.4
Branch Lines owned by the Company.....	228.6
Branch Lines Leased by the Company.....	1,154.7
Branch Lines Controlled by the Company.....	106.6
Total length of all lines owned, leased and controlled	1,588.3

* * * * * 4357

"The chief business of the company is the transportation of coal from the first and second anthracite coal fields of Pennsylvania to tidewater in the Delaware River, at Port Richmond, Philadelphia. At this eastern terminus are 23 wharves, extending from 300 to 800 feet into the river, with trestlework and chutes, allowing a direct discharge of coal from the cars into vessels. More than 35 miles of track are distributed on the wharves of the immediate neighborhood. The main line of road winds through the Schuylkill Valley, extending numerous branches east and west into the two southern coal-fields. The Broad Mountain, dividing the two coal fields, is crossed by the different branches at four different points, three of which lead directly into the Mahanoy coalfield, and one into the Wisconisco Basin. The Laurel Run Improvement Co. was chartered May 18, 1871; name changed December 12, 1871, to the Philadelphia and Reading Coal and 4358

4359 **Fifth—Philadelphia & Reading R. R. Co.—Continued.**

Iron Co., which was organized, under the auspices of the Railroad Company, for the purpose of purchasing and operating the coal properties with which the railroad was connected. The Philadelphia and Reading R. R. Company owns all the stock in the coal company."

"On May 29, 1883, the company acquired control, by a lease for 999 years, of all the railroads and property of the Central R. R. Co. of New Jersey." (P. 303.)

The foregoing extracts from the Manual for 1885 are re-
4360 peated in the Manual for

1886, pp. 593-5;
1887, pp. 273, 274;
1898, p. 716;
1899, p. 188;
1900, p. 163;
1901, p. 150;
1902, p. 144.

4361

[Poor's Manual of Railroads, 1898, pp. 710-711.]

"READING COMPANY. History.—Incorporated as the Excelsior Enterprise Co., May 24, 1871. Name changed to National Company, Jan. 18, 1873. On Sept. 23, 1896, the railroads, property and corporate franchises of the Philadelphia and Reading R. R. Co. and the coal lands and property of the Philadelphia and Reading Coal and Iron Co. included under the gen. mtge. made by those companies under date of Jan. 3, 1888, were sold by the trustees of that mtge. to a committee
4362 representing the reorganization managers. On the same day all the other assets and property of the railroad company and the coal and iron company were sold by the receivers, under the same decree by virtue of which the other sales had been made, and to the same persons. The purchasers at these sales acquired control of the National Company, and conveyed to it a large part of the property purchased by them, first having, on Dec. 7, 1896, changed the name to Reading Co. and in-

Fifth—Philadelphia & Reading R. R. Co.—Continued. 4363

creased the capital stock from $100,000 to $40,000,000. On Dec. 18, 1896, the capital stock was further increased to $140,000,000.

"General Balance Sheet, June 30, 1897.

* * * "Phila. & Reading Ry. Co's stock.....	$20,000,000
Phila. & Read. Coal & Iron Co's stock.....	8,000,000
Stocks of other companies owned.....	25,182,210"

4364

The foregoing extracts from the Manual for 1898 are repeated in the Manuals for

1899, p. 183;
1900, p. 159;
1901, p. 145;
1902, p. 139.

(P. 713, Manual 1898.)

"READING COMPANY.—*Subsidiary Corporations.*

4365

"Philadelphia and Reading Coal and Iron Company.

History.—The Laurel Run Improvement Co., chartered May 18, 1871, name changed Dec. 12, 1871, to Philadelphia and Reading Coal and Iron Co., was organized under the auspices of the Philadelphia and Reading R. R. Co., for the purpose of purchasing and operating the coal properties with which the railroad was connected. The P. & R. R. R. Co. owned the entire share capital of the Coal and Iron Co., besides bonds and mortgages on the coal lands to the amount of $39,737,- 4366
965.53. The property was sold under foreclosure on Sept. 23, 1896, by virtue of the same decree under which the property of the P. & R. R. R. Co. was sold, and was bid in by the same persons."

(P. 713.) *"General Balance Sheet, June 30, 1897.*
"Capital Stock, $8,000,000."

4367 **Fifth—Philadelphia & Reading R. R. Co.**—Continued.

The foregoing extracts from the Manual for 1898, pp. 710-711, are repeated in the Manuals for

1899, p. 185;
1900, p. 161;
1901, p. 148;
1902, p. 142.

4368 [Poor's Manual of Railroads, 1898, p. 714.]

"*Philadelphia and Reading Railroad Company.*

	Miles.
Main Line of Road—Philadelphia, Pa., to Mt. Carbon, Pa	98.4
Branch Lines owned by the Company	228.6
Branch Lines Leased by the Company	553.9
Branch Lines Controlled by the Company	277.5
4369 Total length of lines owned, leased and controlled, June 30, 1897	1,158.4"

[Poor's Manual, 1898, p. 347.]

"CENTRAL RAILROAD COMPANY OF NEW JERSEY.

Jersey City, N. J., to Phillipsburg, N. J., 72.30 miles.

4370 "Statement showing mileage of all railroads operated on Dec. 31, 1897.

Divisions.	Length of Line.
Cent. R. R. of N. J. Div.	
Main Line: Jersey City to Phillipsburg	72.30
Branches: * * *	* *
Total, Central R. R. Div	190.28

* * * * *

Fifth—Philadelphia & Reading R. R. Co.—Continued. 4371

Lehigh & Susquehanna Div.

Phillipsburg to Union Junc	105.33

* * * * *

Total, L. & S. Div	247.95

"Recapitulation of Trackage in Detail.

Divisions.	Length of Line.	
Central R. R. of N. J. Div	190.28 m.	4372
New Jersey Southern Div	182.85	
Freehold & Atlantic Div	24.47	
N. Y. & Long Branch Div	38.04	
Lehigh & Susquehanna Div	247.95	
Grand Totals	683.59	

4373

[Poor's Manual of Railroads, 1899, p. 180.]

"READING COMPANY.

"*History.*—Incorporated as the Excelsior Enterprise Co., May 24, 1871. Name changed to National Co. Jan. 18, 1873, and to Reading Co. on Dec. 7, 1896. * * * The company owns practically the whole capital stock of the Philadelphia and Reading Ry. Co. and of the Philadelphia & Reading Coal and Iron Co., and all of the other stocks and securities which 4374
were acquired by the purchasers at the sale under foreclosure of the general mortgage of the Philadelphia and Reading R. R. Co. and the Philadelphia and Reading Coal and Iron Co."

The foregoing extract from the Manual for 1899 is repeated in the Manual for 1900, p. 157; 1901, p. 142; 1902, p. 137.

4375 **Fifth—Philadelphia & Reading R. R. Co.**—Continued.

[Poor's Manual of Railroads, 1901, p. 142.]

"READING COMPANY.

(P.143.) "In Feb. 1901, the company acquired $14,500,000, being a majority of the capital stock of the Central R. R. of New Jersey."

4376 ———

[Poor's Manual of Railroads, 1902.]

(P. 137.) "READING COMPANY. * * *

"The company owns practically the whole capital stock of the Philadelphia and Reading Ry. Co. and of the Philadelphia and Reading Coal and Iron Co." * * *

(P. 138.) "The Reading Company owns more than 53¼ p. c. of the capital stock of the Central R. R. Co. of New Jersey,
4377 and together with that company owns or controls about 63 p. c. of all the unmined anthracite coal in the State of Pennsylvania."

(P. 139.) "*General Balance Sheet, June 30, 1901.*

* * * * *

"Stock and Bonds P. & R. Ry. Co.	$40,000,000
"Stock of P. & R. Coal & Iron Co.	8,000,000
"Stocks and Bonds, sundry	69,268,935"

4378 (P. 141.) "The stocks and bonds of sundry companies owned by the Reading Co. and the cost of which is shown in the general balance sheet of June 30, 1901, consisted of the following:

"*Stocks:*

* * * * *

Cent. R. R. of New Jersey, Com.	$14,504,000

* * * * *

P. & R. Term R. R. Co.	8,500,000"

Fifth—Philadelphia & Reading R. R. Co.—Continued. 4379

"Summary.

* * * * *

Par Value of Stocks..... 48,554,224.25"

* * * * *

4380

(P. 142.) "READING COMPANY.—Subsidiary Corporations.

Philadelphia and Reading Coal and Iron Company.

* * * * *

"General Balance Sheet, June 30, 1901.

"Capital Stock, $8,000,000." 4381

(P. 143.) "READING COMPANY.—Subsidiary Corporations.

Philadelphia and Reading Railway Company.

Mileage Operated: June 30, 1901 (owned, 365.55 miles).

	Miles.
Main Line: Philadelphia, Pa., to Mt. Carbon, Pa....	98.47
Branch lines owned by the company.....	267.08
Branch lines leased by the company.....	634.76

4382

Total length of lines owned and leased, June 30, 1901 ..... 1,000.31"

(P. 147.) *"General Balance Sheet, June 30, 1901.*

"Capital Stock ($50 shares) $20,000,000."

4383 **Fifth—Philadelphia & Reading R. R. Co.—Continued.**

[Poor's Manual of Railroads, 1902. (P. 156.)]

"CENTRAL RAILROAD OF NEW JERSEY.

(Controlled by Reading Company.)

"Mileage Operated, Dec. 31, 1901.

4384

	Miles.
Main Line: Jersey City, N. J., to Phillipsburg, N. J.	72.30
Central R. R. branches and leased lines	118.98
Freehold & Atlantic Highlands R. R.	24.47
New Jersey Southern R. R.	174.43
New York and Long Branch R. R.	38.04
Lehigh & Susquehanna R. R.	210.55
Lehigh & Lackawanna R. R.	38.22
"Total length of lines operated, Dec. 31, 1901	676.99"

(P. 159.) *"General Balance Sheet, December 31, 1901.*

"Cap. Stk. ($30,000,000 auth.; $100 shares) $27,411,800".

4385

(Defendants' Exhibit 20.)

Defendants offer in evidence the pages and parts of pages enumerated below of the Annual Reports for the year 1889, and each year subsequent thereto, on the Statistics of Railways in the United States, made by the Interstate Commerce 4386
Commission and transmitted to the Senate and House of Representatives as an appendix and separate document, constituting part of its Annual Report to Congress; also, explanatory note printed in each volume as a preface to the table giving classification of Railways and Mileage for the years referred to, which tables include the pages and parts of pages referred to. Such explanatory notes are in the following form:

"EXPLANATORY NOTE.

4387

"Under the title 'Territorial Assignment of Statistics,' page 10, will be found an explanation of a new feature of the present report, namely, the compilation of railway statistics by ten territorial groups. Notice with respect to Table I that for certain roads lying in more than one group totalized figures for the entire road are given in 'Supplement A,' pages 302 and 303. This table, it will be observed, contains some changes as compared with the 1889 report, as for example, columns 2, 5 and 6 of the preceding report have been omitted, and in their place appear 'Length' of 'Line Owned' and 'Line 4388
Operated,' together with the 'Increase' or 'Decrease' in each case over June 30, 1889.

"For a detailed consideration of railway mileage, pages 12 to 16 inclusive may be examined in connection with the following table. Pages 13 and 14 give a 'Summary of Railway Mileage in the United States by States and Territories,' where a column each is devoted to 'Official' and 'Unofficial' mileage,

4389 the total of both columns being the same as that of column 2 of Table 1; on page 14 is presented 'Line Owned,' assigned to the different groups, and a table covering 'Mileage Operated,' all tracks, is given on page 16. Further remarks relating to this table appear under 'Organization of Property for Operation,' pages 17 to 21 inclusive. The table on page 17 shows 'Length of Line Owned, Leased, or Operated under Trackage Rights, by Operating Companies,' and the tables on pages 18 and 19 furnish information concerning the corporate condition and contractual relations of railways, as compiled from the
4390 'Remarks' column of Table 1, this data being shown in totalized form and by groups. A summarization of data included in 'Supplement B—Corporate Changes for the Year ending June 30, 1890,' pages 304 to 315 inclusive, may be found on page 20, being compared with corresponding information for 1889; and page 21 contains a 'Classification of Railways on the Basis of Operated Mileage, for the Years ending June 30, 1890 and 1889."

"Explaining the arrangement of roads in column 1, it may be stated that all operating roads, not subsidiary to other roads, appear in alphabetical order, printed flush; while all
4391 subsidiary roads, whether making operating reports or not, are indented, being also arranged alphabetically, though it should be said of these that such subsidiary roads as operate their own and possibly other roads for the leading road of a system are usually so arranged under a preceding alphabetical listing of the subsidiary roads operated directly by the controlling company. See pages 154 to 166, Nos. 477 to 551, both inclusive.

"Again, a subsidiary road may have in a similar relation to itself another road, which will appear indented to second
4392 place, and should some road be subsidiary to the last-named company, this third road will be still further indented. To illustrate, on page 104 we find, in alphabetical order 'printed flush,' No. 12, the Boston and Maine Railroad as principal in an operating system, and under it, as subsidiary, on page 106, No. 28, the Boston and Lowell Railroad, 'indented;' No. 31, page 108, the Nashua and Lowell Railroad, presents a road subsidiary to No. 28, and is, therefore, 'indented to second

place;' this in turn has subsidiary to itself two other roads, 4393
Nos. 32 and 33, the Peterboro Railroad and the Stony Brook Railroad, which are "still further indented." The object of this arrangement is to show at a glance the proper relation of any road to the immediate road or roads preceding, and this plan is followed throughout all succeeding tables. In subsequent tables, all roads, although the abbreviated names are used, have the same numbers as in Table I, thus facilitating cross-reference. To this statement, however, there is one exception, namely, in 'Supplement B,' pages 304 to 315 inclusive, where the running numbers given are those of the same road 4394
as used in the Second Annual Report, and some of these roads, for the purpose of presenting their statistics up to the date of corporate change within the present year, appear in Table II and following tables, with the same "No." printed in boldfaced type."

[Defendants' Exhibit 20-A.]

Extracts from

4395

INTERSTATE COMMERCE COMMISSION REPORT, 1889.

CONTENTS.

	Pages of Report.
Boston & Maine R. R. Co	60-63
Lake Shore & Michigan Southern Ry. Co	104-107
Michigan Central R. R. Co	113-115
New York Central & Hudson River R. R. Co	122-123
New York, New Haven & Hartford R. R. Co	128-131
Old Colony R. R. Co	136-137
Pennsylvania Company	138-143
Pennsylvania R. R. Co	142-149
Rome, Watertown & Ogdensburgh R. R. Co	160-163
Atchison, Topeka & Santa Fe R. R. Co	50-55

4396

[NOTE—The paging of the original report is indicated by the marginal figures in [ ]. The variations in type, not found in the original report, are introduced for convenience of reference.]

4397 [60]

STATISTICS OF RAILWAYS IN THE UNITED STATES.

CLASSIFICATION OF RAILWAYS AND MILEAGE

[The above running title is

	Name of Road.	Length of Line Operated. Miles.	Length of Line Owned. Miles.
151	**BOSTON AND MAINE RAILROAD COMPANY.**	210.03	125.95
152	Danvers Railroad Company.....	.....	9.26
153	Dover and Winnipiseogee Railroad Company..	.....	29.00
154	Kennebunk and Kennebunkport Railroad Company.	.....	4.50
4398 155	Lowell and Andover Railroad Company.....	.....	10.10
156	Manchester and Keene Railroad Company.....	.....	29.59
157	Manchester and Lawrence Railroad Company.	.....	22.39
158	Newburyport Railroad Company.....	.....	26.98
159	West Amesbury Branch Railroad Company....	.....	4.45
160	Worcester, Nashua and Rochester Railroad Company.	.....	94.48
161	BOSTON AND LOWELL RAILROAD COMPANY.....	.....	98.09
162	Central Massachusetts Railroad Company...	.....	98.77
163	*Connecticut and Passumpsic Rivers Railroad Company.*	.....	110.30
4399 164	*Nashua and Lowell Railroad Company*....	.....	14.50
165	Peterborough Railroad Company.....	.....	10.50

[62]

4400 166	Stony Brook Railroad Corporation.....	.....	13.16
167	Wilton Railroad Company.....	.....	15.50

RAILWAYS AND MILEAGE.

FOR THE YEAR ENDING JUNE 30, 1889.

repeated throughout the report.]

Remarks.	
"Line operated" includes 36.75 miles not in United States.....	151
Leased May 1, 1853, for 100 years, at $7,500 per annum.....	152
Operated under contract dated May 1, 1863, for 50 years, guaranteeing lessor $29,000 annually.	153
Leased Aug. 7, 1883, for 99 years, for 4½ per cent dividend per annum.	154
Leased Dec. 1, 1874, for 99 years, at $52,500 per annum, lessee to pay all public taxes.	155 4402
.....	156
Leased Sept. 1, 1887, for 10 per cent per annum on capital stock and $2,000 per annum for organization.	157
Leased Feb. 21, 1860, for 100 years, for $225,000 cash.....	158
Leased April 1, 1874, for 99 years, for a rental of $5,700 annually.	159
Leased Jan. 1, 1886, for $250,000 per annum and all taxes.....	160
.....	161
.....	162
Leased Jan. 1, 1887, for 99 years, for 5 per cent for 10 years and 6 per cent thereafter on capital stock, interest on bonds and $3,000 for organization expenses, annually; lease assumed by Boston & Me. R. R.	163 4403
Leased Nov. 10, 1880, for 99 years, for $60,000, $4,000 additional in case gross receipts equal or exceed those of 1880, and $1,000 for organization, annually; lease assumed July 12, 1887, by the Boston & Me. R. R., which grants in addition to sums stated in lease 1 per cent annually on capital stock.	164
Leased April 1, 1873, for 20 years, at 6 per cent per annum on cost of road, and taxes; the Boston & Lowell R. R. obtained control of the lease Oct. 1, 1880, and operated the road until 1888, when the Boston & Me. R. R. assumed the lease.	165
	[63] 4404
Acquired by Boston & Lowell R. R. in 1880, through lease of Nashua & Lowell R. R.; new lease to Boston & Lowell R. R. April 1, 1884, to Jan. 1, 1890, for 6 per cent on stock and $500 annually for organization expenses; lease assumed by Boston & Me. R. R.	166
Leased Oct. 1, 1883, for 99 years, for $16,800, all public taxes, and $150 for organization, annually; lease assumed by the Boston & Me. R. R.	167

		Name of Road.	Length of Line Operated. *Miles.*	Length of Line Owned. *Miles.*
4405		**BOSTON AND MAINE RAILROAD COMPANY.—Continued.**		
	168	**Eastern Railroad Company of Massachusetts.**	.....	118.84
4406				
	169	Chelsea Beach Railroad Company.....	.....	1.39
	170	**Eastern Railroad Company in New Hampshire.**	.....	16.08
	171	Portsmouth and Dover Railroad Company.	.....	10.88
	172	Wolfeborough Railroad Company.....	.....	12.03
4407	173	Newburyport City Railroad Company.....	.....	2.08
	174	**Portland, Saco and Portsmouth Railroad Company.**	.....	50.76
	175	Portsmouth, Great Falls and Conway Railroad Company.	.....	72.86
	176	Northern (New Hampshire) Railroad Company	.....	82.91
	177	Concord and Claremont Railroad Company..	.....	70.90
	178	Peterborough and Hillsborough Railroad Company.	.....	18.51
	179	Orchard Beach Railroad Company.....	3.00	3.00
	180	Saint Johnsbury and Lake Champlain Railroad Company.	134.00	131.50
4408	181	York Harbor and Beach Railroad Company....	11.27	11.27
	[104]			
	744	**LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY.**	1,409.55	859.15
	745	Detroit and Chicago Railroad Company.....	.....	67.60
	746	Detroit, Hillsdale and Southwestern Railroad Company.	.....	65.20

DEFENDANTS' EXHIBIT 20-A. 1129

4409

Remarks.

Leased Oct. 1, 1883 for 54 years; gross earnings of both roads to be applied to pay operating expenses, taxes, insurance and other expenditures, rentals to leased lines, and interest on bonds of both lessee and lessor, and $10,000 annually to lessor for organization expenses. After all other payments have been made, surplus to amount of $630,000 to be retained by lessee; surplus above this sum up to $100,000 to be paid lessor; surplus then remaining up to $70,000 to be retained by lessee; surplus above this sum up to $336,000 to be paid lessor; any surplus then remaining to be applied to permanent improvements of property of lessee and lessor, pro rata on mileage.	168	4410
Built and owned by Eastern R. R. of Mass., and included in the lease to Boston & Me. R. R.	169	
Leased Oct. 1, 1878, for 60 years and 2 months, for $22,500 per annum; included in the lease to the Boston & Me. R. R.	170	
Leased in Feb., 1874, for 50 years to the Eastern R. R. in N. H., at $46,140 per annum and guaranteed by the Eastern R. R. of Mass.; included in the lease to the Boston & Me. R. R.	171	
Leased Jan. 6, 1872, for 68 years, for 6 per cent per annum on stock; lease transferred to Eastern R. R. of Mass., Oct. 1, 1875; included in lease of latter to Boston & Me. R. R.	172	
Leased Aug. 14, 1872, for 20 years at $6,000 per annum; included in the lease to the Boston & Me. R. R.	173	4411
Contract dated May 4, 1871, to continue in force until such time as Eastern R. R. of Mass., by default, shall cease to pay regular semi-annual dividend of 3 per cent.	174	
Leased Oct. 1, 1878, for 60 years and 2 months, for $45,000 per annum; included in lease to Boston & Me. R. R.	175	
.....	176	
.....	177	
.....	178	
Road open for business during summer months only.....	179	
.....	180	
.....	181	4412

[105]

.....	744	
Proprietary company; owned entirely by the L. Shore & Mich. Sn. Ry.	745	
Leased Sept. 5, 1881, in perpetuity; annual rental, $54,000 and $500 for organization expenses.	746	

4413

	Name of Road.	Length of Line Operated. *Miles.*	Length of Line Owned. *Miles.*
	LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY—Continued.		
747	Detroit, Monroe and Toledo Railroad Company	.....	62.36
748	Fort Wayne and Jackson Railroad Company..	.....	97.83

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4414

749	Jamestown and Franklin Railroad Company..	.....	50.91
750	Kalamazoo, Allegan and Grand Rapids Railroad Company.	.....	58.42
751	Kalamazoo and White Pigeon Railroad Company	.....	36.57
752	Mahoning Coal Railroad Company.....	.....	42.06
753	Northern Central Michigan Railroad Company	.....	61.14

4415

[112]

849	**MICHIGAN CENTRAL RAILROAD COMPANY.**	1,550.94	270.07
850	Canada Southern Bridge Company.....	.....	3.66

[114]

4416

851	Detroit and Bay City Railroad Company.....	.....	147.99
852	Grand River Valley Railroad Company.....	.....	83.79
853	Jackson, Lansing and Saginaw Railroad Company.	.....	295.10

DEFENDANTS' EXHIBIT 20-A. 1131

4417

Remarks.

Proprietary company; owned entirely by the L. Shore & Mich. Sn. Ry. 747

Leased Sept. 1, 1882, in perpetuity; annual rental, 5 per cent on preferred stock; should net earnings in any year after Sept. 1, 1887, exceed 8 per cent on preferred stock, lessee will pay amount of such excess up to 2 per cent on common stock. 748

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4418

Leased Jan. 1, 1885, for 5 years; annual rental, 30 per cent of gross earnings, and all taxes, except those imposed by the United States or the State of Pennsylvania upon tonnage, dividends, or interest on bonds. 749

Leased Sept. 21, 1869, for 999 years; annual rental, 6 per cent on capital stock, interest on bonds, and all taxes and assessments. 750

Proprietary company; owned entirely by the L. Shore & Mich. Sn. Ry. 751

Leased July 1, 1884, in perpetuity; annual rental, 40 per cent of gross earnings; if this is insufficient to pay interest on bonds, 5 per cent on preferred stock, and $1,000 for corporate expenses, lessee will advance necessary amount and charge same against future rental. 752

Proprietary company; owned entirely by the L. Shore & Mich. Sn. Ry. 753

4419

[113]

Of "line operated," 378.91 miles not in the United States..... 849

Operated in connection with the Canada Sn. Ry., which owns substantially all its capital stock and bonds, the Bridge Company being credited with its earnings and charged with its expenses. 850

[115]

4420

Proprietary company; operated through ownership of entire capital stock; Five Lakes branch, 8.75 miles, taken up and abandoned. 851

Leased Aug. 15, 1870, to continue during the corporate existence of lessor; lessee guarantees floating and funded debt of lessor, interest thereon, 5 per cent per annum on stock, taxes, assessments, etc. 852

Leased Sept. 1, 1871, during corporate existence of the two companies; lessee pays principal and interest of bonds of lessor and a dividend of 3½ per cent per annum. 853

		Name of Road.	Length of Line Operated. *Miles.*	Length of Line Owned. *Miles.*
4421		**MICHIGAN CENTRAL RAILROAD COMPANY—Continued.**		
	854	Joliet and Northern Indiana Railroad Company		45.00
	855	Kalamazoo and South Haven Railroad Company		39.50
	856	Michigan Air Line Railroad Company.....		115.16
	857	Michigan Midland and Canada Railroad Company.		14.68
4422	858	Saginaw Bay and Northwestern Railroad Company.		87.21
	859	Toledo, Canada Southern and Detroit Railway Company.		55.87

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	963	**NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY.**	1,420.64	731.87
	964	New Jersey Junction Railroad Company.....		4.69
4423				
	965	*New York and Harlem Railroad Company*....		135.90
	966	Niagara Bridge and Canandaigua Railroad Company.		100.50
	967	Spuyten Duyvil and Port Morris Railroad Company.		6.04
	968	Troy and Greenbush Railroad Company.....		6.00
	969	Troy Union Railroad Company.....		2.06
	970	**West Shore Railroad Company**.....		448.56
4424	971	Amsterdam, Chuctanunda and Northern Railroad Company.	1.50	1.50
	972	Buffalo Erie Basin Railroad Company.....	.25	.25
	973	Dunkirk, Allegheny Valley and Pittsburgh Railroad Company.	90.60	90.60
	974	Geneva and Lyons Railroad Company.....		14.00
	975	Syracuse, Ontario and New York Railway Company.	45.49	45.49
	976	Wallkill Valley Railroad Company.....	33.46	33.46

DEFENDANTS' EXHIBIT 20-A. 1133

4425

Remarks.

Contracts executed Sept. 7 and 26, 1854; on completion turned over to the Mich. Cent. R. R. to operate forever at an annual rental of $89,000. 854

Leased July 1, 1870, in perpetuity; lessee to pay taxes and interest on bonds. 855

Leased Jan. 1, 1870, for 999 years, lessee guaranteeing principal and interest of bonds. 856

Operated in connection with the Canada Sn. Ry., which owns a majority of its capital stock and all its bonds, the Mich. Mid. & Can. R. R. being credited with its earnings and charged with its expenses. 857

4426

Proprietary company; operated through ownership of entire capital stock. 858

Operated in connection with the Canada Sn. Ry., which owns substantially all its capital stock and bonds, the Toledo, Can. S. W. & Det. Ry. being credited with its earnings and charged with its expenses. 859

[123]

..... 963

Leased July 1, 1886, for 100 years, with privilege of further term of 100 years, at an annual rental of interest at 4 per cent on its bonds. 964

4427

Leased April 1, 1873, to April 1, 2274; annual rental, interest on funded debt and 8 per cent on capital stock. 965

Leased Sept. 1, 1858, for the term of its charter, at an annual rental of $60,000, paid directly to the stockholders. 966

Leased Nov. 1, 1871, to Dec. 31, 1970; annual rental, 8 per cent on cost, $989,000. 967

Leased June 1, 1851, in perpetuity, at an annual rental of $19,250. 968

One-half owned by the N. Y. Cent. & Hudson R. R. R. and one-fourth each by the Del. & Hud. Canal Co. and Fitchburg R. R.; these companies pay this proportion of maintenance and operation. 969

Leased Jan. 1, 1886, for 475 years, with privilege of further term of 500 years; annual rental, interest at 4 per cent on bonds. 970

..... 971

4428

..... 972

Leased Dec. 1, 1872, for 501 years; annual rental, 7 per cent interest on bonds, 1½ per cent dividends on capital stock, $500 for organization expenses, taxes, assessments, etc. 973

Constructed and owned by N. Y. Cent. & Hudson R. R. R..... 974

..... 975

Controlled through ownership of capital stock and bonds held in the interests of the West Shore R. R. 976

4429 [128]

	Name of Road.	Length of Line Operated. *Miles.*	Length of Line Owned. *Miles.*
1022	**NEW YORK AND NEW ENGLAND RAILROAD COMPANY.**	475.69	358.49
1023	Milford, Franklin and Providence Railroad Company.	.....	4.65
1024	*Norwich and Worcester Railroad Company*...	.....	66.16
1025	Rhode Island and Massachusetts Railroad Company in Massachusetts.	.....	6.62
1026	Rhode Island and Massachusetts Railroad Company in Rhode Island.	.....	6.90
4430 1027	Rockville Railroad Company.....	.....	4.43
1028	Milford and Woonsocket Railroad Company...	.....	15.32
1031	**NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY.**	525.89	141.48
1032	*Boston and New York Air Line Railroad Company.*	.....	51.80
1033	Colchester Railroad Company.....	.....	3.59
1034	Harlem River and Port Chester Railroad Company.	.....	11.50
1035	*Hartford and Connecticut Valley Railroad Company.*	.....	46.20
4431 1036	*New Haven and Northampton Railroad Company.*	.....	126.31

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1037	Holyoke and Westfield Railroad Company...	.....	12.32
1038	Naugatuck Railroad Company.....	.....	56.55
1039	Watertown and Waterbury Railroad Company	.....	4.44
4432 1040	*Shore Line Railway Company*.....	.....	48.53
1041	Stamford and New Canaan Railroad Company	.....	7.66

DEFENDANTS' EXHIBIT 20-A. 1135

[129] 4433

Remarks.

"Line operated" includes "transfer boat" .79 mile..... 1022

Leased Sept. 30, 1887, for 99 years, for 25 per cent of gross earnings. 1023

Leased Feb. 9, 1869, for 99 years; annual rental, interest on bonds, and 8 per cent on preferred stock. 1024

Leased Oct. 1, 1887, for 99 years; annual rental, $10,000, and all taxes, assessments, etc. 1025

Leased Oct. 1, 1887, for 99 years; annual rental, $10,000, and all taxes, assessments, etc. 1026

Contract of July 1, 1888, provides for the sale of this road to the N. Y. & N. Eng. R. R., the latter agreeing to pay as rental 5 per cent on purchase price until the transfer of capital stock was made. 1027 4434

Leased Sept. 30, 1887, for 99 years; annual rental, 15 per cent of gross receipts of this road and the Milf., Frank & Prov. R. R. 1028

..... 1031

Operated through ownership of a majority of capital stock..... 1032

Interest on bonds guaranteed by Boston & N. Y. Air Line R. R.. 1033

Proprietary company; operated through ownership of entire capital stock. 1034

Proprietary company; operated through ownership of majority of capital stock. 1035

Proprietary company; operated through ownership of majority of capital stock. 1036 4435

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Leased Dec. 2, 1870, in perpetuity; rental, interest on bonds; in case gross receipts exceed $35,200 per annum lessee to pay lessor one-half of such excess; operated by N. Y., New Haven & Hartf. R. R. through ownership of New Haven & Northamp. R. R. 1037

Leased April 1, 1887, for 99 years; rental, interest on bonds, and 10 per cent per annum on capital stock. 1038

Majority of capital stock and all bonds owned by Naugatuck R. R. and included in lease of that company to the N. Y., New Haven & Hartf. R. R. 1039 4436

Leased in perpetuity; annual rental, $100,000. 1040

Leased April 1, 1887, for 99 years, annual rental, 4 per cent on capital stock, all of which is owned by lessee. 1041

1136 DEFENDANTS' EXHIBIT 20-A.

4437 [136]

	Name of Road.	Length of Line Operated. Miles.	Length of Line Owned. Miles.
1104	**OLD COLONY RAILROAD COMPANY**.....	563.55	469.53
1105	*Boston and Providence Railroad Company.*	.....	63.75
1106	Attleborough Branch Railroad Company	.....	4.00
1107	Chatham Railroad Company.....	.....	7.07
1108	Fall River Railroad Company.....	.....	12.25
4438			
1109	Nantasket Beach Railroad Company....	.....	6.95
1110	Fall River, Warren and Providence Railroad Company.	5.79	5.79

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1136	**PENNSYLVANIA COMPANY**.....	1,366.25	.....
1137	Cleveland and Pittsburgh Railroad Company..	.....	198.34
4439			
1138	**Erie and Pittsburgh Railroad Company**.....	.....	84.47
1139	Indianapolis and Vincennes Railroad Company	.....	128.77
1140	Jeffersonville, Madison and Indianapolis Railroad Company.	.....	222.35
1141	Cambridge Extension	.....	.....
1142	North Western Ohio Railway Company.....	.....	79.98
4440			
1143	**Pittsburgh, Fort Wayne and Chicago Railway Company.**	.....	470.00
1144	Massillon and Cleveland Railroad Company.	.....	12.22
1145	New Castle and Beaver Valley Railroad Company.	.....	14.98

DEFENDANTS' EXHIBIT 20-A. 1137

[137] 4441

Remarks.

.....	1104
Leased April 1, 1888, for 99 years; annual rental, 10 per cent on capital stock, interest on bonds, $10,000 for organization expenses for first 3 years and $3,000 thereafter, taxes, assessments, etc.	1105
Leased Dec. 31, 1870, for 30 years; annual rental, 7 per cent on capital stock; included in lease to Old Colony R. R.	1106
Contract dated Jan. 8, 1888, for 7 years; rental, 30 per cent of gross receipts, payable quarterly.	1107
Leased April 1, 1882, for 99 years; rental, 30 per cent of gross receipts, which is guaranteed to be sufficient to pay interest on bonds.	1108 4442
Leased April 1, 1888, for 99 years; lessee guarantees interest on bonds up to $6,250 and pays taxes, and has option of purchasing property after 20 years of the lease for $150,000.	1109
Road is in possession of Trustee for bondholders under foreclosure and was operated by him during year; entire issue of bonds owned by the Old Colony R. R.	1110

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.....	1136
Leased to the Pennsylvania R. R. Dec. 1, 1871, for 999 years; lessee guarantees principal, interest, and sinking fund charges on bonds, 7 per cent on capital stock, and $10,000 for organization, annually; taxes, assessments, etc.; lease transferred to the Pennsylvania Co. April 14, 1873.	1137 4443
Leased to the Pennsylvania R. R. Mar. 1, 1870, for 999 years; annual rental, 7 per cent on capital stock and bonds; lease transferred to the Pennsylvania Co., April 1, 1871.	1138
Leased Jan. 1, 1879, for 99 years; net earnings paid to lessor to be applied to the payment of interest on bonds.	1139
Leased Jan. 1, 1880, for 999 years; net earnings paid to lessor....	1140
Operated by the Pennsylvania Co. as a part of the Jeffv., Madison & Indpls. R. R., and mileage included in "line owned" by that company.	1141
Leased Jan. 1, 1879, for 99 years, each year's surplus, if any, after deducting taxes, repairs, operating expenses, etc., to be paid lessor.	1142 4444
Leased July 1, 1869, for 999 years; annual rental, interest on bonds, sinking fund, 7 per cent on capital stock, organization expenses, and taxes.	1143
Leased May 22, 1869, for 99 years, at a rental of 40 per cent of gross earnings, as minimum being fixed at $20,000 a year.	1144
Leased June 29, 1865, for 99 years, at a rental of 40 per cent of gross earnings; lease assigned to Pennsylvania R. R. June 7, 1869, and by the latter to the Pennsylvania Co., June 29, 1874, to take effect as of date April 1, 1871.	1145

4445 **PENNSYLVANIA COMPANY—Continued.**

	Name of Road.	Length of Line Operated. *Miles.*	Length of Line Owned. *Miles.*
1146	Pittsburgh, Youngstown and Ashtabula Railroad Company.	.....	122.08

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1147	South Chicago and Southern Railroad Company.	.....	10.25
1148	Calumet River Railway Company.....	4.43	4.43
4446 1149	Chicago, Saint Louis and Pittsburgh Railroad Company.	710.49	580.52
1150	Cincinnati and Richmond Railroad Company	.....	24.47
1151	Cincinnati, Richmond and Chicago Railroad Company.	.....	39.32
1152	Cincinnati and Muskingum Valley Railway Company.	148.45	148.45
1153	East Saint Louis and Carondelet Railway Company.	12.01	12.01
1154	Grand Rapids and Indiana Railroad Company.	565.10	409.20
1155	Cincinnati, Richmond and Fort Wayne Railroad Company.	.....	85.60
4447 1156	Muskegon, Grand Rapids and Indiana Railroad Company.	.....	36.85
1157	Traverse City Railroad Company.....	.....	26.00
1158	Pittsburgh, Cincinnati and Saint Louis Railway Company.	459.23	206.82
1159	Chartiers Railway Company.....	.....	22.76
1160	Little Miami Railroad Company.....	.....	96.38
1161	Columbus and Xenia Railroad Company..	.....	59.86
1162	Dayton and Western Railroad Company...	.....	37.23
4448 1163	Richmond and Miami Railroad Company..	.....	4.19
1164	Pittsburgh, Wheeling and Kentucky Railroad Company.	.....	28.04
1165	Steubenville Extension Railroad Company..	.....	1.23

DEFENDANTS' EXHIBIT 20-A. 1139

4449

Remarks.

Leased Aug. 1, 1887, for 1 year, and thereafter from year to year subject to termination on 12 months' written notice from either party; operated by lessee at cost. 1146

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Operated at cost under a provisional arrangement..... 1147

....do 1148

..... 1149 4450

Operated at cost under a provisional arrangement..... 1150

Leased Feb. 18, 1859, to Cin., Ham. & Day. R. R. for net earnings; Aug. 18, 1888, lease assigned to Chic., St. L. & Pittsb. R. R. 1151

Controlled through ownership of majority of capital stock..... 1152

....do 1153

Controlled by virtue of a contract, in effect from Oct. 1, 1869, for 30 years, under which the Pennsylvania Co. guarantees $4,000,000 of its first mortgage land-grant bonds. 1154

Leased Jan. 1, 1871, for 99 years; rental, net earnings, bond interest, guaranteed by Pennsylvania Co., and Chic., St. L. & Pittsb., and Grand Rap. & Ind. R. Rs., each one-third of any deficiency of net earnings to pay coupons. 1155

4451

Leased Dec. 1, 1886; rental, net earnings, with a minimum guarantee of interest on bonds. 1156

Leased Jan. 1, 1883, for 50 years; rental, net earnings, with a minimum guarantee of interest on bonds. 1157

Controlled through ownership of majority of capital stock..... 1158

Leased Dec. 8, 1871, for 99 years, rental, net earnings..... 1159

Leased Dec. 1, 1869, for 99 years, renewable forever; annual rental 8 per cent on capital stock, interest on bonds, and organization expenses. 1160

Leased Nov. 30, 1868, for 99 years, renewable forever; annual rental, 8 per cent on capital stock, interest on bonds; included in lease of Little Miami R. R. to Pennsylvania Co. 1161

Leased Dec. 1, 1869, for 99 years, renewable forever; rental, interest on bonds; included in lease of Little Miami R. R. to Pennsylvania Co. 1162

4452

Leased Dec. 1, 1869, for 99 years, renewable forever; annual rental, $5,500; included in lease of Little Miami R. R. to Pennsylvania Co. 1163

Leased Feb. 25, 1875, for 99 years; lessee operates the road at cost and pays net earnings to lessor. 1164

Owned by Pennsylvania R. R., and leased April 1, 1871, to Pennsylvania Co. for 999 years; sub-let Nov. 1, 1876, to the Pittsb., Cin. & St. L. Ry., for 25 years; rental, 5 per cent per annum on cost. 1165

4453 [142]

	Name of Road.	Length of Line Operated. Miles.	Length of Line Owned. Miles.
	PENNSYLVANIA COMPANY—Continued.		
1166	Waynesburgh and Washington Railroad Company.	28.15	28.15
1167	**PENNSYLVANIA RAILROAD COMPANY**.....	2,432.95	457.14
1168	Bald Eagle Valley Railroad Company.....	.....	79.53
1169	Bedford and Bridgeport Railroad Company...	.....	49.17
1170	Bellefonte, Nittany and Lemont Railroad Company.	.....	9.45
1171	Cambria and Clearfield Railroad Company...	.....	17.34
4454			
1172	Columbus, Kinkora and Springfield Railroad Company.	.....	14.16
1173	Columbia and Port Deposit Railroad Company	.....	39.83
1174	Downingtown and Lancaster Railroad Company.	.....	28.11
1175	Ebensburgh and Cressen Railroad Company...	.....	11.00
1176	Frankford and Holmesburgh Railroad Company.	.....	4.16
1177	Freehold and Jamesburgh Agricultural Railroad Company.	.....	27.54
1178	Frederick and Pennsylvania Line Railroad Company.	.....	28.00
4455 1179	Hanover and York Railroad Company.....	.....	18.35
1180	Harrisburg, Portsmouth, Mount Joy and Lancaster Railroad Company.	.....	53.74
1181	Kensington and Tacony Railroad Company...	.....	2.28
1182	Lewisburg and Tyrone Railroad Comopany...	.....	84.84
1183	Littlestown Railroad Company.....	.....	9.30
1184	Long Beach Railroad Company.....	.....	20.50
1185	Mifflin and Centre County Railroad Company..	.....	12.31
1186	Millstone and New Brunswick Railroad Company.	.....	6.65
4456			
1187	Nescopec Railroad Company.....	.....	11.96

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1188	North and West Branch Railway Comopany...	.....	47.82

DEFENDANTS' EXHIBIT 20-A. 1141

[143] 4457

Remarks.

Operated independently; bonds and majority of capital stock owned by Chartiers Ry.	1166
"Line operated" includes 1 mile of ferry.....	1167
Leased July 1, 1864, for 99 years; rental, 40 per cent of gross receipts.	1168
Leased Aug. 1, 1886, for 10 years; rental, net earnings.....	1169
Agreement in effect July 22, 1885, terminable at the option of either party on thirty days' notice; rental, net earnings.	1170
Operated under resolutions of Board of Directors in effect Sept. 24, 1888, terminable at any time on thirty days' notice; net earnings are payable to this company.	1171
	4458
Operated under lease expiring June 30, 1889, based on 30 per cent of gross earnings to be paid by lessee to lessor.	1172
Agreement dated June 13, 1877, terminable at any time on thirty days' notice; rental, net earnings.	1173
This company is the re-organized E. Bradyw. & Waynesb. R. R.; operating under resolutions of Board of Directors in effect Aug. 1, 1888, terminable at any time on thirty days' notice; net earnings paid to this company.	1174
Leased March 6, 1862, for 999 years; rental, net earnings.....	1175
Leased Jan. 1, 1881, for 99 years; rental, net earnings.....	1176
Contract dated July 16, 1879, terminable on 30 days' notice; rental, net earnings.	1177
Leased Jan. 1, 1875, for 999 years; lessee operates the road at cost	1178
	4459
Leased Jan. 1, 1875, for 999 years; rental, net earnings.....	1179
Leased Jan. 1, 1861, for 999 years; annual rental, 7 per cent on capital stock, interest on bonds, all taxes levied on stock and bonds, and organization expenses up to $2,000.	1180
Leased Jan. 1, 1887, for 5 years at $30 per annum.....	1181
Leased Jan. 1, 1880, for 99 years; rental, net earnings.....	1182
Leased April 8, 1875, for 999 years; advancements made by lessee to pay taxes, operating expenses, interest on bonds to be repaid from earnings, any surplus remaining after such payments to be paid lessor.	1183
Leased June 28, 1886, terminable on 30 days' notice; lessee operates the road at cost, paying over to lessor any surplus remaining.	1184
Leased March 19, 1863, for 999 years; rental, net earnings.....	1185
Operated since Jan. 1, 1886, by the Pennsylvania R. R. on a temporary arrangement, without any written contract, that company paying all expenses and charging deficiency in net receipts to this company.	1186
	4460
Operated under resolutions of Board of Directors in effect April 25, 1887, terminable at any time on 30 days' notice; net earnings payable to this company.	1187

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Agreement dated Nov. 23, 1881, to continue until Sept. 1, 1901, net earnings to be paid this comyany.	1188

		Name of Road.	Length of Line Operated. *Miles.*	Length of Line Owned. *Miles.*
4461		**PENNSYLVANIA RAILROAD COMPANY—** Continued.		
	1189	Pennsylvania Schuylkill Valley Railroad Company.	.....	118.91
	1190	Perth Amboy and Woodbridge Railroad Company.	.....	6.40
	1191	**Philadelphia and Erie Railroad Company**....	.....	287.56
	1192	Philadelphia, Germantown and Chestnut Hill Railway Company.	.....	6.75
4462	1193	Philadelphia and Long Branch Railroad Company.	.....	47.28
	1194	Pittsburgh, Virginia and Charleston Railway Company.	.....	72.52
	1195	Pomeroy and Newark Railroad Company.....	.....	26.70
	1196	Ridgway and Clearfield Railroad Company...	.....	27.23
	1197	Riverfront Railroad Company.....	.....	3.86
	1198	South West Pennsylvania Railway Company..	.....	89.29
	1199	Sunbury, Hazleton and Wilkesbarre Railway Company.	.....	43.44
	1200	Sunbury and Lewistown Railway Company...	.....	43.45
4463	1201	Susquehanna and Clearfield Railroad Company	.....	24.89
	1202	Tipton Railroad Company.....	.....	4.44
	1203	Tyrone and Clearfield Railway Company.....	.....	105.10
	1204	**United New Jersey Railroad and Canal Company.**	.....	144.72
	1205	Belvidere Delaware Railroad Company.....	.....	80.71
4464				
	[146]			
	1206	Camden and Burlington County Railroad Company.	.....	29.61
	1207	Mount Holly, Lumberton and Medford Railroad Company.	.....	5.95

DEFENDANTS' EXHIBIT 20-A. 1143

4465

Remarks.

Leased Dec. 1, 1885, for 50 years; rental, net earnings..... 1189

Operated as of date Jan. 1, 1889, by virtue of resolutions adopted May 6, 1889, by stockholders of this company, and June 26, 1889, by directors of Pennsylvania R. R.; net earnings paid to this company. 1190

Lease executed Jan. 6, 1862; modified Jan. 1, 1870, for 999 years from Jan. 6, 1862; surplus of gross receipts after paying operating expenses, etc., to be applied to organization expenses and interest on bonds; any balance to be paid lessor. 1191

Leased May 1, 1883, for 30 years; rental, net earnings..... 1192

4466

Leased Jan. 1, 1884, for 50 years; any surplus of earnings after paying operating and other expenses to be paid lessor. 1193

Leased April 1, 1882, for 50 years; rental, net earnings..... 1194

Leased March 1, 1880, for 99 years; rental, net earnings..... 1195

Operated under resolutions of Board of Directors adopted July 23, 1884, terminable at option of either party on thirty days' notice; net earnings paid to this company. 1196

Leased May 1, 1882, for 50 years; rental, $23,000 per annum..... 1197

Leased April 1, 1889, for one year, renewable every year; net earnings paid to this company. 1198

Leased May 1, 1878, for 50 years; net earnings paid to this company. 1199

Leased July 1, 1876, for 99 years; operated for cost and one-half of net earnings after payment of interest on outstanding bonds. 1200

Operated under resolutions of Board of Directors adopted July 23, 1884, terminable at option of either party on thirty days' notice; net earnings paid to this company. 1201 4467

Agreement dated May 1, 1886, terminable at the option of either party on thirty days' notice; net earnings paid to this company. 1202

Leased Jan. 1, 1882, for 50 years; lessee to pay annually all taxes, interest on bonds, sinking fund, organization expenses up to $1,000, and 5 per cent on capital stock. 1203

Leased June 30, 1871, for 999 years; annual rental, 10 per cent on capital stock, taxes, interest on funded and other debts, damages, losses, etc. 1204

Leased Jan. 1, 1876, to June 30, 2870; assigned to Pennsylvania R. R., March 7, 1876; revenue to be applied, first, to operation; second, to interest on bonds; any balance to be paid lessor. 1205

4468

[147]

Leased April 24, 1868, for the term of its corporate existence to Camden & Amboy R. R., one of the constituent companies of United N. J. R. R. & Canal Co.; annual rental, 6 per cent on capital stock and bonds and $500 for organization expenses; lease assigned to Pennsylvania R. R., June 30, 1871. 1206

Leased Mar. 11, 1873, during corporate existence at $11,189 per annum; lease assigned to Pennsylvania R. R., June 13, 1871. 1207

4469

	Name of Road.	Length of Line Operated. *Miles.*	Length of Line Owned. *Miles.*
	PENNSYLVANIA RAILROAD COMPANY—Continued.		
1208	**Philadelphia and Trenton Railroad Company.**	.....	26.50
1209	Connecting Railway Company.....	.....	6.75
1210	Rocky Hill Railroad and Transportation Company.	.....	2.38
4470 1211	Vincentown Branch Railroad Company.....	.....	2.84
1212	West Chester Railroad Company.....	.....	5.00
1213	Western Pennsylvania Railroad Company....	.....	98.23
1214	Alexandria and Fredericksburg Railway Company.	33.60	28.64
1215	Alexandria and Washington Railway Company.	.....	4.96
1216	Allegheny Valley Railroad Company.....	260.30	260.30
1217	*Baltimore and Potomac Railroad Company*...	95.86	92.06
4471 1218	Catonsville Short Line Railroad Company..	.....	3.75
1219	Camden and Atlantic Railroad Company.....	82.64	68.03
1220	Philadelphia, Marlton and Medford Railroad Company.	.....	11.71
1221	Cumberland Valley Railroad Company.....	122.56	82.18
1222	Cumberland Valley and Martinsburg Railroad Company.	.....	11.28
1223	Dillsburg and Mechanicsburg Railroad Company.	.....	7.70
1224	Southern Pennsylvania Railway and Mining Company.	.....	21.40
4472 [148]			
1225	Johnsonburg Railroad Company.....	.....	19.69
1226	Junction Railroad Company.....	3.56	3.56

DEFENDANTS' EXHIBIT 20-A. 1145

4473

Remarks.

Leased June 30, 1871, from United N. J. R. R. & Canal Co., for 999 years; annual rental, 10 per cent on capital stock (excluding 7,650 shares owned by United N. J. R. R. & Canal Co.), taxes, assessments, etc. 1208

Leased Feb. 18, 1863, for 999 years; annual rental, 6 per cent on capital stock, 6 per cent on bonds, and taxes; included in lease to Pennsylvania R. R. 1209

Leased Nov. 22, 1869, for the term of its charter, to the Camden & Amboy R. R., one of the constituent companies of the United N. J. R. R. & Canal Co., at 6 per cent per annum on capital stock; lease assigned to the Pennsylvania R. R., Nov., 1871. 1210

..... 1211 4474

Leased Aug. 6, 1879, for 99 years; annual rental, 5 per cent on capital stock, interest on bonds, sinking fund charges, and taxes. 1212

Leased June 1, 1888, for 40 years; net earnings paid to this company. 1213

Road is in possession of trustees under provisions of its mortgage of June 1, 1866, and is operated by their agent; the bonds are all owned by the Pennsylvania R. R. 1214

Operated by trustees of the Alex. & Fredsb. Ry., who pay this company any earnings over expenses after deducting charges for use of equipment. 1215

W. H. Barnes, receiver; majority of capital stock and about one-fifth of outstanding bonds owned by Pennsylvania R. R. 1216

Controlled through ownership of majority of capital stock..... 1217

Leased Dec. 6, 1883; the lessor receives 40 per cent of net earnings. 1218 4475

Controlled through ownership of majority of capital stock; mileage operated includes 2 miles of ferry. 1219

Leased Jan. 31, 1885, terminable on 30 days' notice; surplus from operation paid lessor. 1220

..... 1221

Leased Mar. 17, 1888, for 99 years; receipts from operation to be applied to maintain the road, pay operating expenses, taxes, insurance, etc.; balance to be paid lessor. 1222

Leased Jan. 1, 1873, for 99 years; terms of lease same as above.. 1223

Leased Mar. 1, 1870, for 199 years; terms of lease same as above. 1224

4476

[149]

Built, but not operated during year..... 1225

The Pennsylvania, Phila., Wilm. & Balt., and Phila. & Reading R. Rs. use this company's tracks, paying a certain rate per car per mile, the Junction R. R. paying the company, moving the traffic for the use of its motive power. 1226

		Name of Road.	Length of Line Operated. *Miles.*	Length of Line Owned. *Miles.*
4477		**PENNSYLVANIA RAILROAD COMPANY—Continued.**		
	1227	**Northern Central Railway Company**.....	372.83	145.41
	1228	Elmira and Lake Ontario Railroad Company	.....	99.61
	1229	Elmira and Williamsport Railroad Company	.....	75.50
	1230	Summit Branch Railroad Company.....	.75	.75
	1231	Lykens Valley Railroad and Coal Company	.....	19.70
4478	1232	Shamokin Valley and Pottsville Railroad Company.	.....	29.78
	1233	*Union Railroad Company (of Baltimore)*...	9.62	9.62
	1234	*Philadelphia, Wilmington and Baltimore Railroad Company.*	535.40	137.30
	1235	Cambridge and Seaford Railroad Company.	.....	27.25
	1236	Delaware Railroad Company.....	.....	99.97
	1237	Delaware and Chesapeake Railway Company.	.....	54.29
4479	1238	Delaware, Maryland and Virginia Railroad Company.	.....	97.62
	1239	Philadelphia and Baltimore Central Railroad Company.	.....	75.15
	1240	Chester Creek Railroad Company.....	.....	6.69
	1241	Queen Anne and Kent Railroad Company...	.....	25.86
	1242	Trenton Delaware Bridge Company.....	.19	.19
	1243	West Jersey Railroad Company.....	223.16	182.06

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4480	1381	**ROME, WATERTOWN AND OGDENSBURGH RAILROAD COMPANY.**	643.19	374.13
	1382	Niagara Falls Branch Railroad Company.....	.....	8.74
	1383	Norwood and Montreal Railroad Company....	.....	12.94
	1384	Oswego and Rome Railroad Company.....	.....	28.49
	1385	Rome, Watertown and Ogdensburgh Terminal Railroad Company.	.....	8.37

DEFENDANTS' EXHIBIT 20-A. 1147

4481

Remarks.

Controlling interest in capital stock owned by the Pennsylvania R. R.	1227	
Contract terminable at the option of either party on 30 days' notice; net receipts after paying charges for use of equipment, paid to this company.	1228	
Leased May 1, 1863, for 999 years, annual rental, 7 per cent on preferred and 5 per cent on common stock, interest on bonds and $3,000 for organization expenses.	1229	
.....	1230	
Leased Mar. 1, 1866, for 999 years to the Summit Branch R. R., annual rental, $62,500, taxes, charges, etc.	1231	
Leased Feb. 27, 1863, for 999 years; annual rental, interest on bonds, 6 per cent on capital stock, and taxes.	1232	4482
Controlled through ownership of entire capital stock.....	1233	
Controlled through ownership of majority of capital stock; "line owned" includes 3.70 miles leased to the Columbia & Port Deposit R. R.	1234	
Agreement dated May 16, 1883, terminable on 30 days' notice; net earnings paid to this company.	1235	
Leased May 4, 1855, for 21 years; renewed April 3, 1875, for 21 years from May 4, 1876; annual rental, 6 per cent on capital stock, interest on funded and floating debt, and one-half of any surplus over 6 per cent of net earnings.	1236	
Controlled through ownership of capital stock; net earnings paid to this company.	1237	
Agreement dated Aug. 1, 1885, terminable on 30 days' notice; net earnings paid to this company.	1238	4483
Agreement dated Aug. 1, 1881, terminable on 6 months' notice; net earnings paid to this company.	1239	
Leased Jan. 13, 1868, for 999 years; annual rental, 6 per cent on $185,000 capital stock, interest on bonds, and taxes.	1240	
Agreement dated Oct. 14, 1881, terminable on 30 days' notice; net earnings paid to this company.	1241	
Trackage contract June 20, 1877, for 993 years, 5 months and 10 days; annual rental, $28,000 and taxes.	1242	
Controlled through ownership of majority of capital stock.....	1243	

[161]

.....	1381	4484
Leased Sept. 21, 1881, in perpetuity, at 7 per cent per annum on capital stock.	1382	
Leased Mar. 6, 1886, in perpetuity; lessee guarantees principal and interest of $130,000, first mortgage bonds.	1383	
Leased Dec. 2, 1869, in perpetuity; annual rental, interest on first mortgage bonds and $24,000 cash.	1384	
Leased Mar. 15, 1888, in perpetuity; lessee guarantees principal and interest of first mortgage bonds, and 6 per cent per annum on capital stock.	1385	

4485 [162]

	Name of Road.	Length of Line Operated. *Miles.*	Length of Line Owned. *Miles.*
	ROME, WATERTOWN AND OGDENSBURGH RAILROAD COMPANY—Continued.		
1386	Syracuse, Phœnix and Oswego Railway Company.	.....	17.11
1387	Utica and Black River Railroad Company....	.....	150.00
1388	Carthage, Watertown and Sackett's Harbor Railroad Company.	.....	29.59

4486

[50]

26	**ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY.**	3,026.26	470.58
27	Denver and Santa Fé Railway Company.....	.....	126.03
28	Florence, Eldorado and Walnut Valley Railroad Company.	.....	72.73
29	Kansas City, Emporia and Southern Railway Company.	.....	84.27
4487 30	Kansas City, Topeka and Western Railroad Company.	.....	66.32
31	Leavenworth Northern and Southern Railway Company.	.....	46.19
32	Marion and McPherson Railway Company....	.....	98.61

[52]

4488 33	New Mexican Railroad Company.....	.....	68.11
34	New Mexico and Southern Pacific Railroad Company.	.....	372.09
35	Pueblo and Arkansas Valley Railroad Company	.....	294.16
36	Rio Grande and El Paso Railroad Company...	.....	20.15
37	Rio Grande, Mexico and Pacific Railroad Company.	.....	186.08

DEFENDANTS' EXHIBIT 20-A. 1149

[163] 4489

Remarks.

Leased Dec. 8, 1885, in perpetuity; lessee guarantees principal and interest of $175,000 first mortgage bonds.	1386
Leased April 14, 1886, for the term of its corporate existence; annual rental, interest on bonds, 7 per cent on capital stock, and $4,500 for organization expenses.	1387
Leased for the term of its corporate existence, for 37½ per cent of gross earnings; included in the lease of the Utica & Black R. R. R. to the Rome, Watert. & Ogdensb. R. R.	1388

4490

[51]

9.67 miles narrow gauge.....	26
Lease became effective Oct. 1, 1887, and expires on day preceding last day of corporate existence of lessor; rental, interest on bonded debt.	27
Lease became effective Jan. 1, 1885, and expires on day preceding last day of corporate existence of lessor; rental, interest on bonded debt.	28
Lease became effective Jan. 1, 1883, and expires on day preceding last day of corporate existence of lessor; rental, interest on bonded debt.	29
Lease became effective Jan. 1, 1880, and expires on day preceding last day of corporate existence of lessor; rental, interest on bonded debt.	30 4491
Operated through ownership of entire capital stock.....	31
Lease became effective Jan. 1, 1883, and expires on day preceding last day of corporate existence of lessor; rental, interest on bonded debt.	32

[53]

Lease became effective Mar. 1, 1884, and expires on day preceding last day of corporate existence of lessor; rental, interest on bonded debt.	33
Lease became effective Jan. 1, 1881, and expires Feb. 6, 1928; rental, interest on bonded debt.	34 4492
Lease became effective Jan. 1, 1880, and expires on day preceding last day of corporate existence of lessor; rental, interest on bonded debt.	35
Working agreement dated Mar. 1, 1884; rental, interest on funded debt. In compliance with a law of Texas, taking effect July 6, 1889, this road will thereafter be operated separately.	36
Lease became effective Mar. 1, 1884, and expires on day preceding last day of corporate existence of lessor; rental, interest on bonded debt.	37

4493

		Name of Road.	Length of Line Operated. *Miles.*	Length of Line Owned. *Miles.*
		ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY—Continued.		
	38	Silver City, Deming and Pacific Railroad Company.	.....	48.29
	39	Southern Kansas Railway Company.....	.....	841.52
	40	Southern Kansas Railway Company of Texas.	.....	100.41
	41	Wichita and Southwestern Railway Company.	.....	130.72
4494				
	42	Atlantic and Pacific Railroad Company.....	930.84	674.99
	43	California Central Railway Company.....	265.59	254.78
	44	Redondo Beach Railway Company.....	.....	10.81
	45	California Southern Railroad Company.....	210.61	210.61
	46	Chicago, Kansas and Western Railroad Company.	943.46	940.93
	47	Chicago, Santa Fé and California Railway Company.	516.70	490.97
4495	48	Atchison, Topeka and Santa Fé Railroad Company in Chicago.	.....	2.12
	49	Mississippi River Railroad and Toll Bridge Company.	.....	.61
	50	Sibley Bridge Company.....	.....	.76

[54]

	51	Gulf, Colorado and Santa Fé Railway Company	1,058.00	1,058.00
	52	Manhattan, Alma and Burlingame Railway Company.	56.62	56.62
	53	New Mexico and Arizona Railroad Company..	87.78	87.78
4496	54	Saint Joseph, Saint Louis and Santa Fé Railway Company.	97.20	97.20
	55	Saint Louis, Kansas City and Colorado Railroad Company.	61.42	56.94
	56	Wichita and Western Railway Company.....	124.64	124.64

DEFENDANTS' EXHIBIT 20-A. 1151

4497

Remarks.	
....do.....	38
Lease became effective Jan. 1, 1888, and expires on day preceding last day of corporate existence of lessor; rental, interest on bonded debt.	39
Verbal agreement made on basis of proposed contract by which the Atch., Top. & S. Fé R. R. was to operate and manage the road in consideration of paying interest on bonded debt.	40
Lease became effective Jan. 1, 1883, and expires on day preceding last day of corporate existence of lessor; rental, interest on bonded debt.	41
Principal and interest of bonds guaranteed by the Atch., Top. & S. Fé R. R. and the St. L. & San Fran. Ry., one-half each.	42
"Raymond cut-off taken up, 3.50 miles, Jan. 1, 1889;" operated through ownership of entire capital stock.	43
Lease dated Dec. 17, 1888, to take effect from opening of road to June 1, 1892; rental, interest on bonds.	44
Controlled through ownership of a majority of capital stock....	45
Opened for operation during year, 62.87 miles; controlled through ownership of a majority of capital stock.	46
Agreement dated July 1, 1888, between these roads and the Atch., Top. & S. Fé R. R. provided that they should be operated as one property, the earnings of which, after deducting operating expenses, taxes, rents, interest and other charges, to be apportioned, semi-annually, on basis of percentage of their respective capital stock at the rate and in the order of priority and preference following: Chic., S. Fé & Cal. Ry., not exceeding 2 per cent; Atch., Top. & S. Fé R. R. in Chic., not exceeding 1 per cent; Miss. R. R. R. & T. Bridge Co. and Sibley Bridge Co., not exceeding 1 per cent, ratably and without preference; and the Atch., Top. & S. Fé R. R. the remainder after providing the above.	47 48 49 50

4498

4499

[55]

Controlled through ownership of majority of capital stock.....	51
Majority of capital stock owned jointly by the Atch., Top. & S. Fé R. R. and the Un. Pac. Ry.	52
Controlled through ownership of entire capital stock.....	53
Opened for operation during year, 1.50 miles; controlled through ownership of entire capital stock.	54
Controlled through ownership of entire capital stock.....	55
Consolidation of King, Pratt & Wn. and Wich. & Wn. R. Rs., Jan. 1, 1889.	56

4500

[Defendants' Exhibit 20-B.]

Extracts from

INTERSTATE COMMERCE COMMISSION REPORT, 1890.

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Boston & Maine R. R. Co.	104-109
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4503 [104]

STATISTICS OF RAILWAYS IN THE UNITED STATES.

CLASSIFICATION OF RAILWAYS AND MILE

[The above running title is

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
12	**BOSTON AND MAINE RAILROAD COMPANY.**	315.70	1,210.03
13	Chelsea Beach Railroad Company.....	3.34	.....
14	Danvers Railroad Company.....	9.26	.....
4504 15	Dover and Winnipiseogee Railroad Company..	29.00	.....

[106]

16	**Eastern Railroad Company in New Hampshire.**	16.08	.....
17	Portsmouth and Dover Railroad Company..	10.88	.....
4505 18	Wolfeborough Railroad Company.....	12.03	.....
19	Kennebunk and Kennebunkport Railroad Company.	4.50	.....
20	Lowell and Andover Railroad Company.....	10.10	.....
21	Manchester and Keene Railroad Company....	29.50	.....
22	Manchester and Lawrence Railroad Company..	22.39	.....
4506 23	Newburyport Railroad Company.....	26.98	.....
24	Newburyport City Railroad Company.....	2.08	.....
25	**Portland, Saco and Portsmouth Railroad Company.**	50.76	.....

DEFENDANTS' EXHIBIT 20-B. 1155

[105] 4507

RAILWAYS AND MILEAGE.

AGE FOR THE YEAR ENDING JUNE 30, 1890.

repeated throughout the report.]

Remarks.	No.
Operating road, independent. "Line operated" includes 36.75 miles not in United States.	12
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	13
Subsidiary road, fixed money rental. Leased May 1, 1853, for 100 years, at $7,500 per annum.	14
Subsidiary road, fixed money rental. Operated under contract dated May 1, 1863, for 50 years, guaranteeing lessor $29,000 annually.	15 4508

[107]

Subsidiary road, fixed money rental. Leased Oct. 1, 1878, to Eastern R. R. of Mass. for 60 years and 2 months for $22,500 per annum.	16
Subsidiary road, fixed money rental. Leased June 1, 1872, for 50 years from Feb., 1874, to the Eastern R. R. in N. H., at $46,140 per annum and guaranteed by the Eastern R. R. of Mass.; included in the lease to the Boston & Me. R. R.	17
Subsidiary road, fixed money rental. Leased Jan. 6, 1872, for 68 years, for 6 per cent per annum on stock; lease transferred to Eastern R. R. of Mass., Oct. 1, 1875; included in lease of latter to Boston & Me. R. R.	18 4509
Subsidiary road, fixed money rental. Leased Aug. 7, 1883, for 99 years, for 4½ per cent dividend per annum.	19
Subsidiary road, fixed money rental. Leased Dec. 1, 1874, for 99 years, at $52,500 per annum, lessee to pay all public taxes.	20
Subsidiary road. Sold under foreclosure; bonds purchased by Boston & Lowell and Concord & Montreal Railroads. Operated by Boston & Me. R. R. for the account of these companies, each being credited with one-half of all earnings and charged with one-half of all expenses.	21
Subsidiary road, fixed money rental. Leased Sept. 1, 1887, for 50 years, for 10 per cent per annum on capital stock and $2,000 per annum for organization.	22
Subsidiary road, fixed money rental. Leased Feb. 21, 1860, for 100 years, for $225,000 cash.	23 4510
Subsidiary road, fixed money rental. Leased Aug. 14, 1872, for 20 years, at $6,000 per annum; included in the lease to the Boston & Me. R. R.	24
Subsidiary road, fixed money rental. Contract dated May 4, 1871, to continue in force until such time as Eastern R. R. of Mass., by default, shall cease to pay regular semi-annual dividend of 3 per cent; contract assigned to the Boston & Me. R. R. on purchase of the Eastern R. R. of Mass., June 30, 1889.	25

4511

No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
	BOSTON AND MAINE RAILROAD COMPANY —Continued.		
26	West Amesbury Branch Railroad Company...	4.45	.....
27	Worcester, Nashua and Rochester Railroad Company.	94.48	.....
28	BOSTON AND LOWELL RAILROAD COMPANY....	98.09	.....

4512 [108]

29	Central Massachusetts Railroad Company...	98.77	.....
30	*Connecticut and Passumpsic Rivers Railroad Company.*	110.30	.....
31	*Nashua and Lowell Railroad Company*.....	14.50	.....

4513

32	Peterboro Railroad Company.....	10.50	.....
33	Stony Brook Railroad Company.....	13.16	.....
34	Wilton Railroad Company.....	15.50	.....

4514

35	*Northern Railroad Company of New Hampshire.*	82.91	.....
36	Concord and Claremont Railroad Company..	70.90	.....
37	Peterboro and Hillsboro Railroad Company.	18.51	.....
38	Orchard Beach Railroad Company.....	3.00	3.00
39	*Saint Johnsbury and Lake Champlain Railroad Company.*	131.50	131.50

DEFENDANTS' EXHIBIT 20-B. 1157

Remarks.	No.	
		4515
Subsidiary road, fixed money rental. Leased April 1, 1874, for 99 years, for a rental of $5,700 annually.	26	
Subsidiary road, fixed money rental. Leased Jan. 1, 1886, for $250,000 per annum and all taxes.	27	
Subsidiary road, fixed money rental. Leased to the Boston & Me. R. R., April 1, 1887; rental, 7 per cent on its capital stock for 10 years, and 8 per cent thereafter.	28	
		[109] 4516
Subsidiary road, contingent money rental. Leased to the Boston & Lowell R. R., Oct. 1, 1886, for 99 years; rental, 20 per cent of gross earnings up to $1,000,000 and 25 per cent of any excess over that amount, deducting from said 20 per cent 5 per cent on $2,000,000 of bonds; lessee to pay $1,500 for organization expenses.	29	
Subsidiary road, fixed money rental. Leased Jan. 1, 1887, for 99 years, for 5 per cent for 10 years, and 6 per cent thereafter on capital stock, interest on bonds, and $3,000 for organization expenses, annually; lease assumed by Boston & Me. R. R.	30	
Subsidiary road, contingent money rental. Leased Nov. 10, 1880, for 99 years, for $60,000, $4,000 additional in case gross receipts equal or exceed those of 1880, and $1,000 for organization, annually; lease assumed July 12, 1887, by the Boston & Me. R. R., which grants in addition to sums stated in lease 1 per cent annually on capital stock.	31	4517
Subsidiary road, fixed money rental. Leased April 1, 1873, for 20 years, at 6 per cent on cost of road and taxes, and $150 for organization, per annum; the Boston & Lowell R. R. obtained control of the lease Oct. 1, 1880, and operated the road until 1888, when the Boston & Me. R. R. assumed the lease.	32	
Subsidiary road, fixed money rental. Leased to the Boston & Lowell R. R., Jan. 1, 1890; rental, 7 per cent on capital stock, taxes, and $500 for organization expenses, per annum; lease assumed by Boston & Me. R. R.	33	
Subsidiary road, fixed money rental. Leased Oct. 1, 1884, for 99 years, for $16,800, all public taxes, and $150 for organization, annually; lease assumed by the Boston & Me. R. R.	34	4518
Subsidiary road, fixed money rental. Operated under contract..	35	
Subsidiary road.....	36	
....do	37	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	38	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock and bonds.	39	

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	BOSTON AND MAINE RAILROAD COMPANY —Continued.		
40	York Harbor and Beach Railroad Company...	11.27	11.27
41	Boston, Revere Beach and Lynn Railroad Company.	8.80	8.80
42	Boston, Winthrop and Shore Railroad Company	4.70	4.70

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119	**NEW YORK AND NEW ENGLAND RAILROAD COMPANY.**	359.86	476.27
120	Milford and Woonsocket Railroad Company...	15.32	.....
121	Milford, Franklin and Providence Railroad Company.	4.60	.....
122	*Norwich and Worcester Railroad Company*...	66.16	.....
123	Rhode Island and Massachusetts Railroad Company in Massachusetts.	6.62	.....
124	Rhode Island and Massachusetts Railroad Company in Rhode Island.	6.98	.....
125	Rockville Railroad Company.....	4.43	.....
126	**NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY.**	141.48	525.89
127	*Boston and New York Air Line Railroad Company.*	51.50	.....
128	Colchester Railroad Company.....	3.59	.....
129	Harlem River and Port Chester Railroad Company.	11.50	.....
130	*Hartford and Connecticut Valley Railroad Company.*	46.20	.....
131	Naugatuck Railroad Company.....	56.55	.....

[120]

132	Watertown and Waterbury Railroad Company.	4.44	.....

DEFENDANTS' EXHIBIT 20-B. 1159

Remarks.	No.	
		4523
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	40	
Operating road, independent	41	
....do	42	
	[119]	
Operating road, independent	119	
		4524
Subsidiary road, contingent money rental. Leased Sept. 30, 1887, for 99 years; annual rental, 15 per cent of gross receipts of this road and the Milf., Frank. & Prov. R. R.	120	
Subsidiary road, contingent money rental. Leased Sept. 30, 1887, for 99 years, for 25 per cent of gross earnings.	121	
Subsidiary road, fixed money rental. Leased Feb. 9, 1869, for 99 years; annual rental, interest on bonds, and 8 per cent on preferred stock.	122	
Subsidiary road, fixed money rental. Leased Oct. 1, 1887, for 99 years; annual rental, 10,000, and all taxes, assessments, etc.	123	
....do	124	
Subsidiary road, fixed money rental. Contract of July 1, 1888, provides for the sale of this road to the N. Y. & N. Eng. R. R., the latter agreeing to pay as rental 5 per cent on purchase price until the transfer of capital stock is made.	125	4525
Operating road, independent	126	
Subsidiary road, fixed money rental. Leased Oct. 1, 1882, for 99 years; rental, $120,000 per annum, and interest on its bonds and the bonds of the Colchester R. R.	127	
Subsidiary road, fixed money rental. Interest on bonds guaranteed by Boston & N. Y. Air Line R. R.	128	
Subsidiary road, other relation. Operated through ownership of entire capital stock.	129	
Subsidiary road, other relation. Operated through ownership of majority of capital stock.	130	
Subsidiary road, fixed monthly rental. Leased April 1, 1887, for 99 years; rental, interest on bonds and 10 per cent per annum on capital stock.	131	4526
	[121]	
Subsidiary road, other relation. Majority of capital stock and all bonds owned by Naugatuck R. R. and included in lease of that company to the N. Y., New Haven & Hartf. R. R.	132	

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY—Continued.		
133	*New Haven and Northampton Company*.....	127.35	.....
134	Holyoke and Westfield Railroad Company..	10.32	.....
135	*Shore Line Railway Company*.....	48.53	.....
136	Stamford and New Canaan Railroad Company	7.66	.....
140	**OLD COLONY RAILROAD COMPANY**.....	482.38	563.55
141	*Boston and Providence Railroad Company*....	63.75	.....
142	Attleboro Branch Railroad Company.....	4.00	.....
143	Chatham Railroad Company.....	7.07	.....
	[122]		
144	Fall River Railroad Company.....	12.25	.....
145	Nantasket Beach Railroad Company.....	6.95	.....
146	Fall River, Warren and Providence Railroad Company.	5.79	5.79

DEFENDANTS' EXHIBIT 20-B. 1161

Remarks.	No.	
		4531
Subsidiary road, fixed money rental. Leased April 1, 1887, for 99 years; rental 1 per cent on capital stock for 3 years, 2 per cent for the second 3 years, 3 per cent for the third 3 years, and 4 per cent thereafter; interest on bonds and taxes.	133	
Subsidiary road, contingent money rental. Leased Dec. 2, 1870, in perpetuity; rental, interest on bonds; in case gross receipts exceed $35,200 per annum lessee to pay lessor one-half of such excess; operated by N. Y., New Haven & Hartf. R. R. through ownership of New Haven & Northamp. Co.	134	
Subsidiary road, fixed money rental. Leased in perpetuity; annual rental, $100,000.	135	4532
Subsidiary road, fixed money rental. Leased April 1, 1887, for 99 years; annual rental, 4 per cent on capital stock, all of which is owned by lessee.	136	
Operating road, independent. "Line owned" includes 12.85 miles not yet in operation.	140	
Subsidiary road, fixed money rental. Leased April 1, 1888, for 99 years; annual rental, 10 per cent on capital stock, interest on bonds, $10,000 *for organization expenses for first 3 years and* $3,000 *thereafter, taxes, assessments, etc.*	141	
Subsidiary road, fixed money rental. Leased Dec. 31, 1870, for 30 years; annual rental, 7 per cent on capital stock; included in lease to Old Colony R. R.	142	
Subsidiary road, contingent money rental. Contract dated Jan. 8, 1888, for 7 years; rental, 30 per cent of gross receipts, payable quarterly.	143	4533

[123]

Subsidiary road, contingent money rental. Leased April 1, 1882, for 99 years; rental, 30 per cent of gross earnings, which is guaranteed to be sufficient to pay interest on bonds.	144	
Subsidiary road, fixed money rental. Leased April 1, 1888, for 99 years; lessee guarantees interest on bonds up to $6,250 and pays taxes, and has option of purchasing property after 20 years of the lease for $150,000.	145	
Operating road, subsidiary, other relation. Road is in possession of trustee for bondholders under foreclosure and was operated by him during year; entire issue of bonds owned by the Old Colony R. R.	146	4534

4535

No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
[146]			
407	**NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY.**	819.45	1,420.64
408	New Jersey Junction Railroad Company.....	4.69	.....
409	*New York and Harlem Railroad Company*....	135.90	.....
410	New York Central and Niagara River Railroad Company.	2.81	.....
4536 411	Spuyten Duyvil and Port Morris Railroad Company.	6.04	.....
412	Troy and Greenbush Railroad Company.....	6.00	.....
413	Troy Union Railroad Company.....	5.00	.....
414	**West Shore Railroad Company**.....	448.56	.....
415	Amsterdam, Chuctanunda and Northern Railroad Company.	1.50	.....
416	Buffalo and Erie Basin Railroad Company....	.25	.25
417	Syracuse, Ontario and New York Railway Company.	45.49	45.49
4537 418	Wallkill Valley Railroad Company.....	32.88	32.88
[154]			
477	**PENNSYLVANIA RAILROAD COMPANY**.....	458.93	2,490.26
478	Bald Eagle Valley Railroad Company.....	88.98	.....
479	Bedford and Bridgeport Railroad Company....	49.17	.....
4538 480	Cambria and Clearfield Railroad Company....	29.09	.....
481	Columbia and Port Deposit Railroad Company	39.83	.....
482	Columbus, Kinkora and Springfield Railroad Company.	14.16	.....

DEFENDANTS' EXHIBIT 20-B. 1163

Remarks.	No.	
		4539
	[147]	
Operating road, independent	407	
Subsidiary road, fixed money rental. Leased July 1, 1886, for 100 years, with privilege of further term of 100 years, at an annual rental of interest at 4 per cent on its bonds.	408	
Subsidiary road, fixed money rental. Leased April 1, 1873, for 401 years. Annual rental, interest on funded debt and 8 per cent on capital stock.	409	
Subsidiary road	410	
Subsidiary road, fixed money rental. Leased Nov. 1, 1871, to Dec. 31, 1970. Annual rental, 8 per cent on cost, $989,000.	411	4540
Subsidiary road, fixed money rental. Leased June 1, 1851, in perpetuity, at an annual rental of $19,250.	412	
Subsidiary road, other relation. One-half owned by the N. Y. Cent. & Hud. Riv. R. R. and one-fourth each by the Del. & Hud. Canal Co. and Fitchburg R. R. These companies pay this proportion of maintenance and operation.	413	
Subsidiary road, fixed money rental. Leased Jan. 1, 1886, for 475 years, with privilege of further term of 500 years; annual rental, interest at 4 per cent on bonds.	414	
Subsidiary road, other relation. Operated under verbal agreement.	415	
Subsidiary road	416	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	417	4541
Operating road, subsidiary, other relation. Controlled through ownership of capital stock and bonds held in the interests of the West Shore R. R.	418	
	[155]	
Operating road, independent	477	
Subsidiary road, contingent money rental. Leased July 1, 1864, for 99 years; rental, 40 per cent of gross receipts. Lease does not apply to the Nittany Branch, which is operated for cost. Net earnings paid to Bald Eagle Vy. R. R.	478	
Subsidiary road, contingent money rental. Leased Aug. 1, 1886, for 10 years; rental, net earnings.	479	4542
Subsidiary road, contingent money rental. Operated under resolutions of Board of Directors in effect Sept. 24, 1888, terminable at any time on 30 days' notice; net earnings are payable to this company.	480	
Subsidiary road, contingent money rental. Agreement dated June 13, 1877, terminable at any time on 30 days' notice; rental, net earnings.	481	
Subsidiary road, contingent money rental. Operated under lease expiring June 30, 1890, based on 30 per cent of gross earnings to be paid by lessee to lessor.	482	

4543 [156]

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	PENNSYLVANIA RAILROAD COMPANY—Continued.		
483	Downingtown and Lancaster Railroad Company	28.11	.....
484	Ebensburg and Cresson Railroad Company....	11.00	.....
485	Frankford and Holmesburg Railroad Company	4.16	.....
4544 486	Freehold and Jamesburg Agricultural Railroad Company.	27.54	.....
487	Frederick and Pennsylvania Line Railroad Company.	28.00	.....
488	Hanover and York Railroad Company.....	18.35	.....
489	Harrisburg, Portsmouth, Mount Joy and Lancaster Railroad Company.	53.74	.....
490	Johnsonburg Railroad Company.....	19.69	.....
491	Kensington and Tacony Railroad Company....	2.28	.....
4545 492	Lewisburg and Tyrone Railroad Company.....	84.84	.....
493	Littlestown Railroad Company.....	9.30	.....
494	Long Beach Railroad Company.....	20.50	.....
495	Mifflin and Centre County Railroad Company.	12.31	.....

4546 [158]

496	Millstone and New Brunswick Railroad Company.	6.64	.....
497	Nescopec Railroad Company.....	11.96	.....

DEFENDANTS' EXHIBIT 20-B. 1165

[157] 4547

Remarks.	No.
Subsidiary road, contingent money rental. This company is the *re-organized* E. Bradyw. & Waynesb. R. R.; operating under resolutions of Board of Directors in effect Aug. 1, 1888, terminable at any time on 30 days' notice; net earnings paid to this company.	483
Subsidiary road, contingent money rental. Leased March 6, 1862, for 999 years; rental, net earnings.	484
Subsidiary road, contingent money rental. Leased Jan. 1, 1881, for 99 years; rental, net earnings.	485
Subsidiary road, contingent money rental. Contract dated July 16, 1879, terminable on 30 days' notice; rental, net earnings.	486
Subsidiary road, fixed money rental. Leased Jan. 1, 1875, for 999 years; lessee operates the road at cost.	487
Subsidiary road, contingent money rental. Leased April 8, 1875, during the term of charter, to April 23, 1893; rental, net earnings.	488
Subsidiary road, fixed money rental. Leased Jan. 1, 1861, for 999 years; annual rental, 7 per cent on capital stock, interest on bonds, all taxes levied on stock and bonds, and organization expenses up to $2,000.	489
Subsidiary road, contingent money rental. Leased July 8, 1889, for 50 years, rental, 5 per cent per annum on capital stock, interest on bonds and taxes, balance divided equally between lessee and lessor.	490
Subsidiary road, fixed money rental. Leased Jan. 1, 1887, for 5 years, at $30 per annum.	491
Subsidiary road, contingent money rental. Leased Jan. 1, 1880, for 99 years; rental, net earnings. "Line owned" does not include .24 mile over the Lewisburg Bridge.	492
Subsidiary road, contingent money rental. Leased April 8, 1875, for 999 years; advancements made by lessee to pay taxes, operating expenses, interest on bonds to be repaid from earnings, any surplus remaining after such payments to be paid lessor.	493
Subsidiary road, contingent money rental. Leased June 28, 1886, terminable on 30 days' notice; lessee operates the road at cost, paying over to lessor any surplus remaining.	494
Subsidiary road, contingent money rental. Leased March 19, 1863, for 999 years; rental, net earnings.	495

4548

4549

[159] 4550

Subsidiary road, contingent money rental. Operated since Jan. 1, 1886, by the Pennsylvania R. R. on a temporary arrangement, without any written contract, that company paying all expenses and charging deficiency in net receipts to this company.	496
Subsidiary road, contingent money rental. Operated under resolutions of Board of Directors in effect April 25, 1887, terminable at any time on 30 days' notice; net earnings payable to this company.	497

	No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
4551		**PENNSYLVANIA RAILROAD COMPANY—** Continued.		
	498	New York Bay Railroad Company.....	4.32	.....
	499	North and West Branch Railway Company....	47.82	.....
	500	Pennsylvania Schuylkill Valley Railroad Company.	118.91	.....
	501	Perth Amboy and Woodbridge Railroad Company.	6.40	.....
4552	502	**Philadelphia and Erie Railroad Company....**	287.56	.....
	503	Philadelphia and Long Branch Railroad Company.	49.11	.....
	504	Philadelphia, Germantown and Chestnut Hill Railroad Company.	6.75	.....
	505	Pittsburgh, Virginia and Charleston Railway Company.	72.52	.....
	506	Pomeroy and Newark Railroad Company.....	26.70	.....
	507	Ridgway and Clearfield Railroad Company....	27.23	.....
4553				
	508	Riverfront Railroad Company.....	3.86	.....
	509	Southwest Pennsylvania Railway Company...	100.09	.....
	[160]			
	510	Sunbury and Lewistown Railway Company...	43.45	.....
4554	511	Sunbury, Hazleton and Wilkes-Barre Railway Company.	43.44	.....
	512	Susquehanna and Clearfield Railroad Company	24.89	.....
	513	Tipton Railroad Company.....	4.44	.....

Remarks.	No.	
		4555
Subsidiary road, other relation. Operated through ownership of capital stock.	498	
Subsidiary road, contingent money rental. Agreement dated Nov. 23, 1881, to continue until Sept. 1, 1901; net earnings to be paid this company.	499	
Subsidiary road, contingent money rental. Leased Dec. 1, 1885, for 50 years; rental, net earnings.	500	
Subsidiary road, contingent money rental. Operated as of date Jan. 1, 1889, by virtue of resolutions adopted May 6, 1889, by stockholders of this company, and June 26, 1889, by directors of Pennsylvania R. R.; net earnings paid to this company.	501	
Subsidiary road, contingent money rental. Lease executed Jan. 6, 1862; modified Jan. 1, 1870, for 999 years from Jan. 6, 1862; surplus of gross receipts after paying operating expenses, etc., to be applied to organization expenses and interest on bonds; any balance to be paid lessor.	502	4556
Subsidiary road, contingent money rental. Leased Jan. 1, 1884, for 50 years; any surplus of earnings after paying operating and other expenses to be paid lessor.	503	
Subsidiary road, contingent money rental. Leased May 1, 1883, for 30 years; rental, net earnings.	504	
Subsidiary road, contingent money rental. Leased April 1, 1882, for 50 years; rental, net earnings.	505	
Subsidiary road, contingent money rental. Leased March 1, 1880, for 99 years; rental, net earnings.	506	
Subsidiary road, contingent money rental. Operated under resolutions of Board of Directors adopted July 23, 1884, terminable at option of either party on 30 days' notice; net earnings paid to this company.	507	4557
Subsidiary road, fixed money rental. Leased May 1, 1882, for 50 years; rental, $23,000 per annum.	508	
Subsidiary road, contingent money rental. Leased April 1, 1889, for one year, renewable every year; net earnings paid to this company.	509	

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Subsidiary road, contingent money rental. Leased July 1, 1876, for 99 years; operated for cost and one-half of net earnings after payment of interest on outstanding bonds.	510	
Subsidiary road, contingent money rental. Leased May 1, 1878, for 50 years; net earnings paid to this company.	511	4558
Subsidiary road, contingent money rental. Operated under resolutions of board of directors adopted July 23, 1884, terminable at the option of either party on 30 days' notice; net earnings paid to this company.	512	
Subsidiary road, contingent money rental. Agreement dated May 1, 1886, terminable at the option of either party on 30 days' notice; net earnings paid to this company.	513	

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	PENNSYLVANIA RAILROAD COMPANY—Continued.		
514	Tyrone and Clearfield Railway Company.....	109.05	.....
515	United New Jersey Railroad and Canal Company.	144.72	.....
516	Belvidere Delaware Railroad Company.....	80.71	.....
517	Camden and Burlington County Railroad Company.	29.61	.....
518	Mount Holly, Lumberton and Medford Rail road Company.	5.95	.....
519	Philadelphia and Trenton Railroad Company.	26.50	.....
520	Connecting Railway Company.....	6.75	.....
[162]			
521	Rocky Hill Railroad and Transportation Company.	2.38	.....
522	Vincentown Branch Railroad Company.....	2.84	.....
523	West Chester Railroad Company.....	5.00	.....
524	Western Pennsylvania Railroad Company.....	98.23	.....
525	Allegheny Valley Railroad Company.....	260.30	260.30

Remarks.	No.	
		4563
Subsidiary road, fixed money rental. Leased Jan. 1, 1882, for 50 years; lessee to pay annually all taxes, interest on bonds, sinking fund, organization expenses up to $1,000, and 5 per cent on capital stock.	514	
Subsidiary road, contingent money rental. Leased June 30, 1871, for 999 years; annual rental, 10 per cent on capital stock, taxes, interest on funded and other debts, damages, losses, etc.	515	
Subsidiary road, contingent money rental. Leased Jan. 1, 1876, to June 30, 2870; assigned to Pennsylvania R. R., March 7, 1876; revenue to be applied, first, to operation; second, to interest on bonds; any balance to be paid lessor.	516	
Subsidiary roads, fixed money rental. Leased April 24, 1868, for the term of its corporate existence to Camden & Amboy R. R., one of the constituent companies of United N. J. R. R. & Canal Co.; annual rental, 6 per cent on capital stock and bonds and $500 for organization expenses; lease assigned to Pennsylvania R. R., June 30, 1871.	517	4564
Subsidiary road, fixed money rental. Leased March 11, 1873, during corporate existence at $11,189 per annum; lease assigned to Pennsylvania R. R., June 13, 1871.	518	
Subsidiary road, fixed money rental. Leased June 30, 1871, from United N. J. R. R. & Canal Co., for 999 years; annual rental, 10 per cent on capital stock (excluding 7,650 shares owned by United N. J. R. R. & Canal Co.), taxes, assessments, etc.	519	
Subsidiary road, fixed money rental. Leased Feb. 18, 1863, for 999 years; annual rental, 6 per cent on capital stock, 6 per cent on bonds and taxes; included in lease to Pennsylvania R. R.	520	4565

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Subsidiary road, fixed money rental. Leased Nov. 22, 1869, for the term of its charter to the Camden & Amboy R. R., one of the constituent companies of the United N. J. R. R. & Canal Co., at 6 per cent per annum on capital stock; lease assigned to the Pennsylvania R. R., Nov., 1871.	521	
Subsidiary road, fixed money rental. Leased April 7, 1868, for corporate existence; annual rental, 6 per cent on capital stock owned by individuals, which is $15,000; the other $10,000 is owned by lessee and nothing is paid on it.	522	
Subsidiary road, fixed money rental. Leased Aug. 6, 1879, for 99 years; annual rental, 5 per cent on capital stock, interest on bonds, sinking fund charges, and taxes.	523	4566
Subsidiary road, contingent money rental. Leased June 1, 1888, for 40 years; net earnings paid to this company.	524	
Operating road, subsidiary, other relation. W. H. Barnes, Receiver, appointed May 2, 1884; majority of capital stock and about one-fifth of outstanding bonds owned by Pennsylvania R. R.	525	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
4567		**PENNSYLVANIA RAILROAD COMPANY—Continued.**		
	526	*Baltimore and Potomac Railroad Company*...	92.06	95.36
	527	Catonsville Short Line Railroad Company..	3.80	.....
	528	Camden and Atlantic Railroad Company.....	67.46	80.07
	529	Philadelphia, Marlton and Medford Railroad Company.	11.71	.....
	530	Cumberland Valley Railroad Company.....	82.18	144.93
4568	531	Cumberland Valley and Martinsburg Railroad Company.	33.65	.....
	532	Dillsburg and Mechanicsburg Railroad Company.	7.70	.....
	533	Southern Pennsylvania Railway and Mining Company.	21.40	.....
	[164]			
4569	534	Junction Railroad Company.....	3.56	3.56
	535	Northern Central Railway Company.....	148.24	372.83
	536	Elmira and Lake Ontario Railroad Company	99.61	.....
	537	Elmira and Williamsport Railroad Company	75.50	.....
4570	538	Lykens Valley Railroad and Coal Company.	19.70	.....
	539	Shamokin Valley and Pottsville Railroad Company.	29.78	.....
	540	Union Railroad Company (of Baltimore)...	9.62	9.62

DEFENDANTS' EXHIBIT 20-B. 1171

Remarks.	No.	
		4571
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	526	
Subsidiary road, contingent money rental. Leased Dec. 6, 1883; the lessor receives 40 per cent of net earnings.	527	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	528	
Subsidiary road, contingent money rental. Leased Jan. 31, 1885, terminable on 30 days' notice; surplus from operation paid lessor.	529	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	530	
Subsidiary road, contingent money rental. Leased March 17, 1888, for 99 years; receipts from operation to be applied to maintain the road, pay operating expenses, taxes, insurance, etc.; balance to be paid lessor.	531	4572
Subsidiary road, contingent money rental. Leased Jan. 1, 1873, for 99 years; terms of lease same as Cumb. Vy. & Martinsb. R. R.	532	
Subsidiary road, contingent money rental. Leased March 1, 1870, for 199 years; terms of lease same as Cumb. Vy. & Martinsb. R. R.	533	

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Operating road, subsidiary, other relation. The Pennsylvania, Phila., Wilm. & Balt., and Phila. & Read. R. Rs. use this company's tracks, paying a certain rate per car per mile, the Junction R. R. paying the company moving the traffic for the use of its motive power.	534	4573
Operating road, subsidiary, other relation. Controlling interest in capital stock owned by the Pennsylvania R. R.	535	
Subsidiary road, contingent money rental. Contract terminable at the option of either party on 30 days' notice; net receipts, after paying charges for use of equipment, paid to this company.	536	
Subsidiary road, fixed money rental. Leased May 1, 1863, for 999 years; annual rental, 7 per cent on preferred and 5 per cent on common stock; interest on bonds and $3,000 for organization expenses.	537	
Subsidiary road, fixed money rental. Leased March 1, 1866, for 999 years to the Summit Branch R. R.; annual rental, $62,500, taxes, charges, etc.	538	4574
Subsidiary road, fixed money rental. Leased Feb. 27, 1863, for 999 years; annual rental, 7 per cent interest on bonds, 6 per cent on capital stock, and taxes.	539	
Operating road, subsidiary, other relation. Controlled through ownership of entire capital stock.	540	

	No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
4575		**PENNSYLVANIA RAILROAD COMPANY—** Continued.		
	541	***Philadelphia, Wilmington and Baltimore Railroad Company.***	137.30	533.93
	542	Cambridge and Seaford Railroad Company..	27.25	.....
	543	Delaware Railroad Company.....	99.97	.....
4576	544	Delaware and Chesapeake Railway Company	54.29	.....
	545	Delaware, Maryland and Virginia Railroad Company.	97.62	.....
	[166]			
	546	Philadelphia and Baltimore Central Railroad Company.	73.68	.....
4577	547	Chester Creek Railroad Company.....	6.69	.....
	548	Queen Anne's and Kent Railroad Company..	25.86	.....
	549	Trenton Delaware Bridge Company.....	.19	.19
	550	West Jersey Railroad Company.....	182.12	223.22
	551	West Jersey and Atlantic Railroad Company	39.50	.....
4578	[172]			
	600	**ROME, WATERTOWN AND OGDENSBURG RAILROAD COMPANY.**	412.55	643.19
	601	Niagara Falls Branch Railroad Company.....	8.74	.....
	602	Oswego and Rome Railroad Company.....	28.49	.....

DEFENDANTS' EXHIBIT 20-B. 1173

Remarks.	No.
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock; "line owned" includes 3.70 miles leased to the Columbia & Port Deposit R. R.	541
Subsidiary road, contingent money rental. Agreement, dated May 16, 1883, took effect June 1, 1883, terminable on 30 days' notice; net earnings paid to this company.	542
Subsidiary road, contingent money rental. Leased May 4, 1855, for 21 years; renewed April 3, 1875, for 21 years from May 4, 1876; annual rental, 6 per cent on capital stock, interest on funded and floating debt, and one-half of any surplus over 6 per cent of net earnings.	543
Subsidiary road, contingent money rental. Agreement took effect July 1, 1882, terminable on 30 days' notice; net earnings paid to this company.	544
Subsidiary road, contingent money rental. Agreement dated Aug. 1, 1885, took effect July 1, 1885, terminable on 30 days' notice; net earnings paid to this company.	545

4579

4580

[167]

Subsidiary road, contingent money rental. Agreement dated Aug. 1, 1881, took effect Sept. 1, 1881, terminable on 6 months' notice; net earnings paid to this company.	546
Subsidiary road, fixed money rental. Leased Jan. 13, 1868, for 999 years; rental, 6 per cent on capital stock and bonds, and taxes.	547
Subsidiary road, contingent money rental. Agreement dated Oct. 14 and 15, 1881, took effect Sept. 1, 1881, terminable on 30 days' notice; net earnings paid to this company.	548
Operating road, subsidiary, fixed money rental. Trackage contract June 20, 1877, for 993 years 5 months and 10 days; annual rental, $28,000 and taxes.	549
Operating road, subsidiary, other relation. Controlled through ownership of capital stock.	550
Subsidiary road, contingent money rental. Leased Dec. 29, 1879, terminable on 6 months' notice; lessee to furnish equipment and operate the road at cost, paying lessor any surplus from operation.	551

4581

[173]

4582

Operating road, independent.....	600
Subsidiary road, fixed money rental. Leased Sept. 21, 1881, in perpetuity, at 7 per cent per annum on capital stock.	601
Subsidiary road, fixed money rental. Leased Dec. 2, 1869, in perpetuity; annual rental, interest on first mortgage bonds and $24,000 cash.	602

No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
603	Utica and Black River Railroad Company.....	150.00	.....
604	Carthage, Watertown and Sacketts Harbor Railroad Company.	29.59	.....

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761	**LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY.**	859.15	1,409.55
762	Detroit and Chicago Railroad Company.....	67.60	.....
763	Detroit, Hillsdale and Southwestern Railroad Company.	65.20	.....
764	Detroit, Monroe and Toledo Railroad Company	62.36	.....
765	Fort Wayne and Jackson Railroad Company..	97.83	.....
766	Jamestown and Franklin Railroad Company..	50.91	.....
767	Kalamazoo and White Pigeon Railroad Company.	36.57	.....
768	Kalamazoo, Allegan and Grand Rapids Railroad Company.	58.42	.....
769	Mahoning Coal Railroad Company.....	50.29	.....
770	Northern Central Michigan Railroad Company	61.14	.....
771	Sturgis, Goshen and Saint Louis Railway Company.	35.81	.....

DEFENDANTS' EXHIBIT 20-B. 1175

Remarks.	No.	
		4587
Subsidiary road, fixed money rental. Leased April 14, 1886, for the term of its corporate existence; annual rental, interest on bonds, 7 per cent on capital stock, and $4,500 for organization expenses.	603	
Subsidiary road, contingent money rental. Leased for the term of its corporate existence, for 37½ per cent of gross earnings; included in the lease of the Utica & Black Riv. R. R. to the Rome, Watert. & Ogdensb. R. R.	604	
		[189] 4588
Operating road, independent. "Line operated" includes 7.20 miles leased from the Battle Ck. & Sturgis Ry.	761	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	762	
Subsidiary road, fixed money rental. Leased Sept. 5, 1881, in perpetuity; annual rental, $54,000 and $500 for organization expenses.	763	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	764	
Subsidiary road, contingent money rental. Leased Aug. 24, 1882, in perpetuity, from Sept. 1, 1882; annual rental, 5½ per cent on preferred stock; should net earnings in any year after Sept. 1, 1887, exceed 8 per cent on preferred stock, lessee will pay amount of such excess up to 2 per cent on common stock.	765	
Subsidiary road, contingent money rental. Leased Jan. 1, 1890, for 5 years; annual rental, 30 per cent of gross earnings, and all taxes, except those imposed by the United States or the State of Pennsylvania upon tonnage, dividends, or interest on bonds.	766	4589
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	767	
Subsidiary road, fixed money rental. Leased Sept. 21, 1869, for 999 years; annual rental, 6 per cent on capital stock, interest on bonds, and all taxes and assessments.	768	
Subsidiary road, contingent money rental. Leased July 1, 1884, in perpetuity; annual rental, 40 per cent of gross earnings; if this is insufficient to pay interest on bonds, 5 per cent on preferred stock, and $1,000 for corporate expenses, lessee will advance necessary amount and charge same against future rental.	769	
Subsidiary road, other relation. Owned entirely by the L. Shore & Mich. Sn. Ry.	770	
Subsidiary road, other relation. Controlled through ownership of capital stock and bonds; "line owned" includes 7.20 miles leased from the Battle Ck. & Sturgis Ry.	771	4590

4591 [190]

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
783	MICHIGAN CENTRAL RAILROAD COMPANY.	270.07	1,608.27
784	Battle Creek and Sturgis Railway Company...	41.00	.....
785	Bay City and Battle Creek Railway Company.	18.00	.....
786	Canada Southern Bridge Company.....	3.66	.....
787	Detroit and Bay City Railroad Company.....	151.42	.....
4592 788	Grand River Valley Railroad Company.....	83.79	.....
789	Jackson, Lansing and Saginaw Railroad Company.	295.10	.....
790	Joliet and Northern Indiana Railroad Company.	45.00	.....
791	Kalamazoo and South Haven Railroad Company.	39.50	.....

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792	Michigan Air Line Railroad Company.....	115.16	.....
793	Michigan, Midland and Canada Railroad Company.	14.68	.....
794	Saginaw Bay and Northwestern Railroad Company.	89.31	.....
795	Toledo and Michigan Belt Railway Company..	1.21	.....
4594 796	Toledo, Canada Southern and Detroit Railway Company.	55.87	.....

DEFENDANTS' EXHIBIT 20-B. 1177

[191] 4595

Remarks.	No.	
Operating road, independent. Of "line operated," 378.91 miles not in the United States.	783	
Subsidiary road. Of "line owned," 7.20 miles leased to and operated by the L. Shore & Mich. Sn. Ry.	784	
Subsidiary road	785	
Subsidiary road, contingent money rental. Operated under agreement dated Dec. 12, 1882, for 21 years, with the Canada Sn. Ry., which owns substantially all its capital stock and bonds, the bridge company being credited with its earnings and charged with its expenses.	786	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	787	
Subsidiary road, fixed money rental. Leased Aug. 15, 1870, to continue during the corporate existence of lessor; lessee guarantees floating and funded debt of lessor, interest thereon, 5 per cent per annum on stock, taxes, assessments, etc.	788	4596
Subsidiary road, fixed money rental. Leased Sept. 1, 1871, during corporate existence of the two companies; lessee pays principal and interest of bonds of lessor and a dividend of 3½ per cent per annum.	789	
Subsidiary road, fixed money rental. Operated under contracts executed Sept. 7 and 26, 1854; on completion turned over to the Mich. Cent. R. R. to operate forever at an annual rental of $89,000.	790	
Subsidiary road, fixed money rental. Leased July 1, 1870, in perpetuity; lessee to pay taxes and interest on bonds.	791	

4597

[193]

Subsidiary road, fixed money rental. Leased Jan. 1, 1870, for 999 years, lessee guaranteeing principal and interest of bonds.	792	
Subsidiary road, other relation. Operated under agreement dated Dec. 12, 1882, with the Canada Sn. Ry., which owns a majority of its capital stock and all its bonds, the Mich. Midland & Can. R. R. being credited with its earnings and charged with its expenses.	793	
Subsidiary road, other relations. Controlled through ownership of capital stock.	794	
Subsidiary road. "Line owned" not in operation.....	795	
Subsidiary road, other relation. Operated under agreement dated Dec. 12, 1882, with the Canada Sn. Ry., which owns substantially all its capital stock and bonds, the Toledo, Can. Sn. & Det. Ry. being credited with its earnings and charged with its expenses.	796	4598

4599 [194]

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
817	**PENNSYLVANIA COMPANY**	.....	1,363.48
818	Cleveland and Pittsburgh Railroad Company..	198.34	.....

[196]

4600

819	**Erie and Pittsburgh Railroad Company**	84.47	.....
820	Indianapolis and Vincennes Railroad Company	162.95	.....
821	Jeffersonville, Madison and Indianapolis Railroad Company.	222.35	.....
822	Cambridge Extension	.....	.....
823	Northwestern Ohio Railway Company	79.98	.....

4601

824	**Pittsburgh, Fort Wayne and Chicago Railway Company**	469.89	.....
825	Massillon and Cleveland Railroad Company.	12.23	.....
826	New Castle and Beaver Valley Railroad Company.	14.98	.....
827	Pittsburgh, Youngstown and Ashtabula Railroad Company.	119.31	.....

4602

828	South Chicago and Southern Railroad Company	10.25	.....
829	Calumet River Railway Company	4.43	.....
830	**Chicago, Saint Louis and Pittsburgh Railroad Company.**	580.52	710.58
831	Cincinnati and Richmond Railroad Company	66.00	.....

DEFENDANTS' EXHIBIT 20-B. 1179

[195] 4603

Remarks.	No.
Operating road, independent	817
Subsidiary road, fixed money rental. Leased to the Pennsylvania R. R. Dec. 1, 1871, for 999 years; lessee guarantees principal, interest, and sinking fund charges on bonds, 7 per cent on capital stock, and $10,000 for organization, annually; taxes, assessments, etc.; lease transferred to the Pennsylvania Co. April 14, 1873.	818

[197]

Subsidiary road, fixed money rental. Leased to the Pennsylvania R. R. Mar. 1, 1870, for 999 years; annual rental, 7 per cent on capital stock and bonds; lease transferred to the Pennsylvania Co., April 1, 1871.	819	4604
Subsidiary road, contingent money rental. Of "line owned," 4.18 miles not in operation. Leased Jan. 1, 1879, for 99 years; net earnings paid to lessor to be applied to the payment of interest on bonds.	820	
Subsidiary road, contingent money rental. Leased Jan. 1, 1880, for 999 years; net earnings paid to lessor.	821	
Subsidiary road. Operated by the Pennsylvania Co., as a part of the Jeffv., Madison & Indpls. R. R., and mileage included in "line owned" by that company.	822	
Subsidiary road, contingent money rental. Leased Jan. 1, 1879, for 99 years, each year's surplus, if any, after deducting taxes, repairs, operating expenses, etc., to be paid lessor.	823	4605
Subsidiary road, fixed money rental. Leased July 1, 1869, for 999 years; annual rental, interest on bonds, sinking fund, 7 per cent on capital stock, organization expenses and taxes.	824	
Subsidiary road, contingent money rental. Leased May 22, 1869, for 99 years, at a rental of 40 per cent of gross earnings, as minimum being fixed at $20,000 a year; lease transferred to the Pennsylvania Co., July 1, 1869.	825	
Subsidiary road, contingent money rental. Leased June 29, 1865, for 99 years, at a rental of 40 per cent of gross earnings; lease assigned to Pennsylvania R. R., June 7, 1869, and by the latter to the Pennsylvania Co., June 29, 1874, to take effect as of date April 1, 1871.	826	
Subsidiary road, contingent money rental. Leased Aug. 1, 1887, for 1 year, and thereafter from year to year subject to termination on 12 months' written notice from either party; operated by lessee at cost.	827	4606
Subsidiary road, contingent money rental. No contract; operated at cost under a provisional arrangement.	828	
Subsidiary road, other relation. "Line owned" not in operation. Controlled through ownership of capital stock.	829	
Operating road, subsidiary, other relation. Controlled through ownership of capital stock.	830	
Subsidiary road, contingent money rental. No contract; operated at cost.	831	

4607 [198]

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
832	Cincinnati and Muskingum Valley Railway Company.	148.45	148.45
833	Grand Rapids and Indiana Railroad Company.	428.27	584.17
834	Cincinnati, Richmond and Fort Wayne Railroad Company.	85.60	.....
835	Muskegon, Grand Rapids and Indiana Railroad Company.	36.85	.....
4608 836	Traverse City Railroad Company.....	26.00	.....
837	Pittsburgh, Cincinnati and Saint Louis Railway Company.	213.78	465.46
838	Chartiers Railway Company.....	22.76	.....
839	Chartiers Connecting Railroad Company..	.72	.....
840	Little Miami Railroad Company.....	96.38	.....
841	Columbus and Xenia Railroad Company..	59.86	.....
4609 842	Dayton and Western Railroad Company...	37.23	.....
843	Pittsburgh, Wheeling and Kentucky Railroad Company.	28.04	.....
844	State Line and Indiana City Railway Company	3.18	.....
845	Steubenville Extension	1.23	.....

DEFENDANTS' EXHIBIT 20-B. 1181

[199] 4610

Remarks.	No.
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	832
Operating road, subsidiary, other relation. Controlled by virtue of a contract, in effect from Oct. 1, 1869, for 30 years, under which the Pennsylvania R. R. guarantees $4,000,000 of its first mortgage land grant bonds.	833
Subsidiary road, contingent money rental. Leased Jan. 1, 1871, for 99 years; rental, net earnings, bond interest, guaranteed by Pennsylvania Co., and Chic., St. L. & Pittsb., and Grand Rap. & Ind. R. Rs., each one-third of any deficiency of net earnings to pay coupons.	834
Subsidiary road, contingent money rental. Leased Dec. 1, 1886, for 99 years; rental, net earnings, with a minimum guarantee of interest on bonds or $37,500 per annum.	835
	4611
Subsidiary road, contingent money rental. Leased Jan. 1, 1883, for 50 years; rental, net earnings, with a minimum guarantee of interest on bonds or $7,500 per annum.	836
Operating road, subsidiary, other relation. Controlled through ownership of capital stock and bonds.	837
Subsidiary road, contingent money rental. Leased Dec. 8, 1871, for 99 years, from Jan. 1, 1872; rental, net earnings.	838
Subsidiary road, other relation. Controlled through ownership of capital stock.	839
Subsidiary road, fixed money rental. Leased Dec. 1, 1869, for 99 years, renewable forever; annual rental, 8 per cent on capital stock, interest on bonds, and organization expenses.	840
Subsidiary road, fixed money rental. Leased Nov. 30, 1868, for 99 years, renewable forever; annual rental, 8 per cent on capital stock, interest on bonds; included in lease of Little Miami R. R. to Pennsylvania Co.	841
	4612
Subsidiary road, fixed money rental. Leased Dec. 1, 1869, for 99 years, renewable forever; rental, interest on bonds; included in lease of Little Miami R. R. to Pennsylvania Co.	842
Subsidiary road, fixed money rental. Leased Feb. 25, 1878, for 99 years; lessee operates the road at cost and pays net earnings to lessor.	843
Subsidiary road, other relation. Controlled through ownership of capital stock.	844
Subsidiary road, fixed money rental. Owned by Pennsylvania R. R., and leased April 1, 1871, to Pennsylvania Co. for 999 years; sublet Nov. 1, 1876, to the Pittsb., Cin. & St. L. Ry. for 25 years; rental, 5 per cent per annum on cost.	845

[Defendants' Exhibit 20-C.]

Extracts from

INTERSTATE COMMERCE COMMISSION REPORT, 1891.

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4615 [108]

REPORT OF THE INTERSTATE COMMERCE COMMISSION.

CLASSIFICATION OF RAILWAYS AND MILE

[The above running title co

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	12	**BOSTON AND MAINE RAILROAD COMPANY.**	315.70	1,210.03
	13	Chelsea Beach Railroad Company.....	3.34	.....
4616	14	Danvers Railroad Company.....	9.26	.....
	15	Dover and Winnipiseogee Railroad Company..	29.00	.....
	16	**Eastern Railroad Company in New Hampshire.**	16.08	.....
	17	Portsmouth and Dover Railroad Company...	10.88	.....
	18	Wolfeborough Railroad Company.....	12.03	.....
4617	19	Kennebunk and Kennebunkport Railroad Company.	4.50	.....
	20	Lowell and Andover Railroad Company.....	8.73	.....
	21	Manchester and Keene Railroad Company.....	29.59	.....

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	22	Manchester and Lawrence Railroad Company.	22.39	.....
	23	Newburyport Railroad Company.....	26.98	.....
4618	24	Newburyport City Railroad Company.....	2.08	.....

DEFENDANTS' EXHIBIT 20-C. 1185

[109] 4619

STATISTICS OF RAILWAYS IN THE UNITED STATES.

AGE FOR THE YEAR ENDING JUNE 30, 1891.

ntinues through the report.]

Remarks.	No.
Operating road, independent. "Line operated" includes 36.75 miles not in the United States.	12
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	13
Subsidiary road, fixed money rental. Leased May 1, 1853, for 100 years, at $7,500 per annum.	14
Subsidiary road, fixed money rental. Operated under contract dated May 1, 1863, for 50 years, guaranteeing lessor $29,000 annually.	15
Subsidiary road, fixed money rental. Leased Oct. 1, 1878, for 60 years and 2 months to En. R. R. of Mass., for $22,500 per annum.	16
Subsidiary road, fixed money rental. Leased June 1, 1872, for 50 years from Feb., 1874, to En. R. R. in N. H., at a rental of $46,140 per annum, guaranteed by En. R. R. of Mass. Included in lease of En. R. R. in N. H. to Boston & Me. R. R.	17
Subsidiary road, fixed money rental. Leased Jan. 6, 1872, for 68 years, for 6 per cent per annum on stock; lease transferred to En. R. R. of Mass., Oct. 1, 1878, included in lease of latter to Boston & Me. R. R.	18
Subsidiary road, fixed money rental. Leased May 15, 1883, for 99 years, for 4½ per cent dividend per annum.	19
Subsidiary road, fixed money rental. Leased Dec. 1, 1874, for 99 years, at $52,500 per annum, lessee to pay all public taxes.	20
Subsidiary road, other relation. Sold under foreclosure; bonds purchased by Boston & Lowell and Conc. & Montreal R. Rs. Operated by Boston & Me. R. R. for account of these companies, each being credited with one-half of all earnings and charged with one-half of all expenses.	21

4620

4621

[111]

Subsidiary road, fixed money rental. Leased Sept. 1, 1887, for 50 years, for 10 per cent per annum on capital stock and $2,000 per annum for organization.	22
Subsidiary road, fixed money rental. Leased Feb. 21, 1860, for 100 years, for $225,000 cash.	23
Subsidiary road, fixed money rental. Leased Aug. 14, 1872, for 20 years at $6,000 per annum; included in the lease to Boston & Me. R. R.	24

4622

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
4623		**BOSTON AND MAINE RAILROAD COMPANY —Continued.**		
	25	**Portland, Saco and Portsmouth Railroad Company.**	50.76	.....
	26	West Amesbury Branch Railroad Company...	4.45	.....
	27	Worcester, Nashua and Rochester Railroad Company.	94.48	.....
4624	28	BOSTON AND LOWELL RAILROAD COMPANY.....	98.09	.....
	29	Central Massachusetts Railroad Company...	98.77	.....
	30	*Connecticut and Passumpsic Rivers Railroad Company.*	110.30	.....
	31	*Nashua and Lowell Railroad Company*.....	14.50	.....
4625				
	32	Peterborough Railroad Company.....	10.50	.....
	33	Stony Brook Railroad Company.....	13.16	.....
	34	Wilton Railroad Company.....	15.50	.....
4626				
	35	*Northern Railroad Company of New Hampshire.*	82.91	.....
	36	Concord and Claremont Railroad Company..	70.90	.....
	37	Peterborough and Hillsborough Railroad Company.	18.51	.....
	38	Orchard Beach Railroad Company.....	3.00	3.00

Remarks.	No.	
Subsidiary road, fixed money rental. Contract dated May 4, 1871, to continue in force until such time as En. R. R. of Mass., by default, shall cease to pay regular semi-annual dividend of 3 per cent; contract assigned to Boston & Me. R. R. on purchase of En. R. R. of Mass., June 30, 1889.	25	4627
Subsidiary road, fixed money rental. Leased April 1, 1874, for 99 years, for a rental of $5,700 annually.	26	
Subsidiary road, fixed money rental. Leased Jan. 1, 1886, for $250,000 per annum and all taxes.	27	
Subsidiary road, fixed money rental. Leased to Boston & Me. R. R., April 1, 1887; rental, 7 per cent on its capital stock for 10 years, and 8 per cent thereafter.	28	4628
Subsidiary road, contingent money rental. Leased to Boston & Lowell R. R., Oct. 1, 1886, for 99 years; rental, 20 per cent of gross earnings up to $1,000,000 and 25 per cent of any excess over that amount, deducting from said 20 per cent 5 per cent on $2,000,000 of bonds; lessee to pay $1,500 for organization expenses.	29	
Subsidiary road, fixed money rental. Leased Jan. 1, 1887, for 99 years, for 5 per cent for 10 years, and 6 per cent thereafter on capital stock, interest on bonds, and $3,000 for organization expenses, annually; lease assumed by Boston & Me. R. R.	30	
Subsidiary road, contingent money rental. Leased Nov. 10, 1880, for 99 years, for $60,000, $4,000 additional in case gross receipts equal or exceed those of 1880, and $1,000 for organization, annually; lease assumed July 12, 1887, by Boston & Me. R. R., which grants in addition to sums stated in lease 1 per cent annually on capital stock.	31	4629
Subsidiary road, fixed money rental. Leased April 1, 1873, for 20 years, at 6 per cent on cost of road and taxes, and $150 for organization, per annum; Boston & Lowell R. R. obtained control of the lease Oct. 1, 1880, and operated the road until 1888, when Boston & Me. R. R. assumed the lease.	32	
Subsidiary road, fixed money rental. Leased to Boston & Lowell R. R., Jan. 1, 1890; rental, 7 per cent on capital stock, taxes, and $500 for organization expenses, per annum; lease assumed by Boston & Me. R. R.	33	
Subsidiary road, fixed money rental. Leased to Boston & Lowell R. R. for 99 years from Oct., 1883; rental $16,800, all public taxes, and $150 for organization, annually; July 12, 1874, lease assigned to Boston & Me. R. R., without consent of lessor; Dec. 19, 1890, lessor assented to assignment of lease at a semi-annual rental of $10,200.	34	4630
Subsidiary road, fixed money rental. Operated under contract...	35	
Subsidiary road	36	
....do.....	37	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	38	

4631

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	BOSTON AND MAINE RAILROAD COMPANY —Continued.		
39	*Saint Johnsbury and Lake Champlain Railroad Company.*	131.50	131.50
40	York Harbor and Beach Railroad Company....	11.27	11.27

[116]

119	**NEW YORK AND NEW ENGLAND RAILROAD COMPANY.**	359.93	507.39
4632			
120	Milford and Woonsocket Railroad Company...	15.33	.....
121	Milford, Franklin and Providence Railroad Company.	4.60	.....
122	*Norwich and Worcester Railroad Company*..	66.16	.....
123	Providence and Springfield Railroad Company.	21.34	.....
124	Rhode Island and Massachusetts Railroad Company in Massachusetts.	6.62	.....
125	Rhode Island and Massachusetts Railroad Company in Rhode Island.	7.30	.....

4633

[118]

126	Rockville Railroad Company.....	4.43	.....
127	Woonsocket and Pascoag Railroad Company..	9.50	.....
128	**NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY.**	149.14	525.89
129	*Boston and New York Air Line Railroad Company.*	51.50	.....

4634

130	Colchester Railroad Company.....	3.59	.....
131	Harlem River and Port Chester Railroad Company.	11.50	.....
132	*Hartford and Connecticut Valley Railroad Company.*	46.20	.....

DEFENDANTS' EXHIBIT 20-C. 1189

Remarks.	No.	
		4635
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock and bonds.	39	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	40	
		[117]
Operating road, independent	119	
		4636
Subsidiary road, contingent money rental. Leased Sept. 30, 1887, for 99 years; annual rental, 15 per cent of gross receipts of this road and the Milf., Frank. & Prov. R. R.	120	
Subsidiary road, contingent money rental. Leased Sept. 30, 1887, for 99 years, for 25 per cent of gross earnings.	121	
Subsidiary road, fixed money rental. Leased Feb. 9, 1869, for 99 years; annual rental, interest on bonds, and 8 per cent on preferred stock.	122	
Subsidiary road, leased for 99 years	123	
Subsidiary road, fixed money rental. Leased Oct. 1, 1887, for 99 years; annual rental, $10,000 and all taxes, assessments, etc.	124	
....do	125	
		4637
		[119]
Subsidiary road, fixed money rental. Contract of July 1, 1888, provides for the sale of this road to N. Y. & New Eng. R. R., the latter agreeing to pay as rental 5 per cent on purchase price until the transfer of capital stock is made.	126	
Subsidiary road, leased for 99 years	127	
Operating road, independent	128	
Subsidiary road, fixed money rental. Leased Oct. 1, 1882, for 99 years; rental, $120,000 per annum, and interest on its bonds and the bonds of the Colchester R. R.	129	4638
Subsidiary road, fixed money rental. Interest on bonds guaranteed by Boston & N. Y. Air Line R. R.	130	
Subsidiary road, fixed money rental. Leased to N. Y., New Hav. & Hartf. R. R. for interest on bonds.	131	
Subsidiary road, fixed money rental. Leased April 1, 1887, for 99 years; rental, 4 per cent on capital stock outstanding.	132	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
		NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY—Continued.		
4639	133	Naugatuck Railroad Company	56.55	.....
	134	Watertown and Waterbury Railroad Company.	4.44	.....
	135	*New Haven and Northampton Company*	126.31	.....
4640	136	Holyoke and Westfield Railroad Company	10.32	.....
	137	*Shore Line Railway Company*	48.53	.....
	141	**OLD COLONY RAILROAD COMPANY**	482.38	569.11
	142	*Boston and Providence Railroad Company*	63.69	.....
4641	143	Attleboro Branch Railroad Company	4.00	.....
	144	Chatham Railroad Company	7.07	.....
	145	Fall River Railroad Company	12.25	.....
	146	Nantasket Beach Railroad Company	6.95	.....
	147	Fall River, Warren and Providence Railroad Company.	5.79	5.79

Remarks.	No.	
		4642
Subsidiary road, fixed monthly rental. Leased April 1, 1887, for 99 years; rental, interest on bonds and 10 per cent per annum on capital stock.	133	
Subsidiary road, other relation. Majority of capital stock and all bonds owned by Naugatuck R. R. and included in lease of that company to N. Y., New Hav. & Hartf. R. R.	134	
Subsidiary road, fixed money rental. Leased April 1, 1887, for 99 years; rental, 1 per cent on capital stock for 3 years, 2 per cent for the second 3 years, 3 per cent for the third 3 years, and 4 per cent thereafter, interest on bonds and taxes.	135	
Subsidiary road, contingent money rental. Leased Dec. 3, 1870, in perpetuity; rental, interest on bonds; in case gross receipts exceed $35,200 per annum lessee to pay lessor one-half of such excess. Lease assumed by N. Y., New Hav. & Hartf. R. R. with lease of New Hav. Northamp. Co.	136	4643
Subsidiary road, fixed money rental. Leased Oct. 19, 1870, in perpetuity; annual rental, $100,000.	137	
Operating road, independent. "Line owned" includes 7.23 miles not yet in operation.	141	
Subsidiary road, fixed money rental. Leased April 1, 1888, for 99 years; annual rental, 10 per cent on capital stock, interest on bonds, $10,000 for organization expenses for first 3 years and $3,000 thereafter, taxes, assessments, etc.	142	
Subsidiary road, fixed money rental. Leased Dec. 31, 1870, for 30 years; annual rental, 7 per cent on capital stock; included in lease to Old Colony R. R.	143	4644
Subsidiary road, contingent money rental. Contract dated Jan. 8, 1888, for 7 years; rental, 30 per cent of gross receipts, payable quarterly.	144	
Subsidiary road, contingent money rental. Leased April 1, 1882, for 99 years; rental, 30 per cent of gross earnings, which is guaranteed to be sufficient to pay interest on bonds.	145	
Subsidiary road, fixed money rental. Leased April 1, 1888, for 99 years; lessee guarantees interest on bonds up to $6,250 and pays taxes, and has option of purchasing property after 20 years of the lease for $150,000.	146	
Operating road, subsidiary, other relation. Road is in possession of trustee for bondholders under foreclosure and was operated by him during year; entire issue of bonds owned by Old Colony R. R.	147	4645

4646 [136]

No.	Name of Road.	Line Owned.	Line Operated.
		Miles.	*Miles.*
413	**NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY.**	819.45	2,096.46
414	New Jersey Junction Railroad Company.....	4.69	.....
415	*New York and Harlem Railroad Company*....	135.90	.....
416	*Rome, Watertown and Ogdensburg Railroad Company.*	412.55	.....
4647			
417	Niagara Falls Branch Railroad Company....	8.74	.....
418	Oswego and Rome Railroad Company.....	28.49	.....
419	Utica and Black River Railroad Company...	149.81	.....
420	Carthage, Watertown and Sacketts Harbor Railroad Company.	29.59	.....
4648			
421	Spuyten Duyvil and Port Morris Railroad Company.	6.04	.....
422	Troy and Greenbush Railroad Company.....	6.00	.....
423	Troy Union Railroad Company.....	5.00	.....
424	**West Shore Railroad Company**.....	449.71	.....
4649			
425	Syracuse, Ontario and New York Railway Company.	45.49	.....
426	Amsterdam, Chuctanunda and Northern Railroad Company.	1.50	.....
427	Beech Creek Railroad Company.....	132.62	148.42
428	Buffalo and Erie Basin Railroad Company....	.25	.25
429	Walkill Valley Railroad Company.....	32.88	32.88

DEFENDANTS' EXHIBIT 20-C. 1193

[137] 4650

Remarks.	No.
Operating road, independent	413
Subsidiary road, fixed money rental. Leased July 1, 1886, for 100 years, with privilege of further term of 100 years, at an annual rental of interest at 4 per cent on its bonds.	414
Subsidiary road, fixed money rental. Leased April 1, 1873, for 401 years. Annual rental, interest on funded debt and 8 per cent on capital stock.	415
Subsidiary road, fixed money rental. Leased Mar. 14, 1891, in perpetuity; rental, 5 per cent on capital stock, and $15,000 per annum until April 1, 1901, and thereafter $7,000 per annum.	416
Subsidiary road, fixed money rental. Leased Sept. 21, 1881, in perpetuity, at 7 per cent per annum on capital stock, included in lease to N. Y. Cent. & Hud. Riv. R. R., dated Mar. 14, 1891.	417
Subsidiary road, fixed money rental. Leased Dec. 2, 1869, in perpetuity; annual rental, interest on first mortgage bonds and $24,000 cash. Lease amended Mar. 2, 1891; rental, 7 per cent on $350,000 first mortgage bonds, and 5 per cent on $400,000 second mortgage bonds per annum, included in lease to N. Y. Cent. & Hud. Riv. R. R., dated Mar. 14, 1891.	418
Subsidiary road, fixed money rental. Leased April 14, 1886, for the term of its corporate existence; annual rental, interest on bonds, 7 per cent on capital stock, interest on bonds, and $4,500 for organization expenses; included in lease to N. Y. Cent. & Hud. Riv. R. R., dated Mar. 14, 1891.	419
Subsidiary road, contingent money rental. Leased for the term of its corporate existence, for 37½ per cent of gross earnings; included in the lease of Utica & Black Riv. R. R. to Rome, Watert. & Ogdensb. R. R. and to N. Y. Cent. & Hud. Riv. R. R., dated Mar. 14, 1891.	420
Subsidiary road, fixed money rental. Leased Nov. 1, 1871, to Dec. 31, 1970; annual rental, 8 per cent on cost, $989,000.	421
Subsidiary road, fixed money rental. Leased June 1, 1851, in perpetuity, at an annual rental of $19,250.	422
Subsidiary road, other relation. One-half owned by N. Y. Cent. & Hud. Riv. R. R. and one-fourth each by Del. & Hud. Canal Co. and Fitchburg R. R. These companies pay this proportion of maintenance and operation.	423
Subsidiary road, fixed money rental. Leased Jan. 1, 1886, for 475 years, with privilege of further term of 500 years; annual rental, interest at 4 per cent on bonds.	424
Subsidiary road, other relation. Controlled through ownership of majority of capital stock.	425
Subsidiary road, other relation. Operated under verbal agreement.	426
Operating road, subsidiary, fixed money rental. Leased Dec. 15, 1890, for 999 years from Oct. 1, 1890, rental, 4 per cent interest per annum on not exceeding $5,000,000 first mortgage bonds and 4 per cent dividend on $5,000,000 capital stock.	427
Subsidiary road	428
Operating road, subsidiary, other relation. Controlled through ownership of capital stock and bonds held in the interests of W. Shore R. R.	429

4651

4652

4653

4654 [142]

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
486	**PENNSYLVANIA RAILROAD COMPANY.....**	490.23	2,569.34
487	Bald Eagle Valley Railroad Company.....	90.68	.....
488	Bedford and Bridgeport Railway Company....	49.17	.....
489	Bustleton Railroad Company.....	4.16	.....
4655			
490	Cambria and Clearfield Railroad Company....	29.18	.....
491	Columbia and Port Deposit Railway Company.	39.83	.....
492	Columbia, Kinkora and Springfield Railroad Company.	14.16	.....
493	Downingtown and Lancaster Railroad Company.	37.98	.....
4656			
494	Ebensburg and Cresson Railroad Company....	11.00	.....
495	Freehold and Jamesburg Agricultural Railroad Company.	27.54	.....
496	Frederick and Pennsylvania Line Railroad Company.	28.00	.....
497	Hanover and York Railroad Company.....	18.35	.....
498	Harrisburg, Portsmouth, Mount Joy and Lancaster Railroad Company.	53.74	.....
499	Johnsonburg Railroad Company.....	19.69	.....
4657			

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500	Kensington and Tacony Railroad Company...	2.98	.....

DEFENDANTS' EXHIBIT 20-C. 1195

[143] 4658

Remarks.	No.
Operating road, independent.....	486
Subsidiary road, contingent money rental. Leased July 1, 1864, for 99 years; rental, 40 per cent of gross receipts. Lease does not apply to the Nittany Brh., which is operated for cost. Net earnings paid to Bald Eagle Vy. R. R.	487
Subsidiary road, contingent money rental. Operated under resolutions of the directors of both companies, which took effect May 1, 1891, and is terminable at the option of either party on 30 days' notice. Net earnings payable to this company.	488
Subsidiary road, contingent money rental. Operated under resolutions of the directors of both companies, which took effect Jan. 1, 1891, and is terminable at the option of either party on 30 days' notice. Net earnings payable to this company.	489
	4659
Subsidiary road, contingent money rental. Operated under resolutions of board of directors in effect Sept. 24, 1888, terminable at any time on 30 days' notice; net earnings payable to this company.	490
Subsidiary road, contingent money rental. Agreement dated July 1, 1890, terminable at any time on 30 day's notice; rental, net earnings.	491
Subsidiary road, contingent money rental. Lease dated Sept. 23, 1889; runs from year to year, unless terminated by 6 months' notice. Lessor collects all earnings, pays all expenses for operating the road and maintenance of way and taxes; balance, if any, is paid to lessee.	492
Subsidiary road, contingent money rental. This company is the reorganized E. Brandyw. and Waynesb. R. R.; operated under resolutions of board of directors in effect Aug. 1, 1888, terminable at any time on 30 days' notice; net earnings paid to this company.	493
	4660
Subsidiary road, contingent money rental. Leased Mar. 6, 1862, for 999 years; rental, net earnings.	494
Subsidiary road, contingent money rental. Contract dated July 16, 1879, terminable on 30 days' notice; rental, net earnings.	495
Subsidiary road, fixed money rental. Leased Jan. 1, 1875, for 999 years; lessee operates the road at cost.	496
Subsidiary road, contingent money rental. Leased April 8, 1875, during the term of charter, to April 23, 1893; rental, net earnings.	497
Subsidiary road, fixed money rental. Leased Jan. 1, 1861, for 999 years; annual rental, 7 per cent on capital stock, interest on bonds, all taxes levied on stock and bonds, and organization expenses up to $2,000.	498
Subsidiary road, contingent money rental. Leased July 8, 1889, for 50 years; rental, 5 per cent per annum on capital stock, interest on bonds and taxes, balance divided equally between lessee and lessor.	499
	4661

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Subsidiary road, fixed money rental. Leased Jan. 1, 1887, for 5 years, at $30 per annum.	500

	No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
4662		**PENNSYLVANIA RAILROAD COMPANY—** Continued.		
	501	Lewisburg and Tyrone Railroad Company...	85.08	.....
	502	Littlestown Railroad Company.....	9.30	.....
	503	Long Beach Railroad Company.....	20.50	.....
4663	504	Mifflin and Centre County Railroad Company	12.31	.....
	505	Millstone and New Brunswick Railroad Company.	6.64	.....
	506	Nescopec Railroad Company.....	11.96	.....
	507	New York Bay Railroad Company.....	7.23	.....
	508	North and West Branch Railway Company...	47.82	.....
4664	509	Pennsylvania Schuylkill Valley Railroad Company.	120.19	.....
	510	Perth Amboy and Woodbridge Railroad Company.	6.40	.....
	511	Philadelphia and Erie Railroad Company.....	287.56	.....
	512	Philadelphia and Long Branch Railroad Company.	49.11	.....
	513	Philadelphia, Germantown and Chestnut Hill Railroad Company.	6.75	.....
4665	514	Pittsburgh, Virginia and Charleston Railway Company.	72.52	.....
	515	Pomeroy and Newark Railroad Company....	26.70	.....
	516	Ridgway and Clearfield Railroad Company....	27.23	.....
	517	Riverfront Railroad Company.....	3.86	.....

DEFENDANTS' EXHIBIT 20-C. 1197

Remarks.	No.	
		4666
Subsidiary road, contingent money rental. Leased Jan. 1, 1880, for 99 years, rental, net earnings. "Line owned" does not include .24 mile over the Lewisburg Bridge.	501	
Subsidiary road, contingent money rental. Leased April 8, 1875, for 999 years; advancements made by lessee to pay taxes, operating expenses, interest on bonds to be repaid from earnings, any surplus remaining after such payments to be paid lessor.	502	
Subsidiary road, contingent money rental. Leased June 28, 1886, terminable on 30 days' notice; lessee operates the road at cost, paying over to lessor any surplus remaining.	503	
Subsidiary road, contingent money rental. Leased March 19, 1863, for 999 years; rental, net earnings.	504	4667
Subsidiary road, contingent money rental. Operated since Jan. 1, 1886, by Pennsylvania R. R. under a temporary arrangement, without any written contract, that company paying all expenses and charging deficiency in net receipts to this company.	505	
Subsidiary road, contingent money rental. Operated under resolutions of board of directors in effect April 25, 1887, terminable at any time on 30 days' notice; net earnings payable to this company.	506	
Subsidiary road, other relation. Controlled through ownership of capital stock.	507	
Subsidiary road, contingent money rental. Agreement dated Nov. 23, 1881, to continue until Sept. 1, 1901; net earnings to be paid this company.	508	
Subsidiary road, contingent money rental. Leased Dec. 1, 1885, for 50 years; rental, net earnings.	509	4668
Subsidiary road, contingent money rental. Operated as of date Jan. 1, 1889, by virtue of resolutions adopted May 6, 1889, by stockholders of this company; and June 26, 1889, by directors of Pennsylvania R. R.; net earnings paid to this company.	510	
Subsidiary road, contingent money rental. Lease executed Jan. 6, 1862; modified Jan. 1, 1870, for 999 years from Jan. 6, 1862; surplus of gross receipts, after paying operating expenses, etc., to be applied to organization expenses and interest on bonds; any balance to be paid lessor.	511	
Subsidiary road, contingent money rental. Leased Jan. 1, 1884, for 50 years; any surplus of earnings after paying operating and other expenses to be paid lessor.	512	
Subsidiary road, contingent money rental. Leased May 1, 1883, for 30 years; rental, net earnings.	513	
Subsidiary road, contingent money rental. Leased April 1, 1882, for 50 years; rental, net earnings.	514	4669
Subsidiary road, contingent money rental. Leased March 1, 1880, for 99 years; rental, net earnings.	515	
Subsidiary road, contingent money rental. Operated under resolutions of board of directors adopted July 23, 1884, terminable at option of either party on 30 days' notice; net earnings paid to this company.	516	
Subsidiary road, fixed money rental. Leased May 1, 1882, for 50 years; rental, $23,000 per annum.	517	

	No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
4670		**PENNSYLVANIA RAILROAD COMPANY—** Continued.		
	518	Southwest Pennsylvania Railway Company..	107.79	.....
	519	Sunbury and Lewistown Railway Company...	43.45	.....
	520	Sunbury, Hazelton and Wilkes-Barre Railway Company.	43.44	.....
	521	Susquehanna and Clearfield Railroad Company.	24.89	.....
4671				
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	522	Tipton Railroad Company.....	4.44	.....
	523	Tyrone and Clearfield Railway Company.....	116.51	.....
	524	United New Jersey Railroad and Canal Company.	144.72	.....
4672	525	Belvidere Delaware Railroad Company.....	79.16	.....
	526	Martins Creek Railroad Company of New Jersey.	.14	.....
	527	Martins Creek Railway Company of Pennsylvania.	.15	.....
	528	Enterprise Railroad Company.....	1.26	.....
	529	Camden and Burlington County Railroad Company.	29.61	.....
4673	530	Mount Holly, Lumberton and Medford Railroad Company.	5.95	.....
	531	Philadelphia and Trenton Railroad Company	26.50	.....
	532	Connecting Railway Company.....	6.75	.....

4674

Remarks.	No.
Subsidiary road, contingent money rental. Leased April 1, 1891, for one year, renewable every year; net earnings paid to this company.	518
Subsidiary road, contingent money rental. Leased July 1, 1876, for 99 years; operated for cost and one-half of net earnings after payment of interest on outstanding bonds.	519
Subsidiary road, contingent money rental. Leased May 1, 1878, for 50 years; net earnings paid to this company.	520
Subsidiary road, contingent money rental. Operated under resolutions of board of directors adopted July 23, 1884, terminable at the option of either party on 30 days' notice; net earnings paid to this company.	521

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Subsidiary road, contingent money rental. Agreement dated May 1, 1886; terminable at the option of either party on 30 days' notice; net earnings paid to this company.	522	
Subsidiary road, fixed money rental. Leased Jan. 1, 1882, for 50 years; lessee to pay annually all taxes, interest on bonds, sinking-fund organization expenses up to $1,000, and 5 per cent on capital stock.	523	
Subsidiary road, contingent money rental. Leased June 30, 1871, for 999 years; annual rental, 10 per cent on capital stock, taxes, interest on funded and other debts, damages, losses, etc.	524	4676
Subsidiary road, contingent money rental. Leased Jan. 1, 1876, to June 30, 2870; assigned to Pennsylvania R. R. March 7, 1876; revenue to be applied, first, to operation; second, to interest on bonds; any balance to be paid lessor.	525	
Subsidiary road, other relation. Controlled through ownership of capital stock.	526	
....do	527	
....do	528	
Subsidiary road, fixed money rental. Leased April 24, 1868, for the term of its corporate existence to Camden & Amb. R. R., one of the constituent companies of United N. J. R. R. & Canal Co.; annual rental, 6 per cent on capital stock and bonds and $500 for organization expenses; lease assigned to Pennsylvania R. R. June 30, 1871.	529	
Subsidiary road, fixed money rental. Leased March 11, 1873, during corporate existence, at $11,189 per annum; lease assigned to Pennsylvania R. R. June 13, 1871.	530	4677
Subsidiary road, fixed money rental. Leased June 30, 1871, from United N. J. R. R. & Canal Co. for 999 years; annual rental, 10 per cent on capital stock (excluding 7,650 shares owned by United N. J. R. R. & Canal Co.), taxes, assessments, etc.	531	
Subsidiary road, fixed monthly rental. Leased Feb. 18, 1863, for 999 years; annual rental, 6 per cent on capital stock, 6 per cent on bonds and taxes; included in lease to Pennsylvania R. R.	532	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
4678		**PENNSYLVANIA RAILROAD COMPANY—** Continued.		
	533	Rocky Hill Railroad and Transportation Company.	2.38	.....
	534	Vincentown Branch Railroad Company.....	2.84	.....
	535	West Chester Railroad Company.....	5.00	.....
4679	536	Western Pennsylvania Railroad Company....	116.00	.....
	537	Allegheny Valley Railroad Company.....	260.30	260.30
	538	*Baltimore and Potomac Railroad Company*...	92.06	95.86
	539	Catonsville Short Line Railroad Company..	3.80	.....
	540	Camden and Atlantic Railroad Company.....	68.78	81.39
	541	Philadelphia, Marlton and Medford Railroad Company.	11.71	.....
4680	542	Cumberland Valley Railroad Company.....	82.18	144.93
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	543	Cumberland Valley and Martinsburg Railroad Company.	33.65	.....
	544	Dillsburg and Mechanicsburg Railroad Company.	7.70	.....
	545	South Pennsylvania Railway and Mining Company.	21.40	.....
4681	546	Junction Railroad Company.....	3.56	3.56
	547	Northern Central Railway Company.....	148.24	372.83
	548	Elmira and Lake Ontario Railroad Company	99.61	.....

DEFENDANTS' EXHIBIT 20-C. 1201

Remarks.	No.	
		4682
Subsidiary road, fixed money rental. Leased Nov. 22, 1869, for the term of its charter to Camden & Amb. R. R., one of the constituent companies of United N. J. R. R. & Canal Co., at 6 per cent per annum on capital stock; lease assigned to the Pennsylvania R. R. Nov., 1871.	533	
Subsidiary road, fixed money rental. Leased April 7, 1868, for corporate existence; annual rental, 6 per cent on capital stock owned by individuals, which is $15,000; the other $10,000 is owned by lessee and nothing is paid on it.	534	
Subsidiary road, fixed money rental. Leased Aug. 6, 1879, for 99 years; annual rental, 5 per cent on capital stock, interest on bonds, sinking-fund charges, and taxes.	535	
Subsidiary road, contingent money rental. Leased June 1, 1888, for 40 years; net earnings paid to this company.	536	4683
Operating road, subsidiary, other relation. W. H. Barnes, Receiver, appointed May 2, 1884; majority of capital stock and about one-fifth of outstanding bonds owned by Pennsylvania R. R.	537	
Operating road, subsidiary, other relations. Controlled through ownership of majority of capital stock.	538	
Subsidiary road, contingent money rental. Leased Dec. 6, 1883; the lessor receives 40 per cent of net earnings.	539	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	540	
Subsidiary road, contingent money rental. Leased Jan. 31, 1885, terminable on 30 days' notice; surplus from operation paid lessor.	541	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	542	4684

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Subsidiary road, contingent money rental. Leased March 17, 1888, for 99 years; receipts from operations to be applied to maintain the road, pay operating expenses, taxes, insurance, etc.; balance to be paid lessor.	543	
Subsidiary road, contingent money rental. Leased Jan. 1, 1873, for 99 years; terms of lease same as Cumb. Vy. & Martinsb. R. R.	544	
Subsidiary road, contingent money rental. Leased March 1, 1870, for 199 years; terms of lease same as Cumb. Vy. & Martinsb. R. R.	545	
Operating road, subsidiary, other relation. The Pennsylvania, Phila., Wilm. & Balt., and Phila. & Read. R. Rs. use this company's tracks, paying a certain rate per car per mile, the Junction R. R. paying the company moving the traffic for the use of the motive power.	546	4685
Operating road, subsidiary, other relation. Controlling interest in capital stock owned by Pennsylvania R. R.	547	
Subsidiary road, contingent money rental. Contract terminable at the option of either party on 30 days' notice; net receipts, after paying charges for use of equipment, paid to this company. Contract took effect Jan. 1, 1877.	548	

	No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
		PENNSYLVANIA RAILROAD COMPANY— Continued.		
4686	549	Elmira and Williamsport Railroad Company	75.50	.....
	550	Lykens Valley Railroad and Coal Company.	19.70	.....
	551	Shamokin Valley and Pottsville Railroad Company.	29.78	.....
	552	Union Railroad Company (of Baltimore)....	9.62	9.62
4687	553	*Philadelphia, Wilmington and Baltimore Railroad Company.*	137.30	534.07
	554	Cambridge and Seaford Railroad Company..	27.25	.....
	555	Delaware Railroad Company.....	100.07	.....
	556	Delaware and Chesapeake Railway Company	54.29	.....
4688	557	Delaware, Maryland and Virginia Railroad Company.	97.62	.....
	558	Philadelphia and Baltimore Central Railroad Company.	73.68	.....
	559	Chester Creek Railroad Company.....	6.69	.....
	560	Queen Anne's and Kent Railroad Company.	25.90	.....
	561	Trenton Delaware Bridge Company.....	.19	.....
	562	West Jersey Railroad Company.....	182.51	223.61
4689	563	West Jersey and Atlantic Railroad Company	39.50	.....

DEFENDANTS' EXHIBIT 20-C. 1203

Remarks.	No.	
Subsidiary road, fixed money rental. Leased May 1, 1863, for 999 years; annual rental, 7 per cent on preferred and 5 per cent on common stock; interest on bonds and $3,000 for organization expenses.	549	4690
Subsidiary road, fixed money rental. Leased March 1, 1866, for 999 years to Summit Brh. R. R.; annual rental, $62,500, taxes, charges, etc.	550	
Subsidiary road, fixed money rental. Leased Feb. 27, 1863, for 999 years; annual rental, 7 per cent interest on bonds, 6 per cent on capital stock, and taxes.	551	
Operating road, subsidiary, other relation. Controlled through ownership of entire capital stock.	552	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock; "lined owned" includes 3.70 miles leased to the Col. & Port Deposit R. R.	553	4691
Subsidiary road, contingent money rental. Agreement dated May 16, 1883; took effect June 1, 1883; terminable on 30 days' notice; net earnings paid to this company.	554	
Subsidiary road, contingent money rental. Leased May 4, 1855, for 21 years; renewed April 3, 1875, for 21 years from May 4, 1876; annual rental, 6 per cent on capital stock, interest on funded and floating debt, and one-half of any surplus over 6 per cent of net earnings.	555	
Subsidiary road, contingent money rental. Agreement took effect July 1, 1882; terminable on 30 days' notice; net earnings paid to this company.	556	
Subsidiary road, contingent money rental. Agreement dated Aug. 1, 1885; took effect July 1, 1885; terminable on 30 days' notice; net earnings paid to this company.	557	4692
Subsidiary road, contingent money rental. Agreement dated Aug. 1, 1881; took effect Sept. 1, 1881; terminable on 6 months' notice; net earnings paid to this company.	558	
Subsidiary road, fixed money rental. Leased Jan. 13, 1868, for 999 years; rental, 6 per cent on capital stock and bonds, and taxes.	559	
Subsidiary road, contingent money rental. Agreement dated Oct. 14 and 15, 1881; took effect Sept. 1, 1881; terminable on 30 days' notice; net earnings paid to this company.	560	
Operating road, subsidiary, fixed money rental. Trackage contract June 20, 1877, for 993 years 5 months and 10 days; annual rental, $28,000 and taxes.	561	
Operating road, subsidiary, other relation. Controlled through ownership of capital stock.	562	
Subsidiary road, contingent money rental. Leased Dec. 29, 1879, terminable at one year's notice; lessee to furnish equipment and operate the road at cost, paying lessor any surplus from operation.	563	4693

4694 [160]

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
773	LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY.	859.15	1,445.28
774	Detroit and Chicago Railroad Company.....	67.60	.....

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4695	775	Detroit, Hillsdale and Southwestern Railroad Company.	65.20	.....
	776	Detroit, Monroe and Toledo Railroad Company	62.36	.....
	777	Fort Wayne and Jackson Railroad Company..	97.83	.....
	778	Jamestown and Franklin Railroad Company..	50.91	.....
	779	Kalamazoo and White Pigeon Railroad Company.	36.57	.....
4696	780	Kalamazoo, Allegan and Grand Rapids Railroad Company.	58.42	.....
	781	Mahoning Coal Railroad Company.....	50.29	.....
	782	Northern Central Michigan Railroad Company	61.14	.....
	783	Sturgis, Goshen and St. Louis Railway Company.	35.81	.....
	795	MICHIGAN CENTRAL RAILROAD COMPANY.	270.07	1,607.33
4697	796	Battle Creek and Sturgis Railway Company....	41.00	.....
	797	Bay City and Battle Creek Railway Company	18.00	.....
	798	Canada Southern Bridge Company.....	3.66	.....

DEFENDANTS' EXHIBIT 20-C. 1205

[161] 4698

Remarks.	No.
Operating road, independent. "Line operated" includes 7.20 miles leased from Battle Ck. & Sturgis Ry.	773
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	774

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Subsidiary road, fixed money rental. Leased Sept. 5, 1881, in perpetuity; annual rental, $54,000 and $500 for organization expenses.	775	4699
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	776	
Subsidiary road, contingent money rental. Leased Aug. 24, 1882, in perpetuity from Sept. 1, 1882; annual rental, 5½ per cent on preferred stock; should net earnings in any year after Sept. 1, 1887, exceed 8 per cent on preferred stock, lessee will pay amount of such excess up to 2 per cent on common stock.	777	
Subsidiary road, contingent money rental. Leased Jan. 1, 1890, for 5 years; annual rental, 30 per cent of gross earnings, and all taxes, except those imposed by United States or State of Pennsylvania upon tonnage, dividends, or interest on bonds.	778	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	779	
Subsidiary road, fixed money rental. Leased Sept. 21, 1869, for 999 years; annual rental, 6 per cent on capital stock, interest on bonds, and all taxes and assessments.	780	4700
Subsidiary road, contingent money rental. Leased July 1, 1884, in perpetuity; annual rental, 40 per cent of gross earnings; if that is insufficient to pay interest on bonds, 5 per cent on preferred stock, and $1,000 for corporate expenses; lessee will advance necessary amount and charge same against future rental.	781	
Subsidiary road, other relation. Owned entirely by L. Shore & Mich. Sn. Ry.	782	
Subsidiary road, other relation. Controlled through ownership of capital stock and bonds; "line owned" includes 7.20 miles leased from Battle Ck. & Sturgis Ry.	783	
Operating road, independent. Of "line operated," 378.91 miles not in United States.	795	
Subsidiary road, fixed money rental. The Mich. Cent. R. R. also owns majority of capital stock.	796	4701
Of "line owned," 7.20 miles leased to and operated by L. Shore & Mich. Sn. Ry.		
Subsidiary road, fixed money rental. Agreement dated Feb. 1, 1890, in perpetuity, rental, interest on bonds and taxes.	797	
Subsidiary road, contingent money rental. Operated under agreement dated Dec. 12, 1882, for 21 years, with Can. Sn. Ry., which owns substantially all its capital stock and bonds, the bridge company being credited with its earnings and charged with its expenses.	798	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
4702		**MICHIGAN CENTRAL RAILROAD COMPANY** —Continued.		
	799	Detroit and Bay City Railroad Company.....	151.42	.....
	800	Grand River Valley Railroad Company.....	83.79	.....

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4703	801	Jackson, Lansing and Saginaw Railroad Company.	295.10	.....
	802	Joliet and Northern Indiana Railroad Company.	45.00	.....
	803	Kalamazoo and South Haven Railroad Company.	39.50	.....
	804	Michigan Air Line Railroad Company.....	115.16	.....
	805	Michigan, Midland and Canada Railroad Company.	14.68	.....
4704	806	Saginaw Bay and Northwestern Railroad Company.	85.32	.....
	807	Toledo and Michigan Belt Line Railway Company.	3.05	.....
	808	Toledo, Canada Southern and Detroit Railway Company.	55.87	.....

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	828	**PENNSYLVANIA COMPANY**.....	.....	1,148.33
4705	829	Cleveland and Pittsburgh Railroad Company	198.34	.....
	830	Erie and Pittsburgh Railroad Company.....	84.47	.....

DEFENDANTS' EXHIBIT 20-C. 1207

Remarks.	No.	
		4706
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	799	
Subsidiary road, fixed money rental. Leased Aug. 15, 1870, to continue during the corporate existence of lessor; lessee guarantees floating and funded debt of lessor, interest thereon, 5 per cent per annum on stock, taxes, assessments, etc.	800	
[165]		
		4707
Subsidiary road, fixed money rental. Leased Sept. 1, 1871, during corporate existence of the two companies; lessee pays principal and interest on bonds of lessor and a dividend of 3½ per cent per annum.	801	
Subsidiary road, fixed money rental. Operated under contracts executed Sept. 7 and 26, 1854; on completion turned over to Mich. Cent. R. R. to operate forever at an annual rental of $89,000.	802	
Subsidiary road, fixed money rental. Leased July 1, 1870, in perpetuity; lessee to pay taxes and interest on bonds.	803	
Subsidiary road, fixed money rental. Leased Jan. 1, 1870, for 999 years, lessee guaranteeing principal and interest of bonds.	804	
Subsidiary road, other relation. Operated under agreement dated Dec. 11, 1882, with Can. Sn. Ry., which owns a majority of its capital stock and all its bonds, Mich. Midl. & Can. R. R. being credited with its earnings and charged with its expenses.	805	
		4708
Subsidiary road, other relation. Controlled through ownership of capital stock.	806	
Subsidiary road	807	
Subsidiary road, other relation. Operated under agreement dated Dec. 12, 1882, with the Can. Sn. Ry., which owns substantially all its capital stock and bonds, Tol., Can. Sn. & Det. Ry. being credited with its earnings and charged with its expenses.	808	
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Operating road, independent.....	828	
Subsidiary road, fixed money rental. Leased to Pennsylvania R. R. Dec. 1, 1871, for 999 years; lessee guarantees principal, interest, and sinking fund charges on bonds, 7 per cent on capital stock, $10,000 for organization annually, taxes, assessments, etc.; lease transferred to Pennsylvania Co. April 14, 1873.	829	4709
Subsidiary road, fixed money rental. Leased to Pennsylvania R. R. Mar. 1, 1870, for 999 years; annual rental, 7 per cent on capital stock and bonds; lease transferred to Pennsylvania Co. April 1, 1871.	830	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
		PENNSYLVANIA COMPANY—Continued.		
4710	831	Indianapolis and Vincennes Railroad Company	132.98	.....
	832	State Line and Indiana City Railway Company	3.18	.....
	833	Toledo, Walhonding Valley and Ohio Railroad Company.	79.98	.....
	834	Pittsburgh, Fort Wayne and Chicago Railway Company.	469.89	.....
4711	835	Massillon and Cleveland Railroad Company.	12.23	.....
	836	New Castle and Beaver Valley Railroad Company.	14.98	.....
	837	Pittsburgh, Youngstown and Ashtabula Railroad Company.	125.17	.....
	838	South Chicago and Southern Railroad Company.	10.25	.....
	839	Calumet River Railway Company.....	4.43	.....
4712	840	Cincinnati and Muskingum Valley Railway Company.	148.45	148.45
	841	Grand Rapids and Indiana Railroad Company	428.27	584.17
	842	Cincinnati, Richmond and Fort Wayne Railroad Company.	85.60	.....
	843	Muskegon, Grand Rapids and Indiana Railroad Company.	36.85	.....
	844	Traverse City Railroad Company.....	26.00	.....
4713	845	Pittsburgh, Cincinnati, Chicago and Saint Louis Railway Company.	1,085.03	981.07

Remarks.	No.	
		4714
Subsidiary road, contingent money rental. Leased Jan. 1, 1879, for 99 years; net earnings paid to lessor to be applied to the payment of interest on bonds.	831	
Subsidiary road, other relation. Controlled through ownership of capital stock.	832	
Subsidiary road, contingent money rental. Leased Jan. 1, 1879, for 99 years, each year's surplus, if any, after deducting taxes, repairs, operating expenses, etc., to be paid lessor.	833	
Subsidiary road, fixed money rental. Leased July 1, 1869, for 999 years; annual rental, interest on bonds, sinking fund, 7 per cent on capital stock, organization expenses, and taxes.	834	
Subsidiary road, contingent money rental. Leased May 22, 1869, for 99 years, at a rental of 40 per cent of gross earnings, minimum being fixed at $20,000 a year; lease transferred to Pennsylvania Co. July 1, 1869.	835	4715
Subsidiary road, contingent money rental. Leased June 29, 1865, for 99 years, at a rental of 40 per cent of gross earnings; lease assigned to Pennsylvania R. R. June 7, 1869, and by the latter to Pennsylvania Co., June 29, 1874, to take effect as of date April 1, 1871.	836	
Subsidiary road, contingent money rental. Leased Aug. 1, 1887, for 1 year, and thereafter from year to year subject to termination on 12 months' written notice from either party; operated by lessee at cost.	837	
Subsidiary road, contingent money rental. No contract; operated at cost under a provisional arrangement.	838	
Subsidiary road, other relation. Controlled through ownership of capital stock. "Line owned" not in operation.	839	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	840	4716
Operating road, subsidiary, other relation. Controlled by virtue of a contract, in effect from Oct. 1, 1869, for 30 years, under which Pennsylvania Co. guarantees $4,000,000 of its first-mortgage, land-grant bonds.	841	
Subsidiary road, contingent money rental. Leased Jan. 1, 1871, for 99 years; rental, net earnings. Bond interest guaranteed by Pennsylvania Co., Pittsb., Cin. Chic. & St. L., and Gr. Rap. & Ind. R. Rs., each, one-third of any deficiency of net earnings to pay coupons.	842	
Subsidiary road, contingent money rental. Leased Dec. 1, 1886, for 99 years; rental, net earnings, with a minimum guarantee of interest on bonds or $37,500 per annum.	843	
Subsidiary road, contingent money rental. Leased Jan. 1, 1883, for 50 years, rental, net earnings, with a minimum guarantee of interest on bonds or $7,500 per annum.	844	4717
Operating road, subsidiary, other relation. Controlled through ownership of capital stock and bonds.	845	

4718

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
[168]			
	PENNSYLVANIA COMPANY—Continued.		
	Pittsburgh, Cincinnati, Chicago and Saint Louis Railway Company—Continued.		
846	Chartiers Railway Company	22.76	.....
847	Chartiers Connecting Railroad Company	.72	.....
848	Englewood Connecting Railway Company	2.35	.....
849	Little Miami Railroad Company	101.50	.....
4719			
850	Columbus and Xenia Railroad Company	54.74	.....
851	Dayton and Western Railroad Company	37.23	.....
852	Ohio Connecting Railway Company	3.27	.....
853	Pittsburgh, Wheeling and Kentucky Railroad Company.	28.04	.....
854	Steubenville Extension Railroad Company	1.23	.....

DEFENDANTS' EXHIBIT 20-C. 1211

Remarks.	No.	
		4720
	[169]	
Subsidiary road, contingent money rental. Leased Dec. 8, 1871 for 99 years, from Jan. 1, 1872; rental, net earnings.	846	
Subsidiary road, other relation. Controlled through ownership of capital stock.	847	
Subsidiary road, other relation. Operated and maintained at cost, any surplus earnings paid to lessor; controlled through ownership of entire capital stock.	848	
Subsidiary road, fixed money rental. Leased Dec. 1, 1869 for 99 years, renewable forever; annual rental, 8 per cent on capital stock, interest on bonds, and organization expenses.	849	4721
Subsidiary road, fixed money rental. Leased Nov. 30, 1868, for 99 years, renewable forever; annual rental, 8 per cent on capital stock, interest on bonds; included in lease of Little Miami R. R. to Pennsylvania Co.	850	
Subsidiary road, fixed money rental. Leased Dec. 1, 1869, for 99 years, renewable forever; rental interest on bonds; included in lease of Little Miami R. R. to Pennsylvania Co.	851	
Subsidiary road, contingent money rental. Operated at cost; net earnings paid to lessor.	852	
Subsidiary road, fixed money rental. Leased Feb. 25, 1878, for 99 years; lessee operates the road at cost and pays net earnings to lessor.	853	
Subsidiary road, fixed money rental. Owned by Pennsylvania R. R. and leased April 1, 1871, to Pennsylvania Co. for 999 years; sublet Nov. 1, 1876, to Pittsb., Cin. & St. L. Ry. for 25 years; rental, 5 per cent per annum on cost.	854	

[Defendants' Exhibit 20-D.]

Extracts from

INTERSTATE COMMERCE COMMISSION REPORT, 1892.

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4724 [98]

REPORT OF THE INTERSTATE COMMERCE COMMISSION.

CLASSIFICATION OF RAILWAYS AND MILE

[The above running title is

	No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
	12	**BOSTON AND MAINE RAILROAD COMPANY.**	360.07	1,210.03
	13	Danvers Railroad Company.....	9.26	.....
4725	14	Eastern Railroad Company in New Hampshire.	16.08	....
	15	Portsmouth and Dover Railroad Company..	10.88	.....
	16	Kennebunk and Kennebunkport Railroad Company.	4.50	....
	17	Lowell and Andover Railroad Company.....	8.73	.....
	18	Manchester and Keene Railroad Company...	29.59	.....
4726	19	Manchester and Lawrence Railroad Company.	22.39	.....
	20	Newburyport Railroad Company.....	26.98	.....
	21	Newburyport City Railroad Company.....	2.08	.....
	22	Portland, Saco and Portsmouth Railroad Company.	50.76	.....
	23	West Amesbury Branch Railroad Company..	4.45	.....
4727				
	24	Worcester, Nashua and Rochester Railroad Company.	94.48	.....
	25	BOSTON AND LOWELL RAILROAD COMPANY.....	98.09	.....

DEFENDANTS' EXHIBIT 20-D. 1215

[99] 4728

STATISTICS OF RAILWAYS IN THE UNITED STATES.

AGE FOR THE YEAR ENDING JUNE 30, 1892.

continued throughout the report.]

Remarks.	No.	
Operating road, independent. "Line operated" includes 36.75 miles not in the United States.	12	
Subsidiary road, fixed money rental. Leased May 30, 1853, for 100 years, at $7,500 per annum.	13	
Subsidiary road, fixed money rental. Leased Oct. 1, 1878, for 60 years and 2 months to En. R. R. of Mass., for $22,500 per annum.	14	4729
Subsidiary road, fixed money rental. Leased June 1, 1872, for 50 years from Feb., 1874, to En. R. R. in N. H., at a rental of $46,140 per annum, guaranteed by En. R. R. of Mass. Included in lease of En. R. R. in N. H. to Boston & Me. R. R.	15	
Subsidiary road, fixed money rental. Leased May 15, 1883, for 99 years, for 4½ per cent dividend per annum.	16	
Subsidiary road, fixed money rental. Leased Dec. 1, 1874, for 99 years, at $52,500 per annum, lessee to pay all public taxes.	17	
Subsidiary road. Other relations: Sold under foreclosure; bonds purchased by Boston & Lowell and Conc. & Montreal R. Rs. Operated by Boston & Me. R. R. for account of these companies, each being credited with one-half of all earnings and charged with one-half of all expenses.	18	
Subsidiary road, fixed money rental. Leased Sept. 1, 1887, for 50 years, for 10 per cent per annum on capital stock and $2,000 per annum for organization.	19	4730
Subsidiary road, fixed money rental. Leased Feb. 21, 1860, for 100 years, for $225,000 cash.	20	
Subsidiary road, fixed money rental. Leased Aug. 14, 1872, for 20 years, at $6,000 per annum; included in the lease to Boston & Me. R. R.	21	
Subsidiary road, fixed money rental. Contract dated May 4, 1871, to continue in force until such time as En. R. R. of Mass., by default, shall cease to pay regular semi-annual dividend of 3 per cent; contract assigned to Boston & Me. R. R. on purchase of En. R. R. of Mass., June 30, 1889.	22	
Subsidiary road, fixed money rental. Leased May 2, 1871, for 99 years; went into effect Jan. 1, 1873, for a rental of $5,700 annually.	23	4731
Subsidiary road, fixed money rental. Leased Jan. 1, 1886, for 50 years, for $250,000 per annum, and all taxes.	24	
Subsidiary road, fixed money rental. Leased to Boston & Me. R. R. April 1, 1887, for 99 years; rental, 7 per cent on its capital stock for 10 years and 8 per cent thereafter.	25	

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	BOSTON AND MAINE RAILROAD COMPANY —Continued.		
	Boston and Lowell Railroad Company—Continued.		
26	Central Massachusetts Railroad Company..	98.77	.....
27	*Connecticut and Passumpsic Rivers Railroad Company.*	110.30	.....
28	*Nashua and Lowell Railroad Company*.....	14 50	.....
29	Peterborough Railroad Company.....	10.50	.....
30	*Northern Railroad Company of New Hampshire.*	82.91	.....
31	Concord and Claremont Railroad Company.	70.90	.....
32	Peterborough and Hillsborough Railroad Company.	18.51	.....
33	Stony Brook Railroad Company.....	13.16	.....
34	Wilton Railroad Company.....	15.50	.....
35	Orchard Beach Railroad Company.....	3.00	3.00

4732

4733 [100]

4734

4735

DEFENDANTS' EXHIBIT 20-D. 1217

Remarks.	No.	
		4736
Subsidiary road, contingent money rental. Leased to Boston & Lowell R. R., Oct. 1, 1886, for 99 years; rental, 20 per cent of gross earnings up to $1,000,000 and 25 per cent of any excess over that amount, deducting from said 20 per cent 5 per cent on $2,000,000 of bonds; lessee to pay $1,500 for organization expenses.		
	[101]	4737
Subsidiary road, fixed money rental. Leased Jan. 1, 1887, for 99 years, at 5 per cent for 10 years and 6 per cent thereafter on capital stock, interest on bonds, and $3,000 for organization expenses, annually; lease assumed by Boston & Me. R. R.	27	
Subsidiary road, contingent money rental. Leased Nov. 10, 1880, for 99 years, for $60,000, $4,000 additional in case gross receipts equal or exceed those of 1880, and $1,000 for organization, annually; lease assumed July 12, 1887, by Boston & Me. R. R., which grants in addition to sums stated in lease 1 per cent annually on capital stock.	28	
Subsidiary road, fixed money rental. Leased April 1, 1873, for 20 years, at 6 per cent on cost of road, and taxes, and $150 for organization per annum. Boston & Lowell R. R. obtained control of the lease Oct. 1, 1880, and operated the road until 1888, when Boston & Me. R. R. assumed the lease.	29	4738
Subsidiary road, fixed money rental. Leased to Boston & Lowell R. R. Jan. 1, 1890, for 99 years; rental, 5 per cent on the Northern R. R. capital stock for the first 7½ years and 6 per cent on the same thereafter. Also principal and interest on $500,000 first mortgage bonds of the Conc. & Claremont R. R., and $100,000 first mortgage bonds of the Peterb. & Hillsb. R. R. Lease assigned to the B. & M. R. R.	30	
Subsidiary road.....	31	
....do	32	
Subsidiary road, fixed money rental. Leased to Boston & Lowell R. R., Jan. 1, 1890; rental, 7 per cent on capital stock, taxes, and $500 for organization expenses per annum; lease assumed by Boston & Me. R. R.	33	4739
Subsidiary road, fixed money rental. Leased to Boston & Lowell R. R. for 99 years from Oct., 1883; rental, $16,800, all public taxes, and $150 for organization, annually; July 12, 1874, lease assigned to Boston & Me. R. R. without consent of lessor; Dec. 19, 1890, lessor assented to assignment of lease at a semi-annual rental of $10,200.	34	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	35	

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	BOSTON AND MAINE RAILROAD COMPANY —Continued.		
36	*Saint Johnsbury and Lake Champlain Railroad Company.*	131.50	131.50
37	York Harbor and Beach Railroad Company...	11.27	11.27

[104]

118	**NEW YORK AND NEW ENGLAND RAILROAD COMPANY.**	360.56	508.92
119	Milford and Woonsocket Railroad Company..	15.33	.....
120	Milford, Franklin and Providence Railroad Company.	4.70	.....
121	*Norwich and Worcester Railroad Company...*	66.16	.....
122	Providence and Springfield Railroad Company	21.34	.....
123	Rhode Island and Massachusetts Railroad Company in Massachusetts.	6.52	.....
124	Rhode Island and Massachusetts Railroad Company in Rhode Island.	7.08	.....
125	Rockville Railroad Company.....	4.43	.....
126	Woonsocket and Pascoag Railroad Company..	9.50	.....
127	**NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY.**	149.14	525.89
128	*Boston and New York Air Line Railroad Company.*	51.50	.....

[106]

129	Colchester Railroad Company.....	3.59	.....
130	Harlem River and Port Chester Railroad Company.	11.50	.....
131	*Hartford and Connecticut Valley Railroad Company.*	46.20	.....
132	Naugatuck Railroad Company.....	56.55	.....

DEFENDANTS' EXHIBIT 20-D. 1219

Remarks.	No.	
		4744
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock and bonds.	36	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	37	
	[105]	
Operating road, independent	118	
		4745
Subsidiary road, contingent money rental. Leased Sept. 30, 1887, for 99 years; annual rental, 15 per cent of gross receipts of this road and the Milf., Frank. & Prov. R. R.	119	
Subsidiary road, contingent money rental. Leased Sept. 30, 1887, for 99 years, for 25 per cent of gross earnings.	120	
Subsidiary road, fixed money rental. Leased Feb. 9, 1869, for 99 years; annual rental, interest on bonds, and 8 per cent on preferred stock.	121	
Subsidiary road, leased for 99 years	122	
Subsidiary road, fixed money rental. Leased Nov. 21, 1887, for 99 years; annual rental, $10,000 and all taxes, assessments, etc.	123	
Subsidiary road, fixed money rental. Leased Oct. 1, 1887, for $10,000 and all taxes, assessments, etc.	124	
Subsidiary road, fixed money rental. Contract of July 1, 1888, provides for the sale of this road to N. Y. & New Eng. R. R., the latter agreeing to pay as rental 5 per cent on purchase price until the transfer of capital stock is made.	125	4746
Subsidiary road, fixed money rental. Leased Feb. 28, 1891, for 99 years; rental 5 per cent interest on stock and bonds.	126	
Operating road, independent	127	
Subsidiary road, fixed money rental. Leased Oct. 1, 1882, for 99 years; rental $120,000 per annum, and interest on its bonds and the bonds of the Colchester R. R.	128	
	[107]	
Subsidiary road, fixed money rental. Leased Sept. 30, 1882, for 999 years. Interest on bonds guaranteed by Boston & N. Y. Air Line R. R.	129	4747
Subsidiary road, fixed money rental. Leased Sept. 30, 1873, for 99 years, to N. Y., New Hav. & Hartf. R. R., for interest on bonds.	130	
Subsidiary road, fixed money rental. Leased April 1, 1887, for 99 years; rental, 4 per cent on capital stock outstanding.	131	
Subsidiary road, fixed monthly rental. Leased April 1, 1887, for 99 years; rental, interest on bonds, and 10 per cent per annum on capital stock.	132	

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY—Continued.		
133	Watertown and Waterbury Railroad Company.	4.44	.....
134	*New Haven and Northampton Company*.....	126.31	.....
135	Holyoke and Westfield Railroad Company..	10.32	.....
136	*Shore Line Railway Company*.....	48.53	.....
137	*New York, Providence and Boston Railroad Company.*	80.28	136.36
138	Pawtuxet Valley Railroad Company.....	5.67	.....
139	*Providence and Worcester Railroad Company*	50.41	.....
140	**OLD COLONY RAILROAD COMPANY**.....	494.91	603.22
141	*Boston and Providence Railroad Company*....	63.69	.....
142	Attleborough Branch Railroad Company....	4.00	.....
143	Chatham Railroad Company.....	7.07	.....
144	Fall River Railroad Company.....	12.25	.....
145	Nantasket Beach Railroad Company.....	6.95	.....
146	Providence, Warren and Bristol Railroad Company.	14.35	.....

DEFENDANTS' EXHIBIT 20-D. 1221

Remarks.	No.	
		4752
Subsidiary road, other relation. Majority of capital stock and all bonds owned by Naugatuck R. R., and included in lease of that company to N. Y., New Hav. & Hartf. R. R.	133	
Subsidiary road, fixed money rental. Leased April 1, 1887, *for* 99 *years; rental,* 1 *per cent on capital stock for* 3 *years,* 2 *per cent for the second* 3 *years,* 3 *per cent for the third* 3 *years, and* 4 *per cent thereafter; interest on bonds, and taxes.*	134	
Subsidiary road, contingent money rental. Leased Dec. 3, 1870, in perpetuity; rental, interest on bonds; in case gross receipts exceed $35,200 per annum, lessee to pay lessor one-half of such excess. Lease assumed by N. Y., New Hav. & Hartf. R. R. with lease of New Hav. & Northamp. Co.	135	4753
Subsidiary road, fixed money rental. Leased Oct. 19, 1870, *in perpetuity; annual rental,* $100,000.	136	
Operating road, subsidiary, fixed money rental. Leased April 1, 1892, *for* 60 *years; rental,* 6 *per cent on capital stock, and payment of all legal obligations of the lessor.*	137	
Subsidiary road, fixed money rental. Leased July 1, 1884, for 99 years; annual rental, 7 per cent on capital stock, interest on bonds, taxes, assessments, etc. Lease assumed by the N. Y., New Hav. & Hartf. R. R. April 1, 1892.	138	
Subsidiary road, fixed money rental. Leased May 1, 1888, *for* 99 *years; rental, interest on bonds, interest not to exceed* $50,000 *on stock,* $300,000 *cash, and* $10,000 *for organization expenses per annum. Lease assumed by the N. Y., New Hav. & Hartf. R. R. April* 1, 1892.	139	4754
Operating road, independent	140	
Subsidiary road, fixed money rental. Leased April 1, 1888, *for* 99 *years; annual rental,* 10 *per cent on capital stock, interest on bonds,* $10,000 *for organization expenses for first* 3 *years, and* $3,000 *thereafter, taxes, assessments, etc.*	141	
Subsidiary road, fixed money rental. Leased Dec. 31, 1870, for 30 years; annual rental, 7 per cent on capital stock; included in lease to Old Colony R. R.	142	
Subsidiary road, contingent money rental. Contract dated Jan. 8, 1888, for 7 years; rental, 30 per cent of gross receipts, payable quarterly.	143	
Subsidiary road, contingent money rental. Leased April 1, 1882, for 99 years; rental, 30 per cent of gross earnings, which is guaranteed to be sufficient to pay interest on bonds.	144	4755
Subsidiary road, fixed money rental. Leased April 1, 1888, for 99 years; lessee guarantees interest on bonds up to $6,250, pays taxes, and has option of purchasing property after 20 years of the lease for $150,000.	145	
Subsidiary road, fixed money rental. Leased July, 1891, for 95 years and 9 months; rental, 5 per cent on capital stock for the first ten years, and 6 per cent for the remainder of the lease; also pay interest and taxes, and not exceeding $500 per annum for salaries.	146	

4756

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	OLD COLONY RAILROAD COMPANY Continued.—		
147	Plymouth and Middleborough Railroad Company.	15.17	15.17
	[118]		
411	**NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY.**	819.45	2,108.66
412	New Jersey Junction Railroad Company.....	4.69	.....
4757			
413	*New York and Harlem Railroad Company*....	135.90	.....
414	*Rome, Watertown and Ogdensburg Railroad Company.*	412.55	.....
415	Niagara Falls Branch Railroad Company...	8.74	.....
4758	[120]		
416	Oswego and Rome Railroad Company.....	28.49	.....
417	Utica and Black River Railroad Company..	149.81	.....
418	Carthage, Watertown and Sacketts Harbor Railroad Company.	29.59	.....
4759			
419	Spuyten Duyvil and Port Morris Railroad Company.	6.04	.....
420	Troy and Greenbush Railroad Company.....	6.00	.....
421	Troy Union Railroad Company.....	5.00	.....

DEFENDANTS' EXHIBIT 20-D. 1223

Remarks.	No.	
		4760
Operating road, subsidiary	147	
	[119]	
Operating road, independent	411	
Subsidiary road, fixed money rental. Leased July 1, 1886, for 100 years, with privilege of further term of 100 years, at an annual rental of interest at 4 per cent on its bonds.	412	4761
Subsidiary road, fixed money rental. Leased April 1, 1873, for 401 years; annual rental, interest on funded debt and 8 per cent on capital stock.	413	
Subsidiary road, fixed money rental. Leased Mar. 14, 1891, in perpetuity; rental, 5 per cent on capital stock and $15,000 per annum until April 1, 1901, and thereafter $7,000 per annum.	414	
Subsidiary road, fixed money rental. Leased Sept. 21, 1881, in perpetuity, at 7 per cent per annum on capital stock, included in lease to N. Y. Cent. & Hud. Riv. R. R., dated March 14, 1891.	415	
	[121]	4762
Subsidiary road, fixed money rental. Leased Dec. 2, 1869, in perpetuity; annual rental, interest on first mortgage bonds and $24,000 cash. Lease amended March 2, 1891; rental, 7 per cent on $350,000 first mortgage bonds and 5 per cent on $400,000 second mortgage bonds per annum; included in lease to N. Y. Cent. & Hud. Riv. R. R., dated March 14, 1891.	416	
Subsidiary road, fixed money rental. Leased April 14, 1886, for the term of its corporate existence; annual rental, 7 per cent on capital stock, interest on bonds, and $4,500 for organization expenses; included in lease to N. Y. Cent. & Hud. Riv. R. R., dated March 14, 1891.	417	
Subsidiary road, contingent money rental. Leased for the term of its corporate existence for 37½ per cent of gross earnings; included in the lease of Utica & Black Riv. R. R., to Rome, Watert. & Ogdensb. R. R. and to N. Y. Cent. & Hud. Riv. R. R., dated March 14, 1891.	418	4763
Subsidiary road, fixed money rental. Leased Nov. 1, 1871, to Dec. 31, 1970; annual rental, 8 per cent on cost, $989,000.	419	
Subsidiary road, fixed money rental. Leased Feb. 5, 1851, in perpetuity, at an annual rental of $19,250.	420	
Subsidiary road, other relation. One-half owned by N. Y. Cent. & Hud. Riv. R. R., and one-fourth each by Del. & Hud. Canal Co. and Fitchburg R. R. These companies pay this proportion of maintenance and operation.	421	

	No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
4764		**NEW YORK CENTRAL AND HUDSON RIVER ROAD COMPANY**—Continued.		
	422	**West Shore Railroad Company**.....	495.20	.....
	423	Amsterdam, Chuctanunda and Northern Railroad Company.	1.50	.....
	424	Beech Creek Railroad Company.....	157.62	153.42
	425	Buffalo and Erie Basin Railroad Company..	.25	.25
4765	426	Walkill Valley Railroad Company.....	32.88	37.69

[124]

	479	**PENNSYLVANIA RAILROAD COMPANY**.....	493.98	2,638.18
	480	Bald Eagle Valley Railroad Company.....	90.68	.....
	481	Bedford and Bridgeport Railway Company...	49.17	.....
4766				
	482	Bustleton Railroad Company.....	4.16	.....
	483	Cambria and Clearfield Railroad Company....	60.95	.....
	484	Columbia and Port Deposit Railway Company.	39.83	.....
	485	Columbus, Kinkora and Springfield Railroad Company.	14.16	.....
4767				
	486	Downingtown and Lancaster Railroad Company.	37.98	.....
	487	Freehold and Jamesburg Agricultural Railroad Company.	27.54	.....

DEFENDANTS' EXHIBIT 20-D. 1225

Remarks.	No.	
		4768
Subsidiary road, fixed money rental. Leased Jan. 1, 1886, for 475 years, with privilege of further term of 500 years; annual rental, interest at 4 per cent on bonds.	422	
Subsidiary road, other relation. Operated under verbal agreement.	423	
Operating road, subsidiary, fixed money rental. Leased Dec. 15, 1890, for 999 years, from Oct. 1, 1890; rental, 4 per cent interest per annum on not exceeding $5,000,000 first mortgage bonds and 4 per cent dividend on $5,000,000 capital stock.	424	
Subsidiary road.....	425	
Operating road, subsidiary, other relation. Controlled through ownership of capital stock and bonds held in the interests of W. Shore R. R.	426	4769

[125]

Operating road, independent.....	479	
Subsidiary road, contingent money rental. Leased July 1, 1864, for 99 years; rental, 40 per cent of gross receipts. Lease does not apply to the Nittany Brh., which is operated by the Pennsylvania R. R. Co. Net earnings paid to Bald Eagle Vy. R. R.	480	
Subsidiary road, contingent money rental. Operated under resolutions of the directors of both companies, which took effect May 1, 1891, and is terminable at the option of either party, on 30 days' notice. Net earnings payable to this company.	481	4770
Subsidiary road, contingent money rental. Operated under resolutions of the directors of both companies, which took effect Jan. 1, 1891, and is terminable at the option of either party, on 30 days' notice. Net earnings payable to this company.	482	
Subsidiary road, contingent money rental. Operated under resolutions of board of directors in effect Sept. 24, 1888, terminable at any time on 30 days' notice; net earnings payable to this company.	483	
Subsidiary road, contingent money rental. Agreement dated July 1, 1890, terminable at any time, on 30 days' notice; rental, net earnings.	484	
Subsidiary road, contingent money rental. Lease dated Sept. 23, 1889; runs from year to year, unless terminated by 6 months' notice. Lessee collects all earnings, pays all expenses for operating the road and maintenance of way and taxes; balance, if any, is paid to lessor.	485	4771
Subsidiary road, contingent money rental. This company is the reorganized E. Brandyw. & Waynesb. R. R.; operated under resolutions of board of directors in effect Aug. 1, 1888, terminable at any time, on 30 days' notice; net earnings paid to this company.	486	
Subsidiary road, contingent money rental. Contract dated July 16, 1879, terminable on 30 days' notice; rental, net earnings.	487	

	No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
4772		**PENNSYLVANIA RAILROAD COMPANY—** Continued.		
	488	Frederick and Pennsylvania Line Railroad Company.	28.00	.....
	489	Hanover and York Railroad Company.....	18.35	.....
	490	Harrisburg, Portsmouth, Mount Joy and Lancaster Railroad Company.	53.74	.....
	491	Johnsonburg Railroad Company.....	19.69	.....
4773				
	492	Kensington and Tacony Railroad Company...	3.77	.....
	493	Lewisburg and Tyrone Railroad Company....	85.08	.....
	494	Littlestown Railroad Company.....	9.30	.....
	495	Long Beach Railroad Company.....	20.50	.....
	496	McKeesport and Bessemer Railroad Company.	1.47	.....
4774	497	Mifflin and Centre County Railroad Company.	12.31	.....
	498	Millstone and New Brunswick Railroad Company.	6.64	.....
	499	Nescopec Railroad Company.....	11.96	.....
	500	New York Bay Railroad Company.....	8.37	.....
	501	North and West Branch Railway Company...	47.82	.....
4775	502	Pennsylvania Schuylkill Valley Railroad Company.	120.19	.....
	503	Perth Amboy and Woodbridge Railroad Company.	6.40	.....

DEFENDANTS' EXHIBIT 20-D. 1227

Remarks.	No.	
		4776
Subsidiary road, fixed money rental. Leased Jan. 1, 1875, for 999 years; lessee operates the road at cost.	488	
Subsidiary road, contingent money rental. Leased April 8, 1875, during the term of charter, to April 23, 1893; rental, net earnings.	489	
Subsidiary road, fixed money rental. Leased Jan. 1, 1861, for 999 years; annual rental, 7 per cent on capital stock, interest on bonds, all taxes levied on stock and bonds, and organization expenses up to $2,000.	490	
Subsidiary road, contingent money rental. Leased July 8, 1889, for 50 years; rental, 5 per cent per annum on capital stock, interest on bonds and taxes, balance divided equally between lessee and lessor.	491	
		4777
Subsidiary road, fixed money rental. Leased Jan. 1, 1887, for 5 years, at $30 per annum.	492	
Subsidiary road, contingent money rental. Leased Jan. 1, 1880, for 99 years; rental, net earnings. "Line owned" includes .24 mile over the Lewisburg Bridge.	493	
Subsidiary road, contingent money rental. Leased April 8, 1875, for 999 years; advancements made by lessee to pay taxes, operating expenses, interest on bonds to be repaid from earnings, any surplus remaining after such payments to be paid lessor.	494	
Subsidiary road, contingent money rental. Leased June 28, 1886, terminable on 30 days' notice; lessee operates the road at cost, paying over to lessor any surplus remaining.	495	
Subsidiary road, contingent money rental. Leased July 20, 1891, terminable on 30 days' notice; rental, net earnings.	496	
Subsidiary road, contingent money rental. Leased March 19, 1863, for 999 years; rental, net earnings.	497	4778
Subsidiary road, contingent money rental. Operated since Feb. 1, 1886, by Pennsylvania R. R., under a temporary arrangement, without any written contract, that company paying all expenses and charging deficiency in net receipts to this company.	498	
Subsidiary road, contingent money rental. Operated under resolutions of board of directors in effect April 25, 1887, terminable at any time, on 30 days' notice; net earnings payable to this company.	499	
Subsidiary road, other relation. Controlled through ownership of capital stock.	500	
Subsidiary road, contingent money rental. Agreement dated Nov. 23, 1881, to continue until Sept. 1, 1901; net earnings to be paid this company.	501	
Subsidiary road, contingent money rental. Leased Dec. 1, 1885, for 50 years; rental, net earnings.	502	4779
Subsidiary road, contingent money rental. Operated as of date Jan. 1, 1889, by virtue of resolutions adopted May 6, 1889, by stockholders of this company, and June 26, 1889, by directors of Pennsylvania R. R.; net earnings paid to this company.	503	

4780 [126]

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	PENNSYLVANIA RAILROAD COMPANY—Continued.		
504	**Philadelphia and Erie Railroad Company**	287.56	.....
505	Philadelphia and Long Branch Railroad Company.	49.09	.....
506	Philadelphia, Germantown and Chestnut Hill Railroad Company.	6.75	.....
4781 507	Pittsburgh, Virginia and Charleston Railway Company.	72.52	.....
508	Pomeroy and Newark Railroad Company	26.70	.....
509	Ridgway and Clearfield Railroad Company	27.23	.....
510	Riverfront Railroad Company	3.86	.....
511	South Fork Railroad Company	8.12	.....
512	Southwest Pennsylvania Railway Company	108.96	.....
4782 513	Sunbury and Lewistown Railway Company	43.45	.....
514	Sunbury, Hazelton and Wilkesbarre Railway Company.	43.44	.....
515	Susquehanna and Clearfield Railroad Company	24.89	.....
516	Tipton Railroad Company	4.44	.....
517	Trenton Cut Off Railroad Company	15.73	.....
4783 518	Turtle Creek Valley Railroad Company	6.37	.....
519	Tyrone and Clearfield Railway Company	124.32	.....
520	**United New Jersey Railroad and Canal Company.**	144.72	.....

DEFENDANTS' EXHIBIT 20-D. 1229

Remarks.	No.	[127] 4784
Subsidiary road, contingent money rental. Lease executed Jan. 6, 1862; modified Jan. 1, 1870, for 999 years, from Jan. 6, 1862; Surplus of gross receipts, after paying operating expenses, etc., to be applied to organization expenses and interest on bonds; any balance to be paid lessor.	504	
Subsidiary road, contingent money rental. Leased Jan. 1, 1884, for 50 years; any surplus of earnings after paying operating and other expenses to be paid lessor.	505	
Subsidiary road, contingent money rental. Leased May 1, 1883, for 30 years; rental, net earnings.	506	
Subsidiary road, contingent money rental. Leased April 1, 1882, for 50 years; rental, net earnings.	507	4785
Subsidiary road, contingent money rental. Leased March 1, 1880, for 99 years; rental, net earnings.	508	
Subsidiary road, contingent money rental. Operated under resolutions of board of directors, adopted July 23, 1884, terminable at option of either party, on 30 days' notice; net earnings paid to this company.	509	
Subsidiary road, fixed money rental. Leased May 1, 1882, for 50 years; rental, $23,000 per annum.	510	
Subsidiary road, contingent money rental. Agreement dated Aug. 15, 1891, terminable at the option of either party on 30 days' notice, in writing; net earnings paid to this company.	511	
Subsidiary road, contingent money rental. Leased April 1, 1892, for one year, renewable every year; net earnings paid to this company.	512	
Subsidiary road, contingent money rental. Leased July 1, 1876, for 99 years; operated for cost and one-half of net earnings after payment of interest on outstanding bonds.	513	4786
Subsidiary road, contingent money rental. Leased May 1, 1878, for 50 years; net earnings paid to this company.	514	
Subsidiary road, contingent money rental. Operated under resolutions of board of directors adopted July 23, 1884, terminable at the option of either party, on 30 days' notice; net earnings paid to this company.	515	
Subsidiary road, contingent money rental. Agreement dated May 1, 1886, terminable at the option of either party on 30 days' notice in writing; net earnings paid to this company.	516	
Subsidiary road, fixed money rental. Leased Jan. 1, 1892, for one year, to be continued from year to year, until terminated by either party on six months' notice; rental $1.	517	
Subsidiary road, contingent money rental. Agreement dated Sept. 28, 1891, terminable at the option of either party on 30 days' notice in writing; net earnings paid to this company.	518	4787
Subsidiary road, fixed money rental. Leased Jan. 1, 1882, for 50 years; lessee to pay annually all taxes, interest on bonds, sinking-fund organization expenses up to $1,000, and 5 per cent on capital stock.	519	
Subsidiary road, contingent money rental. Leased June 30, 1871, for 999 years; annual rental, 10 per cent on capital stock, taxes, interest on funded and other debts, damages, losses, etc.	520	

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	PENNSYLVANIA RAILROAD COMPANY—Continued.		
521	Belvidere Delaware Railroad Company.....	79.04	.....
522	Enterprise Railroad Company.....	1.26	.....
523	Martins Creek Railroad Company of New Jersey.	.14	.....
524	Martins Creek Railroad Company of Pennsylvania.	.15	.....
525	Camden and Burlington County Railroad Company.	29.61	.....
526	Mount Holly, Lumberton and Medford Railroad Company.	5.95	.....
527	Philadelphia and Trenton Railroad Company.	26.50	.....
528	Connecting Railway Company.....	6.75	.....
529	Rocky Hill Railroad and Transportation Company.	2.38	.....
530	Vincentown Branch Railroad Company.....	2.84	.....
531	West Chester Railroad Company.....	5.00	.....
532	Western Pennsylvania Railroad Company....	117.16	.....
[128]			
533	Allegheny Valley Railway Company.....	260.30	260.30
534	Camden and Atlantic Railroad Company.....	68.78	81.39

DEFENDANTS' EXHIBIT 20-D. 1231

Remarks.	No.	
		4792
Subsidiary road, contingent money rental. Leased Jan. 1, 1876, to June 30, 1870; assigned to Pennsylvania R. R. March 7, 1876; revenue to be applied, first, to operation; second, to interest on bonds; any balance to be paid lessor.	521	
Subsidiary road, other relation. Controlled through ownership of capital stock.	522	
....do	523	
....do	524	
Subsidiary road, fixed money rental. Leased April 24, 1868, for the term of its corporate existence, to Camden & Amb. R. R., one of the constituent companies of United N. J. R. R. & Canal Co.; annual rental 6 per cent on capital stock and bonds and $500 for organization expenses; lease assigned to Pennsylvania R. R. June 30, 1871.	525	4793
Subsidiary road, fixed money rental. Leased March 11, 1873, during corporate existence, at $11,189 per annum; lease assigned to Pennsylvania R. R. June 13, 1871.	526	
Subsidiary road, fixed money rental. Leased June 30, 1871, from United N. J. R. R. & Canal Co. for 999 years; annual rental, 10 per cent on capital stock (excluding 7,650 shares owned by United N. J. R. R. & Canal Co.), taxes, assessments, etc.	527	
Subsidiary road, fixed money rental. Leased Feb. 18, 1863, for 999 years; annual rental, 6 per cent on capital stock, 6 per cent on bonds and taxes; included in lease to Pennsylvania R. R.	528	
Subsidiary road, fixed money rental. Leased Nov. 22, 1869, for the term of its charter, to Camden & Amb. R. R., one of the constituent companies of United N. J. R. R. & Canal Co., at 6 per cent per annum on capital stock; lease assigned to the Pennsylvania R. R. Nov., 1871.	529	4794
Subsidiary road, fixed money rental. Leased April 7, 1868, for corporate existence; annual rental, 6 per cent on capital stock owned by individuals, which is $15,000; the other $10,000 is owned by lessee, and nothing is paid on it.	530	
Subsidiary road, fixed money rental. Leased Aug. 6, 1879, for 99 years; annual rental, 5 per cent on capital stock, interest on bonds, sinking-fund charges, and taxes.	531	
Subsidiary road, contingent money rental. Leased June 1, 1888, for 40 years; net earnings paid to this company.	532	
		4795
		[129]
Operating road, subsidiary, other relation; majority of capital stock and about one-fifth of outstanding bonds owned by Pennsylvania R. R.	533	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	534	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
		PENNSYLVANIA RAILROAD COMPANY—Continued.		
4796	535	**Philadelphia, Marlton and Medford Railroad Company.**	11.71	.....
	536	*Cumberland Valley Railroad Company*.....	*62.18*	*144.93*
	537	**Cumberland Valley and Martinsburg Railroad Company.**	33.65	.....
	538	**Dillsburg and Mechanicsburg Railroad Company.**	7.70	.....
4797	539	**Southern Pennsylvania Railway and Mining Company.**	21.40	.....
	540	**Junction Railroad Company**.....	3.56	3.56
	541	**Northern Central Railway Company**.....	148.24	372.83
	542	**Elmira and Lake Ontario Railroad Company**	99.61	.....
	543	**Elmira and Williamsport Railroad Company**	75.50	.....
4798				
	544	**Lykens Valley Railroad and Coal Company.**	19.70	.....
	545	**Shamokin Valley and Pottsville Railroad Company.**	29.78	.....
	546	**Union Railroad Company (of Baltimore)**....	9.62	9.62
	547	***Philadelphia, Wilmington and Baltimore Railroad Company.***	120.59	664.70
	548	***Baltimore and Potomac Railroad Company***..	92.03	.....
4799				
	549	**Catonsville Short Line Railroad Company.**	3.80	.....
	550	**Cambridge and Seaford Railroad Company**..	27.24	.....

DEFENDANTS' EXHIBIT 20-D. 1233

Remarks.	No.	
		4800
Subsidiary road, contingent money rental. Leased Jan. 31, 1885, terminable on 30 days' notice; surplus from operation paid lessor.	535	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	536	
Subsidiary road, contingent money rental. Leased March 17, 1888, for 99 years; receipts from operations to be applied to maintain the road, pay operating expenses, taxes, insurance, etc.; balance to be paid lessor.	537	
Subsidiary road, contingent money rental. Leased Jan. 1, 1873, for 99 years; terms of lease same as Cumb. Vy. & Martinsb. R. R.	538	
Subsidiary road, contingent money rental. Leased March 1, 1870, for 199 years; terms of lease same as Cumb. Vy. & Martinsb. R. R.	539	4801
Operating road, subsidiary, other relation. The Pennsylvania, Phila., Wilm. & Balt., and Phila. & Read. R. Rs. use this company's tracks, paying a certain rate per car per mile, the Junction R. R. paying the company moving the traffic, for the use of the motive power.	540	
Operating road, subsidiary, other relation. Controlling interest in capital stock owned by Pennsylvania R. R.	541	
Subsidiary road, contingent money rental. Contract terminable at the option of either party, on 30 days' notice; net receipts, after paying charges for use of equipment, paid to this company. Contract took effect Jan. 1, 1877.	542	
Subsidiary road, fixed money rental. Leased May 1, 1863, for 999 years; annual rental, 7 per cent on preferred and 5 per cent on common stock; interest on bonds and on $3,000 for organization expenses.	543	4802
Subsidiary road, fixed money rental. Leased March 1, 1866, for 999 years, to Summit Brh. R. R.; annual rental, $62,500, taxes, charges, etc.	544	
Subsidiary road, fixed money rental. Leased Feb. 27, 1863, for 999 years; annual rental, 7 per cent interest on bonds, 6 per cent on capital stock, and taxes.	545	
Operating road, subsidiary, other relation. Controlled through ownership of entire capital stock.	546	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock; "line owned" includes 3.70 miles leased to the Col. & Port Deposit R. R.	547	
Subsidiary road, contingent money rental. Contract took effect Nov. 1, 1891, and is terminable at the option of either company upon giving 30 days' notice in writing; net earnings paid to this company.	548	4803
Subsidiary road, contingent money rental. Leased Dec. 6, 1883; the lessor receives 40 per cent of net earnings. Leased to the Phila., Wilm. & Balt. R. R. with the Balt. & Pot. R. R., Nov. 1, 1891.	549	
Subsidiary road, contingent money rental. Agreement dated May 16, 1883; took effect June 1, 1883; terminable on 30 days' notice; net earnings paid to this company.	550	

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	PENNSYLVANIA RAILROAD COMPANY—Continued.		
551	Delaware Railroad Company.....	117.00	.....
552	Delaware and Chesapeake Railway Company	54.30	.....
553	Delaware, Maryland and Virginia Railroad Company.	97.53	.....
554	Philadelphia and Baltimore Central Railroad Company.	73.68	.....
555	Chester Creek Railroad Company.....	6.69	.....
556	Queen Anne's and Kent Railroad Company..	25.90	.....
557	Trenton Delaware Bridge Company.....	.19	.....
558	West Jersey Railroad Company.....	185.80	231.12
559	Alloway and Quinton Railroad Company....	4.22	.....
560	West Jersey and Atlantic Railroad Company	39.50	.....
[142]			
787	**LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY.**	859.15	1,445.19
788	Detroit and Chicago Railroad Company.....	67.60	.....
[144]			
789	Detroit, Hillsdale and Southwestern Railroad Company.	65.20	.....
790	Detroit, Monroe and Toledo Railway Company	62.36	.....

DEFENDANTS' EXHIBIT 20-D. 1235

Remarks.	No.	
		4808
Subsidiary road, contingent money rental. Leased May 4, 1855, for 21 years; renewed April 3, 1875, for 21 years from May 4, 1876; annual rental, 6 per cent on capital stock, interest on funded and floating debt, and one-half of any surplus over 6 per cent of net earnings.	551	
Subsidiary road, contingent money rental. Agreement took effect July 1, 1882; terminable on 30 days' notice; net earnings paid to this company.	552	
Subsidiary road, contingent money rental. Agreement dated Aug. 1, 1885; took effect July 1, 1885; terminable on 30 days' notice; net earnings paid to this company.	553	
Subsidiary road, contingent money rental. Agreement dated Aug. 1, 1881; took effect Sept. 1, 1881; terminable on 6 months' notice; net earnings paid to this company.	554	4809
Subsidiary road, fixed money rental. Leased Jan. 13, 1868, for 999 years, rental, 6 per cent on capital stock and bonds, and taxes.	555	
Subsidiary road, contingent money rental. Agreement dated Oct. 14 and 15, 1881; took effect Sept. 1, 1881; terminable on 30 days' notice; net earnings paid to this company.	556	
Subsidiary road, fixed money rental. Trackage contract, June 20, 1877, for 993 years, 5 months and 10 days; annual rental, $28,000 and taxes.	557	
Operating road, subsidiary, other relation. Controlled through ownership of capital stock.	558	
Subsidiary road, fixed money rental. Leased Jan. 1, 1892. May be terminated upon 6 months' written notice. Rental, $1 per annum.	559	
Subsidiary road, contingent money rental. Leased Dec. 29, 1879, terminable at one year's notice; lessee to furnish equipment and operate the road at cost, paying lessor any surplus from operation.	560	4810
	[143]	
Operating road, independent. "Line operated" includes 7.20 miles leased from Battle Ck. & Sturgis Ry.	787	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	788	
	[145]	4811
Subsidiary road, fixed money rental. Leased Sept. 5, 1881, in perpetuity; annual rental, $54,000 and $500 for organization expenses.	789	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	790	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
4812		**LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY**—Continued.		
	791	Fort Wayne and Jackson Railroad Company..	97.83	.....
	792	Jamestown and Franklin Railroad Company..	50.91	.....
	793	Kalamazoo and White Pigeon Railroad Company.	36.57	.....
4813	794	Kalamazoo, Allegan and Grand Rapids Railroad Company.	58.42	.....
	795	Mahoning Coal Railroad Company.....	50.20	.....
	796	Northern Central Michigan Railroad Company	61.14	.....
	797	Sturgis, Goshen and Saint Louis Railroad Company.	35.81	.....
	809	**MICHIGAN CENTRAL RAILROAD COMPANY.**	270.07	1,639.87
4814	810	Battle Creek and Sturgis Railway Company..	33.80	.....
	811	Bay City and Battle Creek Railway Company.	18.00	.....
	812	Canada Southern Bridge Company.....	3.66	.....
	813	Detroit and Bay City Railroad Company.....	154.40	.....
	814	Grayling, Twin Lakes and Northeastern Railroad Company.	27.67	.....
	815	Grand River Valley Railroad Company.....	83.79	.....
4815				
	816	Jackson, Lansing and Saginaw Railroad Company.	295.10	.....
	817	Joliet and Northern Indiana Railroad Company.	45.00	.....

DEFENDANTS' EXHIBIT 20-D. 1237

Remarks.	No.	
		4816
Subsidiary road, contingent money rental. Leased Aug. 24, 1882, in perpetuity, from Sept. 1, 1882; annual rental 5½ per cent on preferred stock; should net earnings in any year, after Sept. 1, 1887, exceed 8 per cent on preferred stock, lessee will pay amount of such excess up to 2 per cent on common stock.	791	
Subsidiary road, contingent money rental. Leased Jan. 1, 1890, for 5 years; annual rental 30 per cent of gross earnings, and all taxes, except those imposed by United States or State of Pennsylvania upon tonnage, dividends, or interest on bonds.	792	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	793	
Subsidiary road, fixed money rental. Leased Sept. 21, 1869, for 999 years; annual rental 6 per cent on capital stock, interest on bonds, and all taxes and assessments.	794	4817
Subsidiary road, contingent money rental. Leased July 1, 1884, in perpetuity; annual rental, 40 per cent of gross earnings; if that is insufficient to pay interest on bonds, 5 per cent on preferred stock, and $1,000 for corporate expenses, lessee will advance necessary amount and charge same against future rental.	795	
Subsidiary road, other relation. Owned entirely by L. Shore & Mich. Sn. Ry.	796	
Subsidiary road, other relation. Controlled through ownership of capital stock and bonds; "line owned" includes 7.20 miles leased from Battle Ck. & Sturgis Ry.	797	
Operating road, independent. Of "line operated," 378.91 miles not in United States.	809	
Subsidiary road, fixed money rental. The Mich. Cent. R. R. also owns majority of capital stock. Of "line owned," 7.20 miles leased to and operated by L. Shore & Mich. Sn. Ry., and included in "line owned" by the Sturgis, Goshen and St. L. R. R.	810	4819
Subsidiary road, fixed money rental. Agreement dated Feb. 1, 1890, in perpetuity, rental, interest on bonds, and taxes.	811	
Subsidiary road, contingent money rental. Operated under agreement dated Dec. 12, 1882, for 21 years, with Can. Sn. Ry., which owns substantially all its capital stock and bonds, the bridge company being credited with its earnings and charged with its expenses.	812	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	813	
Subsidiary road, other relation. Controlled through ownership of capital stock.	814	
Subsidiary road, fixed money rental. Leased Jan. 20, 1870, to continue during the corporate existence of lessor; lessee guarantees floating and funded debt of lessor, interest thereon, 5 per cent per annum on stock, taxes, assessments, etc.	815	4820
Subsidiary road, fixed money rental. Leased Sept. 1, 1871, during corporate existence of the two companies; lessee pays principal and interest on bonds of lessor and a dividend of 3½ per cent per annum.	816	
Subsidiary road, fixed money rental. Operated under contracts executed Sept. 7 and 26, 1854; on completion turned over to Mich. Cent. R. R. to operate forever at an annual rental of $89,000.	817	

4820

No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
	MICHIGAN CENTRAL RAILROAD COMPANY —Continued.		
818	Kalamazoo and South Haven Railroad Company.	39.50	.....
819	Michigan Air Line Railroad Company.....	115.16	.....
820	Michigan, Midland and Canada Railroad Company.	14.68	.....

4821 [146]

821	Saginaw Bay and Northwestern Railroad Company.	87.21	.....
822	Toledo and Michigan Belt Line Railway Company.	3.05	.....
823	Toledo, Canada Southern and Detroit Railway Company.	55.87	.....
842	**PENNSYLVANIA COMPANY**.....	.....	1,148.64
843	Calumet River Railway Company.....	4.43	.....
844	Cleveland and Pittsburgh Railroad Company..	198.34	.....

4822

845	Salineville Railroad Company.....	3.00	.....
846	Erie and Pittsburgh Railroad Company.....	84.47	.....

[148]

4823

847	Indianapolis and Vincennes Railroad Company.	133.09	.....
848	Pittsburgh, Fort Wayne and Chicago Railway Company.	469.89	.....

DEFENDANTS' EXHIBIT 20-D. 1239

Remarks. No. 4824

Subsidiary road, fixed money rental. Leased July 1, 1870, in perpetuity; lessee to pay taxes and interest on bonds. 818

Subsidiary road, fixed money rental. Leased Jan. 1, 1870, for 999 years, lessee guaranteeing principal and interest of bonds. 819

Subsidiary road, other relation. Operated under agreement dated Dec. 11, 1882, with Can. Sn. Ry., which owns a majority of its capital stock and all its bonds, Mich. Midl. & Can. R. R. being credited with its earnings and charged with its expenses. 820

[147] 4825

Subsidiary road, other relation. Controlled through ownership of capital stock. 821

Subsidiary road 822

Subsidiary road, other relation. Operated under agreement dated Dec. 12, 1882, for 21 years, with the Can. Sn. Ry., which owns substantially all its capital stock and bonds, Tol., Can. Sn. & Det. Ry. being credited with its earnings and charged with its expenses. 823

Operating road, independent..... 842

Subsidiary road, other relation. Controlled through ownership of capital stock. "Line owned" not in operation. 843

Subsidiary road, fixed money rental. Leased to Pennsylvania R. R. Dec. 1, 1871, for 999 years; lessee guarantees principal, interest, and sinking fund charges on bonds, 7 per cent on capital stock, $10,000 for organization annually, taxes, assessments, etc.; lease transferred to Pennsylvania Co., April 14, 1873. 844 4826

Subsidiary road. Private coal road; no rolling stock. Feeder to Clev. & Pittsb. R. R., at Salineville Station, Ohio, and operated by that road since Nov., 1891. 845

Subsidiary road, fixed money rental. Leased to Pennsylvania R. R. Mar. 1, 1870, *for* 999 *years; annual rental,* 7 *per cent on capital stock and bonds; lease transferred to Pennsylvania Co., April* 1, 1871. 846

[149] 4827

Subsidiary road, contingent money rental. Leased Jan. 1, 1879, for 99 years; net earnings paid to lessor to be applied to payment of interest on bonds. 847

Subsidiary road, fixed money rental. Leased July 1, 1869, *for* 999 *years; annual rental, interest on bonds, sinking fund,* 7 *per cent on capital stock, organization expenses, and taxes.* 848

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
		PENNSYLVANIA COMPANY—Continued.		
4828	849	Massillon and Cleveland Railroad Company.	12.23	.....
	850	New Castle and Beaver Valley Railroad Company.	14.98	.....
	851	Pittsburgh, Youngstown and Ashtabula Railroad Company.	125.19	.....
4829	852	South Chicago and Southern Railroad Company.	10.25	.....
	853	State Line and Indiana City Railway Company	3.36	.....
	854	Toledo, Walhonding Valley and Ohio Railroad Company.	125.38	.....
	855	Cincinnati and Muskingum Valley Railway Company.	148.45	148.45
	856	Grand Rapids and Indiana Railroad Company	433.43	589.33
	857	Cincinnati, Richmond and Fort Wayne Railroad Company.	85.60	.....
4830				
	858	Muskegon, Grand Rapids and Indiana Railroad Company.	36.85	.....
	859	Traverse City Railroad Company.....	26.00	.....
	860	**Pittsburgh, Cincinnati, Chicago and Saint Louis Railway Company.**	1,082.09	1,394.18
	861	Chartiers Railway Company.....	22.76	.....
	862	Chartiers Connecting Railroad Company..	.72	.....
4831	863	Englewood Connecting Railway Company...	2.35	.....
	864	Little Miami Railroad Company.....	101.50	.....
	865	Columbus and Xenia Railroad Company..	54.74	.....

DEFENDANTS' EXHIBIT 20-D. 1241

Remarks.	No.	
Subsidiary road, contingent money rental. Leased May 22, 1869, for 99 years, at a rental of 40 per cent of gross earnings, minimum being fixed at $20,000 a year; lease transferred to Pennsylvania Co., July 1, 1869.	849	4832
Subsidiary road, contingent money rental. Leased June 29, 1865, for 99 years at a rental of 40 per cent of gross earnings; lease assigned to Pennsylvania R. R. June 7, 1869, and by the latter to Pennsylvania Co., June 29, 1874, to take effect as of date April 1, 1871.	850	
Subsidiary road, contingent money rental. Leased Aug. 1, 1887, for 1 year, and thereafter from year to year subject to termination on 12 months' written notice from either party; operated by lessee at cost.	851	
Subsidiary road, contingent money rental. No contract; operated at cost under a provisional arrangement.	852	4833
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	853	
Subsidiary road, contingent money rental. Leased Jan. 1, 1879, for 99 years, each year's surplus, if any, after deducting taxes, repairs, operating expenses, etc., to be paid lessor. Of "line owned," 45.40 miles not in operation.	854	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	855	
Operating road, subsidiary, other relation. Controlled by virtue of a contract, in effect from Oct. 1, 1869, for 30 years, under which Pennsylvania Co. guarantees $4,000,000 of its first-mortgage land-grant bonds.	856	
Subsidiary road, contingent money rental. Leased Jan. 1, 1871, for 99 years; rental, net earnings. Bond interest guaranteed by Pennsylvania Co., Pittsb., Cin., Chic. & St. L., and Gr. Rap. & Ind. R. Rs., each, one-third of any deficiency of net earnings to pay coupons.	857	4834
Subsidiary road, contingent money rental. Leased Dec. 1, 1886, for 99 years; rental, net earnings, with a minimum guarantee of interest on bonds or $37,500 per annum.	858	
Subsidiary road, contingent money rental. Leased Jan. 1, 1883, for 50 years; rental, net earnings, with a minimum guarantee of interest on bonds or $7,500 per annum.	859	
Operating road, subsidiary, other relation. Controlled through ownership of capital stock and bonds.	860	
Subsidiary road, contingent money rental. Leased Dec. 8, 1871, for 99 years, from Jan. 1, 1872; rental, net earnings.	861	
Subsidiary road, other relation. Controlled through ownership of capital stock.	862	
Subsidiary road, other relation. Operated and maintained at cost, any surplus earnings paid to lessor; controlled through ownership of entire capital stock.	863	4835
Subsidiary road, fixed money rental. Leased Dec. 1, 1869, for 99 years, renewable forever; annual rental, 8 per cent on capital stock, interest on bonds, and organization expenses.	864	
Subsidiary road, fixed money rental. Leased Nov. 30, 1868, for 99 years; renewable forever; annual rental, 8 per cent on capital stock, interest on bonds; included in lease of Little Miami R. R. to Pennsylvania Co.	865	

4836

No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
	PENNSYLVANIA COMPANY—Continued.		
866	Dayton and Western Railroad Company...	37.23	.....
867	Ohio Connecting Railway Company.....	3.27	.....
868	Pittsburgh, Wheeling and Kentucky Railroad Company.	28.04	.....
869	Steubenville Extension Railroad Company..	1.23	.....

DEFENDANTS' EXHIBIT 20-D. 1243

Remarks.	No.
Subsidiary road, fixed money rental. Leased Dec. 1, 1869, for 99 years, renewable forever; rental, interest on bonds; included in lease of Little Miami R. R. to Pennsylvania Co.	866
Subsidiary road, contingent money rental. Operated at cost; net earnings paid to lessor. Contract dated Dec. 18, 1890, and continuing in force, subject to termination by either party, on 30 days' written notice.	867
Subsidiary road, fixed money rental. Leased Feb. 25, 1878, for 99 years; lessee operates the road at cost, and pays net earnings to lessor.	868
Subsidiary road, fixed money rental. Owned by Pennsylvania R. R., and leased April 1, 1871, to Pennsylvania Co. for 999 years; sublet, Nov. 1, 1876, to Pittsb., Cin. & St. L. Ry. for 25 years; rental, 5 per cent per annum on cost.	869

[Defendants' Exhibit 20-E.]

Extracts from

4838

INTERSTATE COMMERCE COMMISSION REPORT, 1893.

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4839

4840 [96]

REPORT OF THE INTERSTATE COMMERCE COMMISSION.

CLASSIFICATION OF RAILWAYS AND MILE

[The above running title cont

No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
13	**BOSTON AND MAINE RAILROAD COMPANY.**	365.55	1,293.39
14	BOSTON AND LOWELL RAILROAD COMPANY.....	98.09	.....
4841			
15	Central Massachusetts Railroad Company...	98.77	.....
16	*Connecticut and Passumpsic Rivers Railroad Company.*	110.30	.....
17	*Nashua and Lowell Railroad Company*.....	14.50	.....
4842			
18	Peterborough Railroad Company.....	10.50	.....
19	*Northern Railroad Company of New Hampshire.*	82.91	.....
4843			
20	Concord and Claremont Railroad Company	70.90	.....
21	Peterborough and Hillsborough Railroad Company.	18.51	.....
22	Stony Brook Railroad Company.....	13.16	.....

DEFENDANTS' EXHIBIT 20-E. 1247

[97] 4844

STATISTICS OF RAILWAYS IN THE UNITED STATES.

AGE FOR THE YEAR ENDING JUNE 30, 1893.

inues throughout the report.]

Remarks.	No.
Operating road, independent. "Line operated" includes 36.75 miles not in the United States.	13
Subsidiary road, fixed money rental. Leased to Boston & Me. R. R., April 1, 1887, for 99 years; rental, 7 per cent on its capital stock for 10 years and 8 per cent thereafter.	14
	4845
Subsidiary road, contingent money rental. Leased to Boston & Lowell R. R. Oct. 1, 1886, for 99 years; rental, 20 per cent of gross earnings up to $1,000,000 and 25 per cent of any excess over that amount, deducting from said 20 per cent 5 per cent on $2,000,000 of bonds; lessee to pay $1,500 for organization expenses.	15
Subsidiary road, fixed money rental. Leased Jan. 1, 1887, for 99 years, at 5 per cent for 10 years, and 6 per cent thereafter on capital stock, interest on bonds, and $3,000 for organization expenses, annually; lease assumed by Boston & Me. R. R.	16
Subsidiary road, contingent money rental. Leased Nov. 10, 1880, for 99 years, for $60,000, $4,000 additional in case gross receipts equal or exceed those of 1880, and $1,000 for organization, annually; lease assumed July 12, 1887, by Boston & Me. R. R., which grants in addition to sums stated in lease 1 per cent annually on capital stock.	17
	4846
Subsidiary road, fixed money rental. Leased April 1, 1873, for 20 years, at 6 per cent on cost of road and taxes and $150 for organization per annum. Boston & Lowell R. R. obtained control of the lease Oct. 1, 1880, and operated the road until 1888, when Boston & Me. R. R. assumed the lease.	18
Subsidiary road, fixed money rental. Leased to Boston & Lowell R. R. Jan. 1, 1890, for 99 years; rental, 5 per cent on the Northern R. R. capital stock for the first 7½ years and 6 per cent on the same thereafter. Also principal and interest on $500,000 first mortgage bonds of the Conc. & Claremont R. R. and $100,000 first mortgage bonds of the Peterb. & Hillsb. R. R. Lease assigned to the Boston & Me. R. R.	19
	4847
Subsidiary road.....	20
....do	21
Subsidiary road, fixed money rental. Leased to Boston & Lowell R. R., Jan. 1, 1890, for 99 years; rental, 7 per cent on capital stock, taxes, and $500 for organization expenses per annum; lease assumed by Boston & Me. R. R.	22

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
4848		**BOSTON AND MAINE RAILROAD COMPANY —Continued.** Boston and Lowell Railroad Company—Cont'd.		
	[98]			
	23	Wilton Railroad Company.....	15.50	.....
4849	24	Connecticut River Railroad Company.....	79.85	.....
	25	Vermont Valley Railroad Company of 1871..	24.00	24.00
	26	Sullivan County Railroad Company.....	26.00	26.00
	27	Danvers Railroad Company.....	9.26	.....
4850	28	Eastern Railroad in New Hampshire.....	16.08	.....
	29	Portsmouth and Dover Railroad Company..	10.88	.....
	30	Kennebunk and Kennebunkport Railroad Company.	4.50	.....
	31	Lowell and Andover Railroad Company.....	8.73	.....
	32	Manchester and Keene Railroad Company.....	29.59	.....
4851	33	Manchester and Lawrence Railroad Company.	22.39	.....
	34	Newburyport Railroad Company.....	26.98	.....
	35	Portland, Saco and Portsmouth Railroad Company.	50.76	.....

DEFENDANTS' EXHIBIT 20-E. 1249

Remarks.	No.	
		4852
	[99]	
Subsidiary road, fixed money rental. Leased to Boston & Lowell R. R. for 99 years from Oct., 1883; rental, $16,800, all public taxes, and $150 for organization, annually; July 12, 1874, lease assigned to Boston & Me. R. R. without consent of lessor; Dec. 19, 1890, lessor assented to assignment of lease at a semi-annual rental of $10,200.	23	
Subsidiary road, fixed money rental. Leased Jan. 1, 1893, for 99 years; rental, $129,000 semi-annually; also lessee shall pay interest upon any indebtedness renewed or extended during the term of this lease.	24	4853
Operating road, subsidiary, contingent money rental. Controlled in the interest of Conn. Riv. R. R., which charges the Vt. Vy. R. R. of 1871 with operating expenses, and credits it with gross receipts and earnings of every kind. Operated by the Boston & Me. R. R., as agent, under its lease of the Conn. Riv. R. R.	25	
Operating road, subsidiary, other relation. Entire capital stock owned by Vt. Vy. R. R. of 1871. Net earnings, less taxes, paid lessor. Operated by the Boston & Me. R. R., as agents, under their lease of the Conn. Riv. R. R.	26	
Subsidiary road, fixed money rental. Leased May 30, 1853, for 100 years, at $7,500 per annum.	27	
Subsidiary road, fixed money rental. Leased Oct. 1, 1878, for 60 years and 2 months, to En. R. R. of Mass., for $22,500 per annum.	28	4854
Subsidiary road, fixed money rental. Leased June 1, 1872, for 50 years from Feb., 1874, to En. R. R. in N. H., at a rental of $46,140 per annum, guaranteed by En. R. R. of Mass. Included in lease of En. R. R. in N. H. to Boston & Me. R. R.	29	
Subsidiary road, fixed money rental. Leased May 15, 1883, for 99 years, for 4½ per cent dividend per annum.	30	
Subsidiary road, fixed money rental. Leased Dec. 1, 1874, for 99 years, at $52,500 per annum, lessee to pay all public taxes.	31	
Subsidiary road, other relation. Sold under foreclosure; bonds purchased by Boston & Lowell and Conc. & Montreal R. Rs. Operated by Boston & Me. R. R. for account of these companies, each being credited with one-half of all earnings and charged with one-half of all expenses.	32	
Subsidiary road, fixed money rental. Leased Sept. 1, 1887, for 50 years, for 10 per cent per annum on capital stock and $2,000 per annum for organization.	33	4855
Subsidiary road, fixed money rental. Leased Feb. 21, 1860, for 100 years, for $225,000 cash.	34	
Subsidiary road, fixed money rental. Contract dated May 4, 1871, to continue in force until such time as En. R. R. of Mass., by default, shall cease to pay regular semi-annual dividend of 3 per cent; contract assigned to Boston & Me. R. R. on purchase of En. R. R. of Mass., June 30, 1889.	35	

4856

No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
	BOSTON AND MAINE RAILROAD COMPANY —Continued.		
36	West Amesbury Branch Railroad Company...	4.45	.....
37	Worcester, Nashua and Rochester Railroad Company.	94.48	.....
38	*Saint Johnsbury and Lake Champlain Railroad Company.*	131.50	131.50
39	York Harbor and Beach Railroad Company...	11.27	11.27

4857

[102]

112	**NEW YORK AND NEW ENGLAND RAILROAD COMPANY.**	360.56	545.19
113	Meriden, Waterbury and Connecticut River Railroad Company.	30.34	.....
114	Milford and Woonsocket Railroad Company...	15.33	.....
115	Milford, Franklin and Providence Railroad Company.	4.70	.....
116	*Norwich and Worcester Railroad Company*....	66.16	.....

4858

117	Providence and Springfield Railroad Company.	28.18	.....
118	Rhode Island and Massachusetts Railroad Company in Massachusetts.	6.52	.....

[104]

119	Rhode Island and Massachusetts Railroad Company in Rhode Island.	7.07	.....
120	Rockville Railroad Company.....	4.43	.....

4859

121	Woonsocket and Pascoag Railroad Company..	9.50	.....
122	**NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY.**	282.35	848.03
123	*Boston and New York Air Line Railroad Company.*	51.50	.....
124	Colchester Railroad Company.....	3.59	.....

DEFENDANTS' EXHIBIT 20-E. 1251

Remarks.	No.	
		4860
Subsidiary road, fixed money rental. Leased May 2, 1871, for 99 years, lease went into effect Jan. 1, 1873, for a rental of $5,700 annually.	36	
Subsidiary road, fixed money rental. Leased Jan. 1, 1886, for 50 years, for $250,000 per annum, and all taxes.	37	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock and bonds.	38	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	39	
		4861
[103]		
Operating road, independent.....	112	
Subsidiary road, fixed money rental. Leased Sept. 1, 1892, for 99 years; rental, $22,500 per annum.	113	
Subsidiary road, contingent money rental. Leased Sept. 30, 1887, for 99 years; annual rental, 15 per cent of gross receipts of this road and the Milf., Frank. & Prov. R. R.	114	
Subsidiary road, contingent money rental. Leased Sept. 30, 1887, for 99 years, for 25 per cent of gross earnings.	115	
Subsidiary road, fixed money rental. Leased Feb. 9, 1869, for 99 years; annual rental, interest on bonds, and 8 per cent on preferred stock.	116	
		4862
Subsidiary road, fixed money rental. Leased Oct. 1, 1890, for 99 years; rental, guarantee of principal and interest on bonds.	117	
Subsidiary road, fixed money rental. Leased Nov. 21, 1887, for 99 years; annual rental, $10,000 and all taxes, assessments, etc.	118	
[105]		
Subsidiary road, fixed money rental. Leased Oct. 1, 1887, for $10,000, and all taxes, assessments, etc.	119	
Subsidiary road, fixed money rental. Contract of April 1, 1888, provides for the sale of this road to N. Y. & New Eng. R. R., the latter agreeing to pay as rental 5 per cent on purchase price until the transfer of capital stock is made.	120	
		4863
Subsidiary road, fixed money rental. Leased Feb. 28, 1891, for 99 years; rental, 5 per cent interest on stock and bonds.	121	
Operating road, independent.....	122	
Subsidiary road, fixed money rental. Leased Oct. 1, 1882, for 99 years; rental, $120,000 per annum, and interest on its bonds, and the bonds of the Colchester R. R.	123	
Subsidiary road, fixed money rental. Leased Sept. 30, 1882, for 999 years. Interest on bonds guaranteed by Boston & N. Y. Air Line R. R.	124	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
		NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY—Continued.		
4864	125	Harlem River and Port Chester Railroad Company.	11.50	.....
	126	*Housatonic Railroad Company*.....	90.12	.....
	127	Berkshire Railroad Company.....	20.53	.....
	128	Danbury and Norwalk Railroad Company...	36.20	.....
4865	129	New Haven and Derby Railroad Company..	16.69	.....
	130	Stockbridge and Pittsfield Railroad Company	22.02	.....
	131	Naugatuck Railroad Company.....	60.99	.....
	132	*New Haven and Northampton Company*.....	126.31	.....
4866	133	Holyoke and Westfield Railroad Company..	10.32	.....
	134	Pawtuxet Valley Railroad Company.....	5.67	.....
	135	*Providence and Worcester Railroad Company*.	50.41	.....
	136	*Shore Line Railway Company*.....	48.53	.....
4867	137	West Stockbridge Railroad Company.....	2.64	.....
	138	OLD COLONY RAILROAD COMPANY.....	495.55	618.89
	139	*Boston and Providence Railroad Company*..	63.69	.....

DEFENDANTS' EXHIBIT 20-E. 1253

Remarks.	No.	
		4868
Subsidiary road, fixed money rental. Leased Sept. 30, 1873, for 99 years, to N. Y., New Hav. & Hartf. R. R., for interest on bonds.	125	
Subsidiary road, fixed money rental. Leased July 1, 1892, for 99 years; rental, 1 per cent dividend on preferred capital stock, and interest on bonds.	126	
Subsidiary road, contingent money rental. Leased April 1, 1893, for 99 years; rental, 6 per cent on capital stock, and all expenses and taxes. "Old lease of the Housatonic R. R. suspended but not canceled."	127	
Subsidiary road, fixed money rental. Leased July 1, 1892, for 99 years; rental, 5 per cent dividend on capital stock, and interest on bonds.	128	
		4869
Subsidiary road, fixed money rental. Leased July 1, 1892, for 99 years; rental, 3 per cent dividend on capital stock until June 30, 1895, and 4 per cent thereafter during term of lease, and interest on bonds.	129	
Subsidiary road, contingent money rental. Leased April 1, 1893, for 99 years; rental 6 per cent on capital stock, all expenses and taxes. "Old lease of the Housatonic R. R. suspended, but not canceled."	130	
Subsidiary road, fixed money rental. Leased April 1, 1887, for 99 years; rental, interest on bonds, and 10 per cent per annum on capital stock.	131	
Subsidiary road, fixed money rental. Leased April 1, 1887, for 99 years; rental, 1 per cent on capital stock for 3 years, 2 per cent for the second 3 years, 3 per cent for the third 3 years, and 4 per cent thereafter; interest on bonds, and taxes.	132	
		4870
Subsidiary road, contingent money rental. Leased Dec. 3, 1870, in perpetuity; rental, interest on bonds; in case gross receipts exceed $35,200 per annum, lessee to pay lessor one-half of such excess. Lease assumed by N. Y., New Hav. & Hartf. R. R. with lease of New Hav. & Northamp. Co.	133	
Subsidiary road, fixed money rental. Leased July 1, 1884, for 99 years; annual rental, 7 per cent on capital stock, interest on bonds, taxes, assessments, etc. Lease assumed by the N. Y., New Hav. & Hartf. R. R. April 1, 1892.	134	
Subsidiary road, fixed money rental. Leased July 1, 1892, for 99 years; rental, 10 per cent on capital stock, interest on bonds and taxes.	135	
Subsidiary road, fixed money rental. Leased Nov. 1, 1870, in perpetuity; annual rental, $100,000.	136	4871
Subsidiary road, fixed money rental. Leased April 1, 1893, for 99 years; rental, $18,000 per annum, and all taxes.	137	
Operating road, subsidiary, fixed money rental. Leased Mar. 1, 1893, for 99 years; rental, 7 per cent on capital stock, interest on funded debt, and taxes.	138	
Subsidiary road, fixed money rental. Leased April 1, 1888, for 99 years; annual rental, 10 per cent on capital stock, interest on bonds, $10,000 for organization expenses for first 3 years, and $3,000 thereafter, taxes, assessments, etc.	139	

No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
	NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY—Continued.		
	Old Colony Railroad Company—Continued.		
140	Attleborough Branch Railroad Company..	4.00	.....
141	Chatham Railroad Company.....	7.07	.....
142	Fall River Railroad Company.....	12.25	.....
143	Nantasket Beach Railroad Company.....	6.95	.....
144	Plymouth and Middleborough Railroad Company.	15.03	.....
[106]			
145	Providence, Warren and Bristol Railroad Company.	14.35	.....
[120]			
409	**NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY.**	819.45	2,108.66
410	Amsterdam, Chuctanunda and Northern Railroad Company.	1.50	.....
411	Gouverneur and Oswegatchie Railroad Company.	13.05	.....
412	New Jersey Junction Railroad Company.....	4.69	.....
413	*New York and Harlem Railroad Company*.....	135.90	.....
414	*Rome, Watertown and Ogdensburg Railroad Company.*	412.55	.....
415	Niagara Falls Branch Railroad Company...	8.74	.....

DEFENDANTS' EXHIBIT 20-E. 1255

Remarks.	No.	
		4876
Subsidiary road, fixed money rental. Leased Dec. 31, 1870, for 30 years; annual rental, 7 per cent on capital stock; included in lease to Old Colony R. R.	140	
Subsidiary road, contingent money rental. Contract dated Jan. 8, 1888, for 7 years; rental, 30 per cent of gross receipts, payable quarterly.	141	
Subsidiary road, contingent money rental. Leased April 1, 1882, for 99 years; rental, 30 per cent of gross earnings, which is guaranteed to be sufficient to pay interest on bonds.	142	
Subsidiary road, fixed money rentals. Leased April 1, 1888, for 99 years; lessee guarantees interest on bonds up to $6,250, pays taxes, and has option of purchasing property after 20 years of the lease for $150,000.	143	4877
Subsidiary road, fixed money rental. Leased Dec. 1, 1892, for 99 years; rental, guarantee 5 per cent on $225,000 capital stock, taxes, and $100 for organization purposes.	144	
		[107]
Subsidiary road, fixed money rental. Leased July, 1891, for 95 years and 9 months; rental, 5 per cent on capital stock for the first ten years, and 6 per cent for the remainder of the lease; also interest and taxes, and not exceeding $500 per annum for salaries.	145	4878
		[121]
Operating road, independent.....	409	
Subsidiary road, other relation. Operated under verbal agreement Sept. 25, 1879, to deliver and receive freight to and from Kellogg & Miller's Linseed Oil Works. "Line operated" included as sidings in N. Y. Cent. & Hud. Riv. R. R.	410	
Subsidiary road. "Line owned" not in operation.....	411	
Subsidiary road, fixed money rental. Leased July 1, 1886, for 100 years, with privilege of further term of 100 years, at an annual rental of interest at 4 per cent on its bonds.	412	4879
Subsidiary road, fixed money rental. Leased April 1, 1873, for 401 years; annual rental, interest on funded debt and 8 per cent on capital stock.	413	
Subsidiary road, fixed money rental. Leased Mar. 14, 1891, in perpetuity; rental, 5 per cent on capital stock and $15,000 per annum until April 1, 1901, and thereafter, $7,000 per annum.	414	
Subsidiary road, fixed money rental. Leased Sept. 21, 1881, in perpetuity, at 7 per cent per annum on capital stock, included in lease to N. Y. Cent. & Hud. Riv. R. R., dated March 14, 1891.	415	

	No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
4880		**NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY—Continued.**		
	416	Oswego and Rome Railroad Company.....	28.49	.....
	417	Utica and Black River Railroad Company...	149.81	.....
4881	418	Carthage, Watertown and Sacketts Harbor Railroad Company.	29.59	.....
	419	Spuyten Duyvil and Port Morris Railroad Company.	6.04	.....
	420	Troy and Greenbush Railroad Company.....	6.00	.....
	421	Troy Union Railroad Company.....	5.00	.....
	422	**West Shore Railroad Company**.....	495.20	.....
4882				
	423	Beech Creek Railroad Company.....	149.09	185.28
	424	Buffalo and Erie Basin Railroad Company....	.25	.25
	425	Mohawk and Malone Railway Company.....	181.50	181.50
	426	Wallkill Valley Railroad Company.....	32.88	37.69
4883	[124]			
	481	**PENNSYLVANIA RAILROAD COMPANY**.....	523.71	2,728.56
	482	Bald Eagle Valley Railroad Company.....	90.68	.....
	483	Bedford and Bridgeport Railway Company....	49.17	.....

DEFENDANTS' EXHIBIT 20-E. 1257

Remarks.	No.	
Subsidiary road, fixed money rental. Leased Dec. 2, 1869, in perpetuity; annual rental, interest on first mortgage bonds and $24,000 cash. Lease amended March 2, 1891; rental, 7 per cent on $350,000 first mortgage bonds and 5 per cent on $400,000 second mortgage bonds per annum; included in lease to N. Y. Cent. & Hud. Riv. R. R., dated March 14, 1891.	416	4884
Subsidiary road, fixed money rental. Leased April 14, 1886, for the term of its corporate existence; annual rental, 7 per cent on capital stock, interest on bonds, and $4,500 for organization expenses; included in lease to N. Y. Cent. & Hud. Riv. R. R., dated March 14, 1891.	417	
Subsidiary road, contingent money rental. Leased for the term of its corporate existence for 37½ per cent of gross earnings; included in the lease of Utica & Black Riv. R. R. to Rome, Watert. & Ogdensb. R. R. and to N. Y. Cent. & Hud. Riv. R. R., dated March 14, 1891.	418	4885
Subsidiary road, fixed money rental. Leased Nov. 1, 1871, to Dec. 31, 1970; annual rental, 8 per cent on $989,000 capital stock.	419	
Subsidiary road, fixed money rental. Leased Feb. 3, 1851, in perpetuity, at an annual rental of $19,250.	420	
Subsidiary road, other relation. One-half owned by N. Y. Cent. & Hud. Riv. R. R., and one-fourth each by Del. & Hud. Canal Co. and Fitchburg R. R. These companies pay this proportion of maintenance and operation.	421	
Subsidiary road, fixed money rental. Leased Jan. 1, 1886, for 475 years, with privilege of further term of 500 years; annual rental, interest at 4 per cent on bonds.	422	4886
Operating road, subsidiary, fixed money rental. Leased Dec. 15, 1890, for 999 years, from Oct. 1, 1890; rental, 4 per cent interest per annum on not exceeding $5,000,000 first mortgage bonds and 4 per cent dividend on $5,000,000 capital stock.	423	
Operating road, subsidiary.....	424	
Operating road, subsidiary, fixed money rental. Leased May 1, 1893, in perpetuity; rental, 4 per cent interest, and principal guaranteed, on not exceeding $2,500,000 first mortgage bonds.	425	
Operating road, subsidiary, other relation. Controlled through ownership of capital stock and bonds held in the interests of W. Shore R. R.	426	

[125] 4887

Operating road, independent.....	481	
Subsidiary road, contingent money rental. Leased July 1, 1864, for 99 years; rental, 40 per cent of gross receipts. Lease does not apply to the Nittany Brh., which is operated at cost. Net earnings paid to Bald Eagle Vy. R. R.	482	
Subsidiary road, contingent money rental. Operated under resolutions of the directors of both companies, which took effect May 1, 1891, and is terminable at the option of either party, on 30 days' notice. Net earnings payable to this company.	483	

	No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
		PENNSYLVANIA RAILROAD COMPANY— Continued.		
4888	484	Bustleton Railroad Company	4.16	.....
	485	Cambria and Clearfield Railroad Company	97.53	.....
	486	Columbia and Port Deposit Railway Company.	43.53	.....
4889	487	Columbus, Kinkora and Springfield Railroad Company.	14.16	.....
	488	Cresson and Clearfield County and New York Short Route Railroad Company.	28.69	.....
	489	Downingtown and Lancaster Railroad Company	37.98	.....
	490	Engelside Railroad Company	.17	.....
	491	Freehold and Jamesburg Agricultural Railroad Company.	27.54	.....
4890	492	Frederick and Pennsylvania Line Railroad Company.	28.00	.....
	[126]			
	493	Hanover and York Railroad Company	27.65	.....
	494	Harrisburg, Portsmouth, Mount Joy and Lancaster Railroad Company.	53.74	.....
4891	495	Johnsonburg Railroad Company	19.69	.....
	496	Kensington and Tacony Railroad Company	5.13	.....
	497	Lewisburg and Tyrone Railroad Company	85.08	.....

DEFENDANTS' EXHIBIT 20-E. 1259

Remarks.	No.	
		4892
Subsidiary road, contingent money rental. Operated under resolutions of the directors of both companies, which took effect Jan. 1, 1891, and is terminable at the option of either party, on 30 days' notice. Net earnings payable to this company.	484	
Subsidiary road, contingent money rental. Operated under resolutions of board of directors in effect Sept. 24, 1888, terminable at any time on 30 days' notice; net earnings payable to this company.	485	
Subsidiary road, contingent money rental. Agreement dated July 1, 1890, terminable at any time, on 30 days' notice; rental, net earnings.	486	
Subsidiary road, contingent money rental. Lease dated Sept. 23, 1889; runs from year to year, unless terminated by 6 months' notice. Lessee collects all earnings, pays all expenses for operating the road and maintenance of way and taxes; balance, if any, is paid to lessor.	487	4893
Subsidiary road, contingent money rental. Leased Jan. 2, 1893, for 99 years; rental, net earnings.	488	
Subsidiary road, contingent money rental. This company is the reorganized E. Brandyw. and Waynesb. R. R.; operated under resolutions of board of directors in effect Aug. 1, 1888, terminable at any time, on 30 days' notice; net earnings paid to this company.	489	
Subsidiary road. "Operated by the Pennsylvania R. R. as a siding."	490	
Subsidiary road, contingent money rental. Contract dated July 16, 1879, terminable on 30 days' notice; rental, net earnings.	491	
Subsidiary road, fixed money rental. Leased Jan. 1, 1875, for 999 years; lessee operates the road at cost.	492	4894
		[127]
Subsidiary road, contingent money rental. Operated under resolutions of the directors of both companies, which took effect Jan. 3, 1893, and is terminable at the option of either party, on 30 days' notice; net earnings payable to this company.	493	
Subsidiary road, fixed money rental. Leased Jan. 1, 1861, for 999 years; annual rental, 7 per cent on capital stock, 4 per cent interest on bonds, all taxes levied on stock and bonds, and organization expenses up to $2,000.	494	
Subsidiary road, contingent money rental. Leased July 8, 1889, for 50 years; rental, 5 per cent per annum on capital stock, interest on bonds and taxes, balance divided equally between lessee and lessor.	495	4895
Subsidiary road, fixed money rental. Leased Jan. 1, 1887, for 5 years, at $30 per annum. Renewed by agreement dated March 15, 1892, for 1 year from Jan. 1, 1892, and thereafter from year to year, terminable upon 6 months' notice; rental, $30 per annum.	496	
Subsidiary road, contingent money rental. Leased Jan. 1, 1880, for 99 years; rental, net earnings. "Line owned" includes 24 miles over the Lewisburg Bridge.	497	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
		PENNSYLVANIA RAILROAD COMPANY—Continued.		
4896	498	Long Beach Railroad Company.....	20.50	.....
	499	McKeesport and Bessemer Railroad Company.	1.52	.....
	500	Mifflin and Centre County Railroad Company..	12.31	.....
	501	Millstone and New Brunswick Railroad Company.	6.64	.....
4897	502	Nescopec Railroad Company.....	11.96	.....
	503	New York Bay Railroad Company.....	9.11	.....
	504	North and West Branch Railway Company....	47.82	.....
	505	Pennsylvania, Schuylkill Valley Railroad Company.	129.80	.....
	506	Perth Amboy and Woodbridge Railroad Company.	6.40	.....
4898	507	Philadelphia and Erie Railroad Company....	287.56	.....
	508	Philadelphia and Long Branch Railroad Company.	49.09	.....
	509	Philadelphia, Germantown and Chestnut Hill Railroad Company.	7.91	.....
	510	Pittsburgh, Virginia and Charleston Railway Company.	72.48	.....
	511	Pomeroy and Newark Railroad Company.....	26.70	.....
	512	Ridgway and Clearfield Railroad Company....	27.23	.....
4899	513	Riverfront Railroad Company.....	3.86	.....
	514	South Fork Railroad Company.....	8.12	.....
	515	Southwest Pennsylvania Railway Company...	108.96	.....

DEFENDANTS' EXHIBIT 20-E. 1261

Remarks.	No.	
		4900
Subsidiary road, contingent money rental. Operated by the Pennsylvania R. R. as agent under resolution adopted June 28, 1886, terminable on 30 days' notice; rental, net earnings.	498	
Subsidiary road, contingent money rental. Leased July 20, 1891, terminable on 30 days' notice; rental, net earnings.	499	
Subsidiary road, contingent money rental. Leased March 19, 1863, for 999 years; rental, net earnings.	500	
Subsidiary road, contingent money rental. Operated since Feb. 1, 1886, by Pennsylvania R. R., under a temporary arrangement, without any written contract, that company paying all expenses and charging deficiency in net receipts to this company.	501	
Subsidiary road, contingent money rental. Operated under resolutions of board of directors in effect April 25, 1887, terminable at any time, on 30 days' notice; net earnings payable to this company.	502	4901
Subsidiary road, other relation. Controlled through ownership of capital stock.	503	
Subsidiary road, contingent money rental. Agreement dated Nov. 23, 1881, to continue until Sept. 1, 1901; net earnings to be paid this company.	504	
Subsidiary road, contingent money rental. Leased Dec. 1, 1885, for 50 years; rental, net earnings.	505	
Subsidiary road, contingent money rental. Operated as of date Jan. 1, 1889, by virtue of resolutions adopted May 6, 1889, by stockholders of this company, and June 26, 1889, by directors of Pennsylvania R. R.; net earnings paid to this company.	506	
Subsidiary road, contingent money rental. Lease executed Jan. 6, 1862; modified Jan. 1, 1870, for 999 years, from Jan. 6, 1862; surplus of gross receipts, after paying operating expenses, etc., to be applied to organization expenses and interest on bonds; any balance to be paid lessor.	507	4902
Subsidiary road, contingent money rental. Leased Jan. 1, 1884, for 50 years; any surplus of earnings after paying operating and other expenses to be paid lessor.	508	
Subsidiary road, contingent money rental. Leased May 1, 1883, for 30 years; rental, net earnings.	509	
Subsidiary road, contingent money rental. Leased April 1, 1882, for 50 years; rental, net earnings.	510	
Subsidiary road, contingent money rental. Leased March 1, 1880, for 99 years; rental, net earnings.	511	
Subsidiary road, contingent money rental. Operated under resolutions of board of directors, adopted July 23, 1884, terminable at option of either party, on 30 days' notice; net earnings paid to this company.	512	4903
Subsidiary road, fixed money rental. Leased May 1, 1882, for 50 years; rental, $23,000 per annum.	513	
Subsidiary road, contingent money rental. Agreement dated Aug. 15, 1891, terminable at the option of either party on 30 days' notice, in writing; net earnings paid to this company.	514	
Subsidiary road, contingent money rental. Leased April 1, 1892, for one year, renewable every year; net earnings paid to this company.	515	

	No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
4904		**PENNSYLVANIA RAILROAD COMPANY—Continued.**		
	516	Sunbury and Lewistown Railway Company...	43.45	.....
	517	Sunbury, Hazelton and Wilkesbarre Railway Company.	43.44	.....
	518	Susquehanna and Clearfield Railroad Company	24.89	.....
	519	Tipton Railroad Company.....	4.44	.....
4905	520	Trenton Delaware Bridge Company.....	.19	.....
	[128]			
	521	Tyrone and Clearfield Railway Company.....	127.68	.....
	522	United New Jersey Railroad and Canal Company.	144.83	.....
4906	523	Belvidere Delaware Railroad Company.....	79.04	.....
	524	Enterprise Railroad Company.....	1.26	.....
	525	Martins Creek Railroad Company of New Jersey.	.14	.....
	526	Martins Creek Railroad Company of Pennsylvania.	.15	.....
	527	Camden and Burlington County Railroad Company.	29.61	.....
4907	528	Mount Holly, Lumberton and Medford Railroad Company.	5.95	.....
	529	Philadelphia and Trenton Railroad Company.	27.12	.....
	530	Connecting Railway Company.....	6.75	.....

DEFENDANTS' EXHIBIT 20-E. 1263

Remarks.	No.	
		4908
Subsidiary road, contingent money rental. Leased July 1, 1876, for 99 years; operated for cost and one-half of net earnings after payment of interest on outstanding bonds.	516	
Subsidiary road, contingent money rental. Leased May 1, 1878, for 50 years; net earnings paid to this company.	517	
Subsidiary road, contingent money rental. Operated under resolutions of board of directors adopted July 23, 1884, terminable at the option of either party, on 30 days' notice; net earnings paid to this company.	518	
Subsidiary road, contingent money rental. Agreement dated May 1, 1886, terminable at the option of either party on 30 days' notice; net earnings paid to this company.	519	
Subsidiary road, fixed money rental. Trackage contract, June 20, 1877, for 993 years, 5 months and 10 days; annual rental, $28,000 and taxes.	520	4909
		[129]
Subsidiary road, fixed money rental. Leased Jan. 1, 1882, for 50 years; lessee to pay annually all taxes, interest on bonds, sinking fund organization expenses up to $1,000, and 5 per cent on capital stock.	521	
Subsidiary road, contingent money rental. Leased June 30, 1871, for 999 years; annual rental, 10 per cent on capital stock, taxes, interest on funded and other debts, damages, losses, etc.	522	4910
Subsidiary road, contingent money rental. Leased Jan. 1, 1876, to June 30, 2870; assigned to Pennsylvania R. R. March 7, 1876; revenue to be applied, first, to operation; second, to interest on bonds; any balance to be paid lessor.	523	
Subsidiary road, other relation. Controlled through ownership of capital stock.	524	
....do	525	
....do	526	
Subsidiary road, fixed money rental. Leased April 24, 1858, for the term of its corporate existence, to Camden & Amb. R. R., one of the constituent companies of United N. J. R. R. & Canal Co.,; annual rental 6 per cent on capital stock and bonds and $500 for organization expenses; lease assigned to Pennsylvania R. R. June 30, 1871.	527	
Subsidiary road, fixed money rental. Leased March 11, 1873, during corporate existence, at $11,189 per annum; lease assigned to Pennsylvania R. R. June 13, 1871.	528	4911
Subsidiary road, fixed money rental. Leased June 30, 1871, from United N. J. R. R. & Canal Co. for 999 years; annual rental, 10 per cent on capital stock (excluding 7,650 shares owned by United N. J. R. R. & Canal Co.), taxes, assessments, etc.	529	
Subsidiary road, fixed money rental. Leased Feb. 18, 1863, for 999 years; annual rental, 6 per cent on capital stock, 6 per cent on bonds and taxes; included in lease to Pennsylvania R. R.	530	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
4912		**PENNSYLVANIA RAILROAD COMPANY—Continued.**		
	531	Rocky Hill Railroad and Transportation Company.	2.38	.....
	532	Vincentown Branch Railroad Company.....	2.84	.....
	533	West Chester Railroad Company.....	5.00	.....
4913				
	534	Western Pennsylvania Railroad Company....	117.50	.....
	535	Allegheny Valley Railway Company.....	260.30	260.30
	536	Camden and Atlantic Railroad Company.....	68.78	81.39
	537	Philadelphia, Marlton and Medford Railroad Company.	11.71	.....
	538	Cumberland Valley Railroad Company.....	82.18	144.93
	539	Cumberland Valley and Martinsburg Railroad Company.	33.65	.....
4914				
	540	Dillsburg and Mechanicsburg Railroad Company.	7.70	.....
	541	Southern Pennsylvania Railway and Mining Company.	21.40	.....
	542	Junction Railroad Company (of Philadelphia)	3.56	3.56
	543	Northern Central Railway Company.....	148.24	372.83
	544	Elmira and Lake Ontario Railroad Company	99.61	.....
4915				
	545	Elmira and Williamsport Railroad Company	75.50	.....
	546	Lykens Valley Railroad and Coal Company.	19.70	.....

Remarks.	No.	
		4916
Subsidiary road, fixed money rental. Leased Nov. 22, 1869, for the term of its charter, to Camden & Amb. R. R., one of the constituent companies of United N. J. R. R. & Canal Co., at 6 per cent per annum on capital stock; lease assigned to the Pennsylvania R. R. Nov., 1871.	531	
Subsidiary road, fixed money rental. Leased April 7, 1868, for corporate existence; annual rental, 6 per cent on capital stock owned by individuals, which is $15,000; the other $10,000 is owned by lessee, and nothing is paid on it.	532	
Subsidiary road, fixed money rental. Leased Aug. 6, 1879, for 99 years; annual rental, 5 per cent on capital stock, interest on bonds, sinking fund charges, and taxes.	533	4917
Subsidiary road, contingent money rental. Leased June 1, 1888, for 40 years; net earnings paid to this company.	534	
Operating road, subsidiary, other relation; majority of capital stock and about one-fifth of outstanding bonds owned by Pennsylvania R. R.	535	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	536	
Subsidiary road, contingent money rental. Leased Jan. 1, 1885, terminable on 30 days' notice; surplus from operation paid lessor.	537	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	538	
Subsidiary road, contingent money rental. Leased March 17, 1888, for 99 years; receipts from operation to be applied to maintain the road, pay operating expenses, taxes, insurance, etc.; balance to be paid lessor.	539	4918
Subsidiary road, contingent money rental. Leased Jan. 1, 1873, for 99 years; terms of lease same as Cumb. Vy. & Martinsb. R. R.	540	
Subsidiary road, contingent money rental. Leased March 1, 1870 for 199 years; terms of lease same as Cumb. Vy. & Martinsb. R. R.	541	
Operating road, subsidiary, other relation. The Pennsylvania, Phila., Wilm. & Balt., and Phila. & Read. R. Rs. use this company's tracks, paying a certain rate per car per mile, the Junction R. R. paying the company moving the traffic for the use of the motive power.	542	
Operating road, subsidiary, other relation. Controlling interest in capital stock owned by Pennsylvania R. R.	543	
Subsidiary road, contingent money rental. Contract terminable at the option of either party, on 30 days' notice; net receipts, after paying charges for use of equipment, paid to this company. Contract took effect Jan. 1, 1877. Controlled through ownership of entire capital stock, by the Nn. Cent. Ry.	544	4919
Subsidiary road, fixed money rental. Leased May 1, 1863, for 999 years; annual rental, 7 per cent on preferred and 5 per cent on common stock; interest on bonds and on $3,000 for organization expenses.	545	
Subsidiary road, fixed money rental. Leased March 1, 1866, for 999 years to Summit Brh. R. R.; annual rental, $62,500, taxes, charges, etc.	546	

	No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
4920		**PENNSYLVANIA RAILROAD COMPANY—Continued.**		
		Northern Central Railway Company—Cont'd.		
	547	Shamokin Valley and Pottsville Railroad Company.	29.78	.....
	[130]			
4921	548	Baltimore and Sparrows Point Railroad Company.	5.19	5.19
	549	Union Railroad Company (of Baltimore)...	9.62	9.62
	550	*Philadelphia, Wilmington and Baltimore Railroad Company.*	117.85	669.56
	551	*Baltimore and Potomac Railroad Company*..	93.21	.....
	552	Catonsville Short Line Railroad Company.	3.80	.....
	553	Cambridge and Seaford Railroad Company..	27.24	.....
4922	554	Delaware Railroad Company.....	117.00	.....
	555	Delaware and Chesapeake Railway Company.	54.30	.....
	556	Delaware, Maryland and Virginia Railroad Company.	97.53	.....
	557	Philadelphia and Baltimore Central Railroad Company.	73.68	.....
	558	Chester Creek Railroad Company.....	6.69	.....
4923	559	Queen Anne's and Kent Railroad Company.	25.90	.....
	560	South Chester Railroad Company.....	2.72	.....
	561	West Jersey Railroad Company.....	185.53	231.09
	562	Alloway and Quinton Railroad Company....	4.22	.....

DEFENDANTS' EXHIBIT 20-E. 1267

Remarks.	No.	
		4924
Subsidiary road, fixed money rental. Leased Feb. 27, 1863, for 999 years; annual rental, 7 per cent interest on bonds, 6 per cent on capital stock, and taxes.	547	
	[131]	
Operating road, subsidiary	548	
Operating road, subsidiary, other relation. Controlled through ownership of entire capital stock.	549	4925
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	550	
Subsidiary road, contingent money rental. Contract took effect Nov. 1, 1891, and is terminable at the option of either company upon giving 30 days' notice in writing; net earnings paid to this company.	551	
Subsidiary road, contingent money rental. Leased Dec. 6, 1883; the lessor receives 40 per cent of net earnings. Leased to the Phila., Wilm. & Balt. R. R. with the Balt. & Pot. R. R., Dec. 6, 1893, for 99 years; rental, net earnings.	552	
Subsidiary road, contingent money rental. Agreement dated May 16, 1883; took effect June 1, 1883; terminable on 30 days' notice; net earnings paid to this company.	553	4926
Subsidiary road, contingent money rental. Leased May 5, 1855; renewed April 23, 1875; renewed Jan. 13, 1882; expires May 4, 1897. Annual rental, 6 per cent on capital stock, interest on funded and floating debt, and one-half of any surplus over 6 per cent of net earnings.	554	
Subsidiary road, contingent money rental. Agreement took effect July 1, 1882; terminable on 30 days' notice; net earnings paid to this company.	555	
Subsidiary road, contingent money rental. Agreement dated Aug. 1, 1885; took effect July 1, 1885; terminable on 30 days' notice; net earnings paid to this company.	556	
Subsidiary road, contingent money rental. Agreement dated Aug. 1, 1881; took effect Sept. 1, 1881; terminable on 6 months' notice; net earnings paid to this company.	557	
Subsidiary road, fixed money rental. Leased Jan. 13, 1868, for 999 years; rental, 6 per cent on capital stock and bonds, and taxes.	558	4927
Subsidiary road, contingent money rental. Agreement dated Oct. 14 and 15, 1881; took effect Sept. 1, 1881; terminable on 30 days' notice; net earnings paid to this company.	559	
Subsidiary road. Included in "operation" of the Phila., Wilm. & Balt. R. R. as siding.	560	
Operatnig road, subsidiary, other relation	561	
Subsidiary road, fixed money rental. Leased Jan. 1, 1892. May be terminated upon 6 months' written notice. Rental, $1 per annum.	562	

	No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
		PENNSYLVANIA RAILROAD COMPANY—Continued.		
4928	563	West Jersey and Atlantic Railroad Company	39.74	.....
	564	Richland and Petersburg Railroad Company	22.04	22.04
	565	Winslow and Richland Railroad Company...	11.45	11.45
		[146]		
4929	810	**LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY.**	859.15	1,453.90
	811	Detroit and Chicago Railroad Company.....	67.60	.....
	812	Detroit, Hillsdale and Southwestern Railroad Company.	65.20	.....
	813	Detroit, Monroe and Toledo Railroad Company	62.36	.....
	814	Fort Wayne and Jackson Railroad Company..	97.83	.....
	815	Jamestown and Franklin Railroad Company..	50.91	.....
4930	816	Kalamazoo and White Pigeon Railroad Company.	36.57	.....
	817	Kalamazoo, Allegan and Grand Rapids Railroad Company.	58.42	.....
	818	Mahoning Coal Railroad Company.....	50.20	.....
	819	Northern Central Michigan Railroad Company	61.14	.....
	820	Oberlin and La Grange Railroad Company....	4.56	.....
4931	821	Silver Creek and Dunkirk Railway Company.	8.71	.....
	822	Sturgis, Goshen and Saint Louis Railroad Company.	28.28	.....
	823	Toledo and Ohio Northern Railway Company..	4.20	.....

DEFENDANTS' EXHIBIT 20-E. 1269

Remarks.	No.	
		4932
Subsidiary road, contingent money rental. Leased Dec. 29, 1879, terminable at one year's notice; lessee to furnish equipment and operate the road at cost, paying lessor any surplus from operation.	563	
Operating road, subsidiary	564	
....do	565	
	[147]	
Operating road, independent. "Line operated" includes 7.20 miles leased from Battle Ck. & Sturgis Ry.	810	4933
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	811	
Subsidiary road, fixed money rental. Leased Sept. 5, 1881, in perpetuity; annual rental $54,000, and $500 for organization expenses.	812	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	813	
Subsidiary road, contingent money rental. Leased Aug. 24, 1882, in perpetuity, from Sept. 1, 1882; annual rental, 5½ per cent on preferred stock; should net earnings in any year, after Aug. 24, 1887, exceed 8 per cent on preferred stock, lessee will pay amount of such excess up to 2 per cent on common stock.	814	
Subsidiary road, contingent money rental. Leased Jan. 1, 1890, for 5 years; annual rental, 30 per cent of gross earnings, and all taxes except those imposed by United States, or State of Pennsylvania upon tonnage, dividends, or interest on bonds.	815	4934
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	816	
Subsidiary road, fixed money rental. Leased Sept. 21, 1869, for 999 years; annual rental 6 per cent on capital stock, interest on bonds, and all taxes and assessments.	817	
Subsidiary road, contingent money rental. Leased July 1, 1884, in perpetuity; annual rental 40 per cent of gross earnings; if that is insufficient to pay interest on bonds, 5 per cent on preferred stock, and $1,000 for corporate expenses, lessee will advance necessary amount and charge same against future rental.	818	
Subsidiary road, other relation. Owned entirely by L. Shore & Mich. Sn. Ry.	819	
Subsidiary road, contingent money rental. "Train service operated by the L. Shore & Mich. Sn. Ry." under contract dated March 29, 1884, for 10 years.	820	4935
Subsidiary road, other relation. Capital stock all held by the L. Shore & Mich. Sn. Ry.	821	
Subsidiary road, other relation. Controlled through ownership of capital stock and bonds.	822	
Subsidiary road. "Line owned" not in operation	823	

4936 [148]

No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
838	**MICHIGAN CENTRAL RAILROAD COMPANY.**	270.07	1,638.52
839	Battle Creek and Sturgis Railway Company..	41.00	.....
840	Bay City and Battle Creek Railway Company.	18.00	.....
841	Canada Southern Bridge Company.....	3.66	.....
4937			
842	Detroit and Bay City Railroad Company.....	155.00	.....
843	Grayling, Twin Lakes and Northeastern Railroad Company.	27.80	.....
844	Grand River Valley Railroad Company.....	83.79	.....
845	Jackson, Lansing and Saginaw Railroad Company.	295.10	.....
846	Joliet and Northern Indiana Railroad Company	45.00	.....
4938			
847	Kalamazoo and South Haven Railroad Company.	39.50	.....
848	Michigan Air Line Railroad Company.....	115.16	.....
849	Michigan, Midland and Canada Railroad Company.	14.68	.....
850	Saginaw Bay and Northwestern Railroad Company.	85.13	.....
851	Toledo and Michigan Belt Railway Company..	3.05	.....
852	Toledo, Canada Southern and Detroit Railway Company.	55.87	.....
4939			

DEFENDANTS' EXHIBIT 20-E. 1271

[149] 4940

Remarks.	No.
Operating road, independent. Of "line operated" 378.91 miles not in United States.	838
Subsidiary road, fixed money rental. The Mich. Cent. R. R. also owns majority of capital stock. Of "line owned," 7.53 miles operated by the L. Shore & Mich. Sn. Ry., with the Sturgis, Goshen & St. L. Ry.	839
Subsidiary road, fixed money rental. Agreement dated Feb. 1, 1890, in perpetuity; rental, interest on bonds, and taxes.	840
Subsidiary road, contingent money rental. Operated under agreement dated Dec. 12, 1882, for 21 years, with Can. Sn. Ry., which owns substantially all its capital stock and bonds, the bridge company being credited with its earnings and charged with its expenses.	841
	4941
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	842
Subsidiary road, other relation. Controlled through ownership of capital stock.	843
Subsidiary road, fixed money rental. Leased Jan. 20, 1870, to continue during the corporate existence of lessor; lessee guarantees floating and funded debt of lessor, interest thereon, 5 per cent per annum on stock, taxes, assessments, etc.	844
Subsidiary road, fixed money rental. Leased Sept. 1, 1871, during corporate existence of the two companies; lessee pays principal and interest on bonds of lessor and a dividend of 3½ per cent per annum, also $750 per annum for organization purposes.	845
Subsidiary road, fixed money rental. Operated under contracts executed Sept. 7 and 26, 1854; on completion turned over to Mich. Cent. R. R. to operate forever at an annual rental of $89,000.	846
	4942
Subsidiary road, fixed money rental. Leased July 1, 1870, in perpetuity; lessee to pay taxes and interest on bonds.	847
Subsidiary road, fixed money rental. Leased Jan. 1, 1870, for 999 years, lessee guaranteeing principal and interest of bonds.	848
Subsidiary road, other relation. Operated under agreement dated Dec. 12, 1882, for 21 years with Can. Sn. Ry., which owns a majority of its capital stock and all its bonds, Mich., Midl. & Can. R. R. being credited with its earnings and charged with its expenses.	849
Subsidiary road, other relation. Controlled through ownership of capital stock.	850
Subsidiary road.....	851
Subsidiary road, other relation. Operated under agreement dated Dec. 12, 1882, for 21 years, with the Can. Sn. Ry., which owns substantially all its capital stock and bonds, Tol., Can. Sn. & Det. Ry. being credited with its earnings and charged with its expenses.	852
	4943

4944 [150]

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
859	**NEW YORK, CHICAGO AND SAINT LOUIS RAILROAD COMPANY.**	502.18	530.48
860	Chicago and State Line Railroad Company....	9.96	.....
872	**PENNSYLVANIA COMPANY**.....	.....	1,212.57
873	Calumet River Railway Company.....	4.43	.....
874	Cleveland and Pittsburgh Railroad Company..	198.34	.....

4945

875	Salineville Railroad Company.....	3.07	.....
876	**Erie and Pittsburgh Railroad Company**.....	84.47	.....
877	Indianapolis and Vincennes Railroad Company	133.11	.02
878	**Pittsburgh, Fort Wayne and Chicago Railway Company.**	469.89	.....

4946

879	Massillon and Cleveland Railroad Company.	12.23	.....
880	New Castle and Beaver Valley Railroad Company.	14.98	.....
881	Pittsburgh, Ohio Valley and Cincinnati Railroad Company.	15.27	.....
882	Pittsburgh, Youngstown and Ashtabula Railroad Company.	125.19	.....

4947

[152]

883	South Chicago and Southern Railroad Company.	10.25	.....
884	State Line and Indiana City Railway Company	6.58	.....
885	Toledo, Walhonding Valley and Ohio Railroad Company.	125.40	.....

DEFENDANTS' EXHIBIT 20-E. 1273

[151] 4948

Remarks.	No.
Operating road, independent.....	859
Subsidiary road, fixed money rental. Leased in perpetuity to Ft. Way. & Ill. R. R.; annual rental, $100, organization expenses up to $500, all taxes, assessments, etc. Ft. Way. & Ill. R. R. merged into N. Y., Chic. & St. L. R. R.	860
Operating road, independent.....	872
Subsidiary road, other relation. Controlled through ownership of capital stock. "Line owned" not in operation.	873
Subsidiary road, fixed money rental. Leased to Pennsylvania R. R. Dec. 1, 1871, for 999 years; lessee guarantees principal, interest and sinking fund charges on bonds, 7 per cent on capital stock, $10,000 for organization annually, taxes, assessments, etc.; lease transferred to Pennsylvania Co., April 14, 1873.	874
Subsidiary road. Private coal road; no rolling stock. Feeder to Clev. & Pittsb. R. R. at Saline ville Station, Ohio, and operated by that road since Nov., 1891.	875
Subsidiary road, fixed money rental. Leased to Pennsylvania R. R. Mar. 1, 1870, *for* 999 *years; annual rental,* 7 *per cent on capital stock and bonds; lease transferred to Pennsylvania Co. April* 1, 1871.	876
Subsidiary road, contingent money rental. Leased Dec. 28, 1878, for 99 years; net earnings paid to lessor to be applied to payment of interest on bonds.	877
Subsidiary road, fixed money rental. Leased July 1, 1869, *for* 999 *years; annual rental, interest on bonds, sinking fund,* 1 *per cent on capital stock, organization expenses, and taxes.*	878
Subsidiary road, contingent money rental. Leased May 22, 1869, for 99 years, at a rental of 40 per cent of gross earnings, minimum being fixed at $20,000 a year; lease transferred to Pennsylvania Co., July 1, 1869.	879
Subsidiary road, contingent money rental. Leased June 29, 1865, for 99 years at a rental of 40 per cent of gross earnings, lease assigned to Pennsylvania R. R. June 7, 1869, and by the latter to Pennsylvania Co., June 29, 1874, to take effect as of date April 1, 1871.	880
Subsidiary road, other relation. Controlled through ownership of majority of capital stock.	881
Subsidiary road, contingent money rental. Leased Aug. 1, 1887, for 1 year and thereafter from year to year subject to termination on 12 months' written notice from either party; operated by lessee at cost.	882

4949

4950

4951

[153]

Subsidiary road, contingent money rental. No contract; operated at cost under a provisional arrangement.	883
....do	884
Subsidiary road, contingent money rental. Leased Jan. 17, 1879, for 99 years, each year's surplus, if any, after deducting taxes, repairs, operating expenses, etc., to be paid lessor.	885

4952

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	PENNSYLVANIA COMPANY—Continued.		
886	Cincinnati and Muskingum Valley Railway Company.	148.45	148.45
887	Grand Rapids and Indiana Railroad Company.	436.18	592.08
888	Cincinnati, Richmond and Fort Wayne Railroad Company.	85.60	.....
889	Muskegon, Grand Rapids and Indiana Railroad Company.	36.85	.....
4953			
890	Traverse City Railroad Company.....	26.00	.....
891	**Pittsburgh, Cincinnati, Chicago and Saint Louis Railway Company.**	1,083.18	1,395.51
892	Chartiers Railway Company.....	22.76	.....
893	Chartiers Connecting Railroad Company..	.72	.....
894	Englewood Connecting Railway Company...	2.35	.....
895	Little Miami Railroad Company.....	101.50	.....
4954			
896	Columbus and Xenia Railroad Company..	55.00	.....
897	Dayton and Western Railroad Company..	37.99	.....
898	Ohio Connecting Railway Company.....	3.27	.....
899	Pittsburgh, Wheeling and Kentucky Railroad Company.	28.04	.....
900	Steubenville Extension Railroad Company..	1.23	.....
4955			

DEFENDANTS' EXHIBIT 20-E. 1275

Remarks.	No.	
		4956
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	886	
Operating road, subsidiary, other relation. Controlled by virtue of a contract in effect from Oct. 1, 1869, for 30 years, under which Pennsylvania Co. guarantees $4,000,000 of its first mortgage land-grant bonds.	887	
Subsidiary road, contingent money rental. Leased Jan. 1, 1871, for 99 years; rental, net earnings. Bond interest guaranteed by Pennsylvania Co., Pittsb., Cin., Chic. & St. L. and Gr. Rap. & Ind. R. Rs., each one-third of any deficiency of net earnings to pay coupons.	888	
Subsidiary road, contingent money rental. Leased Dec. 1, 1886, for 99 years; rental, net earnings, with a minimum guarantee of interest on bonds or $37,500 per annum.	889	
		4957
Subsidiary road, contingent money rental. Leased Jan. 1, 1883, for 50 years; rental, net earnings, with a minimum guarantee of interest on bonds or $7,500 per annum.	890	
Operating road, subsidiary, other relation. Controlled through ownership of capital stock and bonds.	891	
Subsidiary road, contingent money rental. Leased Dec. 8, 1871, for 99 years, from Jan. 1, 1872; rental, net earnings.	892	
Subsidiary road, other relation. Controlled through ownership of capital stock.	893	
Subsidiary road, other relation. Operated and maintained at cost, any surplus earnings paid to lessor; controlled through ownership of entire capital stock.	894	
Subsidiary road, fixed money rental. Leased Dec. 1, 1869, for 99 years, renewable forever; annual rental, 8 per cent on capital stock, interest on bonds, and organization expenses.	895	
		4958
Subsidiary road, fixed money rental. Leased Nov. 30, 1868, for 99 years, renewable forever; annual rental, 8 per cent on capital stock, interest on bonds; included in lease of Little Miami R. R. to Pennsylvania Co.	896	
Subsidiary road, fixed money rental. Leased Dec. 1, 1869, for 99 years, renewable forever; rental, interest on bonds; included in lease of Little Miami R. R. to Pennsylvania Co.	897	
Subsidiary road, contingent money rental. Operated at cost; net earnings paid to lessor. Contract dated Dec. 18, 1890, and continuing in force, subject to termination by either party, on 30 days' written notice.	898	
Subsidiary road, contingent money rental. Leased Feb. 25, 1878, for 99 years; lessee operates the road at cost and pays net earnings to lessor.	899	
Subsidiary road, fixed money rental. Owned by Pennsylvania R. R. and leased April 1, 1871, to Pennsylvania Co. for 999 years; sublet Nov. 1, 1876, to Pittsb., Cin. & St. L. Ry. for 25 years; rental, 5 per cent per annum on cost.	900	
		4959

4960 [170]

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
1173	**ILLINOIS CENTRAL RAILROAD COMPANY..** [Line south of Cairo, Illinois.]	.....	894.41
1174	Canton, Aberdeen and Nashville Railroad Company.	87.89	.....
1175	Chicago, Saint Louis and New Orleans Railroad Company.	666.16	.....
1176	Yazoo and Mississippi Valley Railroad Company.	947.63	807.27

4961

[184]

1173	**ILLINOIS CENTRAL RAILROAD COMPANY..** [Line north of Cairo, Illinois.]	705.50	1,993.89
1393	Blue Island Railroad Company.....	3.96	.....
1394	Chicago and Springfield Railroad Company...	111.47	.....

4962

1395	Chicago, Havana and Western Railroad Company.	131.62	.....
1396	Chicago, Madison and Northern Railroad Company.	231.30	.....
1397	Dubuque and Sioux City Railroad Company...	524.01	.....
1398	Cedar Falls and Minnesota Railroad Company.	75.58	.....

4963

1399	Kankakee and Southwestern Railroad Company.	131.26	.....
1400	Rantoul Railroad Company.....	74.43	.....
1401	South Chicago Railroad Company.....	4.76	.....

DEFENDANTS' EXHIBIT 20-E. 1277

[171] 4964

Remarks.	No.
Operating road, independent. "Line operated," includes 140.36 miles, leased from Yazoo & Miss. Vy. R. R.	1173
Subsidiary road, fixed money rental. Leased March 31, 1888, until June 1, 1952; rental, net earnings of the road, which lessee guarantees to be $60,000 per annum.	1174
Subsidiary road, fixed money rental. Leased July 1, 1882, for 400 years; annual rental, 4 per cent on capital stock, interest on bonds, taxes, assessments, etc. On April 3, 1889, this company acquired Miss. & Tenn. R. R.	1175
Operating road, subsidiary, other relation. "Line owned" includes 140.36 miles leased to and operated by Ill. Cent. R. R.	1176

4965

[185]

Operating road, independent.....	1173
Subsidiary road, other relation. Controlled through ownership of entire capital stock and bonds.	1393
Subsidiary road, fixed money rental. Leased Dec. 1, 1877, for 50 years, from July 1, 1877; in lieu of annual rental lessee issued currency bonds for $2,000,000, secured by lessor on demised property; $1,600,000 of these bonds were used by lessor to pay for the property, the remainder being reserved for improvements, etc.; lessee agrees to pay principal and interest of these bonds, taxes, assessments, etc.	1394
Subsidiary road, contingent money rental. Leased April 1, 1888, in perpetuity; lessee receives all earnings, pays all expenses, and turns over to lessor any net earnings.	1395
Subsidiary road, contingent money rental. Line, Chicago to Freeport, Ill., leased March 30, 1888, in perpetuity, lessor to receive net earnings; balance of line operated without any written contract; lessee owns the entire capital stock and bonds of lessor.	1396
Subsidiary road, contingent money rental. Leased July 1, 1890, for 16 years; lessee receives all earnings, pays all expenses, and turns over to lessor any net earnings.	1397
Subsidiary road, fixed money rental. Operated since Oct. 1, 1887, by Dubq. & Sioux Cy. R. R., at $1,000 per mile per annum, paid into United States court, where proceedings are pending to test the validity of the lease to Dubq. & Sioux Cy. R. R., dated Sept. 27, 1866.	1398
Subsidiary road, fixed money rental. Leased Aug. 1, 1881, in perpetuity; in lieu of annual rental lessee issued $968,000 registered bonds secured by lessor on demised property; $200,000 of these bonds retired a like amount previously issued and secured by same property; residue was for equipping and improving road, lessee agreeing to pay principal and interest and all taxes, assessments, etc.	1399
Subsidiary road, contingent money rental. Leased Dec. 11, 1886, in perpetuity; lessee receives all earnings, pays all expenses, and turns over to lessor any net earnings.	1400
Subsidiary road, contingent money rental. Leased July 1, 1890, in perpetuity; lessee receives all earnings, pays all expenses, and turns over to lessor any net earnings.	1401

4966

4967

[Defendants' Exhibit 20-F.]

Extracts from 4968

INTERSTATE COMMERCE COMMISSION REPORT, 1894.

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4970

[126]

REPORT OF THE INTERSTATE COMMERCE COMMISSION.

CLASSIFICATION OF RAILWAYS AND MILE

[The above running title con-

No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
12	**BOSTON AND MAINE RAILROAD COMPANY.**	370.00	1,292.65
13	BOSTON AND LOWELL RAILROAD COMPANY.....	98.09	.....

4971

14	Central Massachusetts Railroad Company...	98.77	.....
15	*Connecticut and Passumpsic Rivers Railroad Company.*	110.30	.....
16	*Nashua and Lowell Railroad Company*.....	14.50	.....

4972

17	Peterborough Railroad Company.....	10.50	.....
18	*Northern Railroad Company of New Hampshire.*	82.91	.....

4973

19	Concord and Claremont Railroad Company	70.90	.....
20	Peterborough and Hillsborough Railroad Company.	18.51	.....
21	Stony Brook Railroad Company.....	13.19	.....

DEFENDANTS' EXHIBIT 20-F. 1281

4974

[127]

STATISTICS OF RAILWAYS IN THE UNITED STATES.

AGE FOR THE YEAR ENDING JUNE 30, 1894.

tinues throughout the report.]

Remarks.	No.
Operating road, independent. "Line operated" includes 37.15 miles not in United States.	12
Subsidiary road, fixed money rental. Leased to Boston & Me. R. R., April 1, 1887, for 99 years; rental, 7 per cent on its capital stock for 10 years and 8 per cent thereafter; operating expenses and all interest on debt.	13
	4975
Subsidiary road, contingent money rental. Leased to Boston & Lowell R. R., Oct. 1, 1886, for 99 years; rental, 20 per cent of gross earnings up to $1,000,000 and 25 per cent of any excess over that amount, deducting from said 20 per cent 5 per cent on $2,000,000 of bonds; lessee to pay $1,500 for organization expenses.	14
Subsidiary road, fixed money rental. Leased Jan. 1, 1887, for 99 years, at 5 per cent for 10 years and 6 per cent thereafter on capital stock, interest on bonds, and $3,000 for organization expenses, annually; lease assumed by Boston & Me. R. R.	15
Subsidiary road, contingent money rental. Leased Nov. 10, 1880, for 99 years, for $60,000, $4,000 additional in case gross receipts equal or exceed those of 1880, and $1,000 for organization, annually; lease assumed July 12, 1887, by Boston & Me. R. R., which grants in addition to sums stated in lease 1 per cent annually on capital stock.	16
	4976
Subsidiary road, fixed money rental. Leased April 1, 1893, for 93 years; rental, 4 per cent on capital stock, $300 organization expenses, operating expenses, and taxes. Boston & Me. R. R. operates road by reason of being the lessee of the Boston & Lowell R. R.	17
Subsidiary road, fixed money rental. Leased to Boston & Lowell R. R., Jan. 1, 1890, for 99 years; rental, 5 per cent on the Northern R. R. capital stock for the first 7½ years, and 6 per cent on the same thereafter. Also principal and interest on $500,000 first mortgage bonds of the Conc. & Claremont R. R., and $100,000 first mortgage bonds of the Peterb. & Hillsb. R. R. Lease assigned to the Boston & Me. R. R.	18
	4977
Subsidiary road	19
....do	20
Subsidiary road, fixed money rental. Leased to Boston & Lowell R. R., Jan. 1, 1890, for 99 years; rental, 7 per cent on capital stock, taxes, and $500 for organization expenses per annum; lease assumed by Boston & Me. R. R.	21

4978

No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
	BOSTON AND MAINE RAILROAD COMPANY —Continued.		
	Boston and Lowell Railroad Company—Continued.		
22	Wilton Railroad Company.....	15.50	.....

4979 [128]

23	Connecticut River Railroad Company.....	79.85	.....
24	Danvers Railroad Company.....	9.26	.....
25	**Eastern Railroad in New Hampshire**.....	16.08	.....
26	Portsmouth and Dover Railroad Company...	10.88	.....

4980

27	Kennebunk and Kennebunkport Railroad Company.	4.50	.....
28	Lowell and Andover Railroad Company.....	8.73	.....
29	Manchester and Keene Railroad Company....	29.59	.....
30	Manchester and Lawrence Railroad Company.	22.39	.....
31	Newburyport Railroad Company.....	26.98	.....
32	**Portland, Saco and Portsmouth Railroad Company.**	50.76	.....

4981

33	Worcester, Nashua and Rochester Railroad Company.	94.48	.....
34	MAINE CENTRAL RAILROAD COMPANY.....	314.23	813.76
35	Androscoggin Railroad Company.....	31.00	.....

DEFENDANTS' EXHIBIT 20-F. 1283

Remarks.	No.	
		4982
Subsidiary road, fixed money rental. Leased to Boston & Lowell R. R., for 99 years from Oct., 1883; rental, $16,800, all public taxes, and $150 for organization, annually; July 12, 1874, lease assigned to Boston & Me. R. R. without consent of lessor; Dec. 19, 1890, lessor assented to assignment of lease at a semi-annual rental of $10,200.	22	
		[129] 4983
Subsidiary road, fixed money rental. Leased Jan. 1, 1893, for 99 years; rental, 10 per cent on capital stock, 4 per cent interest on bonds, $2,000 for organization expenses.	23	
Subsidiary road, fixed money rental. Leased May 30, 1853, for 100 years, at $7,500 per annum.	24	
Subsidiary road, fixed money rental. Leased Oct. 1, 1878, for 60 years and 2 months, to En. R. R. of Mass., for $22,500 per annum.	25	
Subsidiary road, fixed money rental. Leased June 1, 1872, for 50 years from Feb., 1874, to En. R. R. in N. H., at a rental of $46,140 per annum, guaranteed by En. R. R. of Mass. Included in lease of En. R. R. in N. H. to Boston & Me. R. R.	26	
Subsidiary road, fixed money rental. Leased May 15, 1883, for 99 years, for 4½ per cent dividend per annum.	27	4984
Subsidiary road, fixed money rental. Leased Dec. 1, 1874, for 99 years, at $52,500 per annum, lessee to pay all public taxes.	28	
Subsidiary road, other relation. Sold under foreclosure, bonds purchased by Boston & Lowell and Conc. & Montreal R. Rs. Operated by Boston & Me. R. R. for account of these companies, each being credited with one-half of all earnings and charged with one-half of all expenses.	29	
Subsidiary road, fixed money rental. Leased Sept. 1, 1887, for 50 years, for 10 per cent per annum on capital stock and $2,000 per annum for organization.	30	
Subsidiary road, fixed money rental. Leased Feb. 21, 1860, for 100 years, for $225,000 cash.	31	
Subsidiary road, fixed money rental. Contract dated May 4, 1871, to continue in force until such time as En. R. R. of Mass., by default, shall cease to pay regular semi-annual dividend of 3 per cent; contract assigned to Boston & Me. R. R. on purchase of En. R. R. of Mass., May 8, 1890.	32	4985
Subsidiary road, fixed money rental. Leased Jan. 1, 1886, for 50 years, for $250,000 per annum, and all taxes.	33	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock. "Line operated" includes 52.34 miles not in United States.	34	
Subsidiary road, other relation. Leased June 29, 1871, for 999 years. Lessee assumed the payment of $425,000 city of Bath bonds, in aid of the lessor; gave $110,000 in stock scrip redeemable in Me. Cent. stock, also $200,000 in Me. Cent. stock, and promissory notes for $33,333.33.	35	

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	BOSTON AND MAINE RAILROAD COMPANY —Continued.		
	Maine Central Railroad Company—Continued.		
36	Belfast and Moosehead Lake Railroad Company.	33.13	.....
37	Dexter and Newport Railroad Company....	14.23	.....
38	Dexter and Piscataquis Railroad Company..	16.54	.....
39	Eastern Maine Railway Company.....	18.80	.....
40	European and North American Railway Company.	120.34	.....
41	Knox and Lincoln Railway Company.....	48.39	.....
42	*Portland and Ogdensburg Railway Company*	109.10	.....
43	Upper Coos Railroad Company.....	55.00	.....
44	Portland and Rochester Railroad Company...	54.98	53.86
45	*Saint Johnsbury and Lake Champlain Railroad Company.*	131.50	131.50
46	Vermont Valley Railroad Company of 1871....	24.00	24.00
47	Sullivan County Railroad Company.....	26.00	26.00
48	York Harbor and Beach Railroad Company...	11.27	11.27

DEFENDANTS' EXHIBIT 20-F. 1285

Remarks.	No.	
		4990
Subsidiary road, fixed money rental. Leased May 10, 1871, for 50 years, at an annual rental of $36,000 and taxes.	36	
Subsidiary road, fixed money rental. Leased Dec. 13, 1888, for 999 years, at an annual rental of $18,000 until Nov. 24, 1898, and $6,100 per annum thereafter, and $250 per annum for organization expenses. Lessee also guarantees the principal and interest of bonds of lessor.	37	
Subsidiary road, fixed money rental. Leased Dec. 13, 1888, for 999 years; rental, $13,350, and $250 per annum for organization expenses, and taxes.	38	
Subsidiary road, fixed money rental. Leased May 1, 1883, for 999 years; annual rental, $9,000, all taxes, and $500 for organization expenses.	39	4991
Subsidiary road, fixed money rental. Leased April 1, 1882, for 999 years; annual rental, $125,000, all taxes, and $500 for expenses of organization; lessee also assumes city of Bangor bonds, amounting to $1,000,000, issued to aid construction of road of lessor.	40	
Subsidiary road, fixed money rental. Leased Aug. 1, 1891, for 999 years, lessee to pay all taxes, interest and indebtedness of lessor, a dividend of 5 per cent to the stockholders, and $200 for organization expenses.	41	
Subsidiary road, fixed money rental. Leased Aug. 20, 1888, for 999 years, lessee to pay all taxes, interest and indebtedness of lessor, and a dividend of 1 per cent per annum for 3 years, and 2 per cent thereafter.	42	
Subsidiary road, fixed money rental. Leased May 1, 1890, for 999 years; rental, interest on bonds, 6 per cent on capital stock, and $500 for charter obligations.	43	4992
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock; 1.12 miles owned not in operation.	44	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	45	
Operating road, subsidiary, contingent money rental. Controlled in the interest of Conn. Riv. R. R., which charges the Vt. Vy. R. R. of 1871 with operating expenses, and credits it with gross receipts and earnings of every kind. Operated by Boston & Me. R. R., as agent, under its lease of the Conn. Riv. R. R.	46	
Operating road, subsidiary, other relation. Majority of capital stock owned by Vt. Vy. R. R. of 1871. Net earnings, less taxes, paid lessor. Operated by Boston & Me. R. R., as agents, under their lease of Conn. Riv. R. R.	47	4993
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	48	

4994 [132]

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
111	**NEW YORK AND NEW ENGLAND RAILROAD COMPANY.**	360.56	545.19
112	Meriden, Waterbury and Connecticut River Railroad Company.	30.34	.....
113	Milford and Woonsocket Railroad Company...	15.33	.....
114	Milford, Franklin and Providence Railroad Company.	4.70	.....
115	*Norwich and Worcester Railroad Company*....	66.16	.....
4995			
116	Providence and Springfield Railroad Company	28.18	.....
117	Rhode Island and Massachusetts Railroad Company in Massachusetts.	6.52	.....
118	Rhode Island and Massachusetts Railroad Company in Rhode Island.	7.08	.....
119	Rockville Railroad Company.....	4.43	.....
120	Woonsocket and Pascoag Railroad Company..	9.50	.....
4996 121	**NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY.**	282.35	1,469.28
122	*Boston and New York Air Line Railroad Company.*	51.50	.....
123	Colchester Railway Company.....	3.59	.....
124	Harlem River and Port Chester Railroad Company.	11.50	.....
125	*Housatonic Railroad Company*.....	90.12	.....
4997 126	Berkshire Railroad Company.....	20.53	.....

DEFENDANTS' EXHIBIT 20-F. 1287

[133] 4998

Remarks.	No.	
Operating road, independent. Thomas C. Platt and Marsden J. Perry, receivers; appointed Dec. 27, 1893, and Jan. 24, 1894, respectively.	111	
Subsidiary road, fixed money rental. Leased Sept. 1, 1892, for 99 years; rental, $22,500 per annum.	112	
Subsidiary road, contingent money rental. Leased Sept. 30, 1887, for 99 years; annual rental, 15 per cent of gross receipts of this road and the Milf., Frank. & Prov. R. R.	113	
Subsidiary road, contingent money rental. Leased Sept. 30, 1887, for 99 years, for 25 per cent of gross earnings.	114	
Subsidiary road, fixed money rental. Leased Feb. 9, 1869, for 99 years; annual re: ., interest on bonds, and 8 per cent on preferred stock.	115	4999
Subsidiary road, fixed money rental. Leased Oct. 1, 1890, for 99 years; rental, guarantee of principal and interest on bonds, taxes and assessments.	116	
Subsidiary road, fixed money rental. Leased Nov. 21, 1887, for 99 years; annual rental, $10,000 and all taxes, assessments, etc.	117	
Subsidiary road, fixed money rental. Leased Oct. 1, 1887, for 99 years; rental, $10,000, all taxes and assessments.	118	
Subsidiary road, fixed money rental. Contract of April 1, 1888, provides for the sale of this road to N. Y. & New Eng. R. R., the latter agreeing to pay as rental 5 per cent on purchase price until the transfer of capital stock is made.	119	
Subsidiary road, fixed money rental. Leased Feb. 28, 1891, for 99 years; rental, 5 per cent interest on stocks and bonds.	120	
Operating road, independent.....	121	5000
Subsidiary road, fixed money rental. Leased Oct. 1, 1882, for 99 years; rental, $120,000 per annum, and interest on its bonds, and the bonds of Colchester Ry.	122	
Subsidiary road, fixed money rental. Leased Sept. 30, 1882, for 999 years; interest on bonds guaranteed by Boston & N. Y. Air Line R. R.	123	
Subsidiary road, fixed money rental. Leased Sept. 30, 1873, for 99 years, to N. Y., New Hav. & Hartf. R. R., for interest on bonds. The lessee owns entire capital stock of lessor road.	124	
Subsidiary road, fixed money rental. Leased July 1, 1892, for 99 years; rental, 1 per cent dividend on preferred capital stock, and interest on bonds.	125	5001
Subsidiary road, contingent money rental. Leased April 1, 1893, for 99 years; rental, 6 per cent on capital stock, and all expenses and taxes. "Old lease of the Housatonic R. R. suspended, but not canceled."	126	

5002 [134]

No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
	NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY—Continued.		
	Housatonic Railroad Company—Continued.		
127	Danbury and Norwalk Railroad Company...	36.20	.....
128	New Haven and Derby Railroad Company..	16.69	.....
5003 129	Stockbridge and Pittsfield Railroad Company	22.02	.....
130	Naugatuck Railroad Company.....	60.99	.....
131	*New Haven and Northampton Company*.....	126.31	.....
132	Holyoke and Westfield Railroad Company...	10.32	.....
5004			
133	Old Colony Railroad Company.....	495.20	.....
134	*Boston and Providence Railroad Company*..	63.69	.....
135	Attleborough Branch Railroad Company..	4.00	.....
136	Chatham Railroad Company.....	7.07	.....
5005 137	Fall River Railroad Company.....	12.25	.....
138	Nantasket Beach Railroad Company.....	6.95	.....

DEFENDANTS' EXHIBIT 20-F.

[135] 5006

Remarks.	No.
Subsidiary road, fixed money rental. Leased July 1, 1892, for 99 years; rental, 5 per cent dividend on capital stock, interest on bonds, all taxes and assessments. Of "line owned," 5.95 miles operated by Shepaug, Litchf. & Nn. R. R.	127
Subsidiary road, fixed money rental. Leased July 1, 1892, for 99 years; rental, 3 per cent dividend on capital stock until June 30, 1895, and 4 per cent thereafter during term of lease, interest on bonds, all taxes and assessments.	128
Subsidiary road, fixed money rental. Leased April 1, 1893, for 99 years; rental, 6 per cent on capital stock, $250 organization expenses, all expenses and taxes. "Old lease of the Housatonic R. R. suspended, but not canceled."	129 5007
Subsidiary road, fixed money rental. Leased April 1, 1887, for 99 years; rental, interest on bonds, and 10 per cent per annum on capital stock.	130
Subsidiary road, fixed money rental. Leased April 1, 1887, for 99 years; rental, 1 per cent on capital stock for 3 years, 2 per cent for the second 3 years, 3 per cent for the third 3 years, and 4 per cent thereafter; interest on bonds, and taxes.	131
Subsidiary road, contingent money rental. Leased Dec. 3, 1870, in perpetuity; rental, interest on bonds; in case gross receipts exceed $35,200 per annum, lessee to pay lessor one-half of such excess. Lease assumed by N. Y., New Hav. & Hartf. R. R., with lease of New Hav. & Northamp. Co.	132 5008
Subsidiary road, fixed money rental. Leased Mar. 1, 1893, for 99 years; rental, 7 per cent on capital stock, interest on funded debt, taxes, and organization expenses. Lease includes its interest as lessee.	133
Subsidiary road, fixed money rental. Leased April 1, 1888, for 99 years; annual rental, 10 per cent on capital stock, interest on bonds, taxes, and assessments, etc.	134
Subsidiary road, fixed money rental. Leased Dec. 31, 1870, for 30 years; annual rental, 7 per cent on capital stock; included in lease to Old Colony R. R.	135
Subsidiary road, contingent money rental. Contract dated Jan. 8, 1888, for 7 years; rental, 30 per cent of gross receipts, payable quarterly.	136
Subsidiary road, contingent money rental. Leased April 1, 1882, for 99 years; rental, 30 per cent of gross earnings, which is guaranteed to be sufficient to pay interest on bonds.	137 5009
Subsidiary road, fixed money rental. Leased April 1, 1888, for 99 years; lessee guarantees interest on bonds up to $6,250, pays taxes, and has option of purchasing property after 20 years of the lease for $150,000.	138

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
5010		**NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY—Continued.**		
	139	Plymouth and Middleborough Railroad Company.	15.03	.....
	140	Providence, Warren and Bristol Railroad Company.	14.35	.....
	141	Pawtuxet Valley Railroad Company.....	5.67	.....
5011	142	*Providence and Worcester Railroad Company*..	50.41	.....
	143	*Shore Line Railway Company*.....	48.53	.....
	144	West Stockbridge Railroad Company.....	2.64	.....
	[150]			
	428	**NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY.**	819.45	2,408.65
5012	429	Amsterdam, Chuctanunda and Northern Railroad Company.	1.50	.....
	430	Carthage and Adirondack Railway Company..	43.00	.....
	431	Gouverneur and Oswegatchie Railroad Company.	13.05	.....
	432	Mohawk and Malone Railway Company.....	181.50	.....
	433	New Jersey Junction Railroad Company.....	4.69	.....
5013	434	*New York and Harlem Railroad Company*....	135.90	.....
	435	New York and Putnam Railroad Company....	57.16	.....
	436	Mahopac Falls Railroad Company.....	4.05	.....

DEFENDANTS' EXHIBIT 20-F. 1291

Remarks.	No.	
		5014
Subsidiary road, fixed money rental. Leased Dec. 1, 1892, for 99 years; rental, guarantee 5 per cent on $225,000 capital stock, taxes, and $100 for organization purposes.	139	
Subsidiary road, fixed money rental. Leased July, 1891, for 95 years and 9 months; rental, 5 per cent on capital stock for the first 10 years, and 6 per cent for the remainder of the lease; also pay interest and taxes, and not exceeding $500 per annum for salaries.	140	
Subsidiary road, fixed money rental. Leased July 1, 1884, for 99 years; annual rental, 7 per cent on capital stock, interest on bonds, taxes, assessments, etc. Lease assumed by N. Y., New Hav. & Hartf. R. R., April 1, 1892.	141	
		5015
Subsidiary road, fixed money rental. Leased July 1, 1892, for 99 years; rental, 10 per cent on capital stock, interest on bonds, and taxes.	142	
Subsidiary road, fixed money rental. Leased Nov. 1, 1870, in perpetuity; annual rental, $100,000.	143	
Subsidiary road, fixed money rental. Leased April 1, 1893, for 99 years; rental, $1,800 per annum, and all taxes.	144	
		[151]
Operating road, independent.....	428	
		5016
Subsidiary road, other relation. Operated under verbal agreement Sept. 23, 1879, to deliver and receive freight to and from Kellogg & Miller's Linseed Oil Works. "Line operated" included as sidings in N. Y. Cent. & Hud. Riv. R. R.	429	
Subsidiary road, fixed money rental. Leased Jan. 9, 1893, from May 1, 1893, for term of corporate existence; rental, 4 per cent interest on bonds not exceeding $1,600,000.	430	
Subsidiary road, fixed money rental. Leased July 8, 1892, in perpetuity; rental, interest on bonds.	431	
Subsidiary road, fixed money rental. Leased May 1, 1893, in perpetuity; rental, 4 per cent interest, and principal guaranteed, on not exceeding $2,500,000 first-mortgage bonds.	432	
Subsidiary road, fixed money rental. Leased July 1, 1886, for 100 years, with privilege of further term of 100 years, at an annual rental of interest at 4 per cent on its bonds.	433	
Subsidiary road, fixed money rental. Leased April 1, 1873, for 401 years; annual rental, interest on funded debt, and 8 per cent on capital stock.	434	5017
Subsidiary road, fixed money rental. Leased Jan. 30, 1894, in perpetuity; rental, 4 per cent interest on first-mortgage bonds and 5 per cent on $1,200,000 first consolidated mortgage forty-year bonds of N. Y. & Nn. Ry. pending retirement.	435	
Subsidiary road, other relation. Operated since Jan. 1, 1894, as a branch of N. Y. & Putnam R. R. by N. Y. Cent. & Hud. Riv. R. R., lessee. N. Y. & Putnam R. R. owns entire capital stock.	436	

	No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
		NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY—Continued.		
5018	437	*Rome, Watertown and Ogdensburg Railroad Company.*	412.55	.....
	438	**Niagara Falls Branch Railroad Company...**	8.74	.....
	439	Oswego and Rome Railroad Company.....	28.49	.....
5019	440	Utica and Black River Railroad Company...	149.81	.....
	441	Carthage, Watertown and Sacketts Harbor Railroad Company.	29.59	.....
	442	Spuyten Duyvil and Port Morris Railroad Company.	6.04	.....
	443	Tivoli Hollow Railroad Company.....	1.23	.....
5020	444	Troy and Greenbush Railroad Company.....	6.00	.....
	445	Troy Union Railroad Company.....	5.00	.....
	446	**West Shore Railroad Company**.....	495.20	.....
	447	Beech Creek Railroad Company.....	149.73	185.92
	448	Buffalo and Erie Basin Railroad Company....	.75	.75
	449	Malone and Saint Lawrence Railway Company	12.00	12.00
5021	450	Wallkill Valley Railroad Company.....	32.88	37.69

Remarks.	No.	
Subsidiary road, fixed money rental. Leased Mar. 14, 1891, in perpetuity; rental, 5 per cent on capital stock and $15,000 per annum until April 1, 1901, and thereafter $7,000 per annum.	437	5022
Subsidiary road, fixed money rental. Leased Sept. 21, 1881, in perpetuity, at 7 per cent per annum on capital stock; included in lease to N. Y. Cent. & Hud. Riv. R. R., dated March 14, 1891.	438	
Subsidiary road, fixed money rental. Leased Dec. 2, 1869, in perpetuity; annual rental, interest on first-mortgage bonds and $24,000 cash. Lease amended March 2, 1891; rental, 7 per cent on $350,000 first-mortgage bonds and 5 per cent on $400,000 second-mortgage bonds per annum; included in lease to N. Y. Cent. & Hud. Riv. R. R., dated March 14, 1891.	439	
Subsidiary road, fixed money rental. Leased April 14, 1886, for the term of its corporate existence; annual rental, 7 per cent on capital stock, interest on bonds, and $4,500 for organization expenses; included in lease to N. Y. Cent. & Hud. Riv. R. R., dated March 14, 1891.	440	5023
Subsidiary road, contingent money rental. Leased for the term of its corporate existence for 37½ per cent of gross earnings; included in the lease of Utica & Black Riv. R. R. to Rome, Watert. & Ogdensb. R. R., and to N. Y. Cent. & Hud. Riv. R. R., dated March 14, 1891.	441	
Subsidiary road, fixed money rental. Leased Nov. 1, 1871, to Dec. 31, 1970; annual rental, 8 per cent on $989,000 capital stock.	442	
Subsidiary road.....	443	
Subsidiary road, fixed money rental. Leased Feb. 3, 1851, in perpetuity, at an annual rental of $19,250, taxes, etc.	444	
Subsidiary road, other relation. One-half owned by N. Y. Cent. & Hud. Riv. R. R., and one-fourth each by Del. & Hud. Canal Co. and Fitchburg R. R. These companies pay this proportion of maintenance and operation.	445	5024
Subsidiary road, fixed money rental. Leased Jan. 1, 1886, for 475 years, with privilege of further term of 500 years; annual rental, interest at 4 per cent on bonds.	446	
Operating road, subsidiary, fixed money rental. Leased Dec. 15, 1890, for 999 years; rental, 4 per cent on $1,000,000 second-mortgage bonds and 5 per cent on $1,000,000 capital stock.	447	
Operating road, subsidiary.....	448	
Operating road, subsidiary, fixed money rental. Leased March 1, 1894, for 99 years; rental, 5 per cent interest on first-mortgage bonds.	449	
Operating road, subsidiary, other relation. Controlled through ownership of capital stock and bonds held in the interests of W. Shore R. R.	450	5025

5026 [156]

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
512	**PENNSYLVANIA RAILROAD COMPANY.....**	527.36	2,742.07
513	Bald Eagle Valley Railroad Company.....	90.08	.....
514	Bedford and Bridgeport Railway Company...	49.17	.....
515	Bustleton Railroad Company.....	4.16	.....
5027			
516	Cambria and Clearfield Railroad Company....	97.62	.....
517	Columbia and Port Deposit Railway Company.	43.53	.....
518	Columbus, Kinkora and Springfield Railroad Company.	14.16	.....
519	Cresson and Clearfield County and New York Short Route Railroad Company.	28.69	.....
520	Downingtown and Lancaster Railroad Company.	37.98	.....
5028			
521	Engelside Railroad Company.....	.17	.....
522	Freehold and Jamesburg Agricultural Railroad Company.	27.54	.....
523	Frederick and Pennsylvania Line Railroad Company.	28.00	.....
524	Hanover and York Railroad Company.....	27.65	.....
525	Harrisburg, Portsmouth, Mount Joy and Lancaster Railroad Company.	53.74	.....
5029			
526	Johnsonburg Railroad Company.....	19.69	.....
527	Kensington and Tacony Railroad Company...	5.13	.....

DEFENDANTS' EXHIBIT 20-F. 1295

[157] 5030

Remarks.	No.	
Operating road, independent.....	512	
Subsidiary road, contingent money rental. Leased July 1, 1864, for 99 years; rental, 40 per cent of gross receipts. Lease does not apply to Nittany Brh., which is operated for cost. Net earnings paid to Bald Eagle Vy. R. R.	513	
Subsidiary road, contingent money rental. Operated under resolutions of the directors of both companies, which took effect May 1, 1891, and is terminable at the option of either party on 30 days' notice. Net earnings payable to this company.	514	
Subsidiary road, contingent money rental. Operated under resolutions of the directors of both companies, which took effect Jan. 1, 1891, and is terminable at the option of either party on 30 days' notice. Net earnings payable to this company.	515	5031
Subsidiary road, contingent money rental. Operated under resolutions of board of directors in effect Sept. 24, 1888, terminable at any time on 30 days' notice; net earnings payable to this company.	516	
Subsidiary road, contingent money rental. Agreement dated July 1, 1890, terminable at any time on 30 days' notice; rental, net earnings.	517	
Subsidiary road, contingent money rental. Lease dated Sept. 23, 1889; runs from year to year, unless terminated by 6 months' notice. Lessee collects all earnings, pays all expenses for operating the road and maintenance of way, and taxes; balance, if any, is paid to lessor.	518	
Subsidiary road, contingent money rental. Leased Jan. 2, 1893, for 99 years; rental, net earnings.	519	
Subsidiary road, contingent money rental. This company is the reorganized E. Brandyw. & Waynesb. R. R., operated under resolutions of board of directors in effect August 1, 1888, terminable at any time on 30 days' notice; net earnings paid to this company.	520	5032
Subsidiary road. "Operated by Pennsylvania R. R. as a siding"	521	
Subsidiary road, contingent money rental. Contract dated July 16, 1879, terminable on 30 days' notice; rental, net earnings.	522	
Subsidiary road, fixed money rental. Leased Jan. 1, 1875, for 999 years; lessee operates the road at cost.	523	
Subsidiary road, contingent money rental. Operated under resolutions of the directors of both companies, which took effect Jan. 3, 1893, and is terminable at the option of either party on 30 days' notice; net earnings payable to this company.	524	
Subsidiary road, fixed money rental. Leased Jan. 1, 1861, for 999 years; annual rental, 7 per cent on capital stock, 4 per cent interest on bonds, all taxes levied on stock and bonds, and organization expenses up to $2,000.	525	5033
Subsidiary road, contingent money rental. Leased July 8, 1889, for 50 years; rental, 5 per cent per annum on capital stock, interest on bonds, and taxes; balance divided equally between lessee and lessor.	526	
Subsidiary road, fixed money rental. Leased Jan. 1, 1887, for 5 years, at $30 per annum, and taxes. Renewed by agreement dated March 15, 1892, for 1 year from Jan. 1, 1892, and thereafter from year to year, terminable upon 6 months' notice.	527	

	No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
		PENNSYLVANIA RAILROAD COMPANY—Continued.		
5034	528	Lewisburg and Tyrone Railroad Company....	85.08	.....
	529	McKeesport and Bessemer Railroad Company	1.52	.....
	530	Mifflin Centre County Railroad Company.....	12.31	.....
	531	Millstone and New Brunswick Railroad Company.	6.64	.....
5035	532	Nescopec Railroad Company.....	11.96	.....
	533	New York Bay Railroad Company.....	9.20	.....
	534	North and West Branch Railway Company...	47.82	.....
	535	Pennsylvania, Schuylkill Valley Railroad Company.	130.22	.....
	536	Perth Amboy and Woodbridge Railroad Company.	6.40	.....
5036	537	Philadelphia and Beach Haven Railroad Company.	12.09	.....
	[158]			
	538	**Philadelphia and Erie Railroad Company**.....	287.56	.....
5037	539	Philadelphia and Long Branch Railroad Company.	49.09	.....
	540	Philadelphia, Germantown and Chestnut Hill Railroad Company.	13.87	.....
	541	Pittsburgh, Virginia and Charleston Railway Company.	73.71	.....
	542	Pomeroy and Newark Railroad Company.....	26.70	.....

DEFENDANTS' EXHIBIT 20-F. 1297

Remarks.	No.	
		5038
Subsidiary road, contingent money rental. Leased Jan. 1, 1880, for 99 years; rental, net earnings. "Line owned" includes 24 miles over the Lewisburg Bridge.	528	
Subsidiary road, contingent money rental. Operated under resolutions of the directors of both companies, which took effect Nov. 24, 1891, and is terminable at the option of either party on 30 days' notice; net earnings payable to this company.	529	
Subsidiary road, contingent money rental. Leased March 19, 1863, for 999 years; rental, net earnings.	530	
Subsidiary road, contingent money rental. Operated since Feb. 1, 1886, by Pennsylvania R. R., under a temporary arrangement, without any written contract, that company paying all expenses and charging deficiency in net receipts to this company.	531	5039
Subsidiary road, contingent money rental. Operated under resolutions of board of directors in effect April 25, 1887, terminable at any time on 30 days' notice; net earnings payable to this company.	532	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	533	
Subsidiary road, contingent money rental. Agreement dated Nov. 23, 1881, to continue until Sept. 1, 1901; net earnings to be paid this company.	534	
Subsidiary road, contingent money rental. Leased Dec. 1, 1885, for 50 years; rental, net earnings.	535	
Subsidiary road, contingent money rental. Operated as of date Jan. 1, 1889, by virtue of resolutions adopted May 6, 1889, by stockholders of this company, and June 26, 1889, by directors of Pennsylvania R. R.; net earnings paid to this company.	536	5040
Subsidiary road, contingent money rental. Operated by Pennsylvania R. R., as agent, under resolution adopted Jan. 1, 1894, terminable on 30 days' notice; rental, net earnings.	537	
		[159]
Subsidiary road, contingent money rental. Lease executed Jan. 6, 1862; modified Jan. 1, 1870, for 999 years from Jan. 1, 1862; surplus of gross receipts, after paying operating expenses, etc., to be applied to organization expenses and interest on bonds; any balance to be paid lessor.	538	
Subsidiary road, contingent money rental. Leased Jan. 1, 1884, for 50 years; any surplus of earnings after paying operating and other expenses to be paid lessor.	539	5041
Subsidiary road, contingent money rental. Leased May 1, 1883, for 30 years; rental, net earnings.	540	
Subsidiary road, contingent money rental. Leased April 1, 1882, for 50 years; rental, net earnings.	541	
Subsidiary road, contingent money rental. Leased March 1, 1880, for 99 years; rental, net earnings.	542	

	No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
5042		**PENNSYLVANIA RAILROAD COMPANY—Continued.**		
	543	Ridgway and Clearfield Railroad Company....	27.23	.....
	544	Riverfront Railroad Company.....	3.86	.....
	545	South Fork Railroad Company.....	8.12	.....
5043	546	Southwest Pennsylvania Railway Company...	111.87	.....
	547	Sunbury and Lewistown Railway Company...	43.45	.....
	548	Sunbury, Hazelton and Wilkesbarre Railway Company.	43.44	.....
	549	Susquehanna and Clearfield Railroad Company	24.89	.....
	550	Tipton Railroad Company.....	4.44	.....
5044	551	Trenton Delaware Bridge Company.....	.19	.....
	552	Tyrone and Clearfield Railway Company.....	132.87	.....
	553	United New Jersey Railroad and Canal Company.	144.83	.....
	554	Belvidere Delaware Railroad Company.....	79.04	.....
	555	Enterprise Railroad Company.....	1.26	.....
5045	556	Martin's Creek Railway Company of New Jersey.	.14	.....
	557	Martin's Creek Railway Company of Pennsylvania.	.15	.....
	558	Camden and Burlington County Railroad Company.	29.61	.....

DEFENDANTS' EXHIBIT 20-F. 1299

Remarks.	No.	
		5046
Subsidiary road, contingent money rental. Operated under resolutions of board of directors, adopted July 23, 1884, by the stockholders of this company, and Sept. 10, 1884, by Pennsylvania R. R., terminable at option of either party on 30 days' notice; net earnings paid to this company.	543	
Subsidiary road, fixed money rental. Leased May 1, 1882, for 50 years; rental, $23,000 per annum, and after Jan. 1, 1894, $28,000 per annum.	544	
Subsidiary road, contingent money rental. Agreement dated Aug. 15, 1891, terminable at the option of either party on 30 days' notice, in writing; net earnings paid to this company.	545	
Subsidiary road, contingent money rental. Leased April 1, 1893, for one year, renewable every year; net earnings paid to this company. Terminable at the end of any year after 6 months' notice by either party.	546	5047
Subsidiary road, contingent money rental. Leased July 1, 1876, for 99 years; operated for cost and one-half of net earnings after payment of interest on outstanding bonds.	547	
Subsidiary road, contingent money rental. Leased May 1, 1878, for 50 years; net earnings paid to this company.	548	
Subsidiary road, contingent money rental. Operated under resolutions of board of directors adopted July 23, 1884, terminable at the option of either party on 30 days' notice; net earnings paid to this company.	549	
Subsidiary road, contingent money rental. Agreement dated May 1, 1886, terminable at the option of either party on 30 days' notice; net earnings paid to this company.	550	
Subsidiary road, fixed money rental. Trackage contract dated June 20, 1877, for 993 years, 5 months and 10 days; annual rental, $28,000 and taxes.	551	5048
Subsidiary road, fixed money rental. Leased Jan. 1, 1882, for 50 years; lessee to pay annually all taxes, interest on bonds, sinking fund, organization expenses up to $10,000, and 5 per cent on capital stock.	552	
Subsidiary road, fixed money rental. Leased June 30, 1871, for 999 years; annual rental, 10 per cent on capital stock, taxes, interest on funded and other debts, damages, losses, etc.	553	
Subsidiary road, contingent money rental. Leased Jan. 1, 1876, to June 30, 2870; assigned to Pennsylvania R. R. March 7, 1876; revenue to be applied, first, to operation; second, to interest on bonds; any balance to be paid lessor.	554	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	555	
....do	556	5049
....do	557	
Subsidiary road, fixed money rental. Leased April 24, 1858, for the term of its corporate existence, to Camden & Amb. R. R., one of the constituent companies of United N. J. R. R. & Canal Co.; annual rental, 6 per cent on capital stock and bonds and $500 for organization expenses; lease assigned to Pennsylvania R. R. June 30, 1871.	558	

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	PENNSYLVANIA RAILROAD COMPANY—Continued.		
559	Mount Holly, Lumberton and Medford Railroad Company.	5.95	.....
560	**Philadelphia and Trenton Railroad Company**	27.12	.....
561	Connecting Railway Company.....	6.75	.....
562	Rocky Hill Railroad and Transportation Company.	2.38	.....
563	Vincentown Branch Railroad Company.....	2.84	.....
564	West Chester Railroad Company.....	5.22	.....
565	Western Pennsylvania Railroad Company.....	120.38	.....
	[160]		
566	Allegheny Valley Railway Company.....	260.30	260.30
567	Camden and Atlantic Railroad Company.....	68.79	81.67
568	Philadelphia, Marlton and Medford Railroad Company.	11.98	.....
569	Cumberland Valley Railroad Company.....	82.18	144.93
570	Cumberland Valley and Martinsburg Railroad Company.	33.65	.....
571	Dillsburg and Mechanicsburg Railroad Company.	7.70	.....
572	Southern Pennsylvania Railway and Mining Company.	21.40	.....
573	Junction Railroad Company (of Philadelphia).	3.56	3.56

DEFENDANTS' EXHIBIT 20-F. 1301

Remarks.	No.	
		5054
Subsidiary road, fixed money rental. Leased March 11, 1873, during corporate existence, at $11,189 per annum; lease assigned to Pennsylvania R. R. June 13, 1871.	559	
Subsidiary road, fixed money rental. Leased June 30, 1871, from United N. J. R. R. & Canal Co. for 999 years; annual rental, 10 per cent on capital stock (excluding 7,650 shares owned by United N. J. R. R. & Canal Co.), taxes, assessments, etc.	560	
Subsidiary road, fixed money rental. Leased Feb. 18, 1863, for 999 years; annual rental, 6 per cent on capital stock, 6 per cent on bonds, and taxes; included in lease to Pennsylvania R. R.	561	
Subsidiary road, fixed money rental. Leased Nov. 22, 1869, for the term of its charter, to Camden & Amb. R. R., one of the constituent companies of United N. J. R. R. & Canal Co., at 6 per cent per annum on capital stock; lease assigned to Pennsylvania R. R. Nov., 1871.	562	5055
Subsidiary road, fixed money rental. Leased April 7, 1868, for corporate existence; annual rental, 6 per cent on capital stock owned by individuals, which is $15,000; the other $10,000 is owned by lessee and nothing is paid on it.	563	
Subsidiary road, fixed money rental. Leased Aug. 6, 1879, for 99 years; annual rental, 5 per cent on capital stock, interest on bonds, sinking-fund charges, and taxes.	564	
Subsidiary road, contingent money rental. Leased June 1, 1888, for 40 years; net earnings paid to this company.	565	
		5056
	[161]	
Operating road, subsidiary, other relation. Majority of capital stock and about one-fifth of outstanding bonds owned by Pennsylvania R. R.	566	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	567	
Subsidiary road, contingent money rental. Leased Jan. 1, 1885, terminable on 30 days' notice; surplus from operation paid lessor.	568	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	569	
Subsidiary road, contingent money rental. Leased March 17, 1888, for 99 years; receipts from operation to be applied to maintain the road, pay operating expenses, taxes, insurance, etc.; balance to be paid lessor.	570	5057
Subsidiary road, contingent money rental. Leased Jan. 1, 1873, for 99 years; terms of lease same as Cumb. Vy. & Martinsb. R. R.	571	
Subsidiary road, contingent money rental. Leased March 1, 1870, for 199 years; terms of lease same as Cumb. Vy. & Martinsb. R. R.	572	
Operating road, subsidiary, other relation. The Pennsylvania, Phila., Wilm. & Balt., and Phila. & Read. R. Rs. use this company's tracks, paying a certain rate per car per mile, the Junction R. R. paying the company moving the traffic for the use of the motive power.	573	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
		PENNSYLVANIA RAILROAD COMPANY—Continued.		
5058	574	**Northern Central Railway Company**	148.24	372.83
	575	Elmira and Lake Ontario Railroad Company	99.61	.....
	576	Elmira and Williamsport Railroad Company.	75.50	.....
5059	577	Lykens Valley Railroad and Coal Company..	19.70	.....
	578	Shamokin Valley and Pottsville Railroad Company.	29.78	.....
	579	Baltimore and Sparrows Point Railroad Company.	5.19	5.19
	580	Union Railroad Company (of Baltimore)...	9.65	9.65
	581	*Philadelphia, Wilmington and Baltimore Railroad Company.*	116.79	643.66
	582	*Baltimore and Potomac Railroad Company*..	93.21	.....
5060	583	Catonsville Short Line Railroad Company.	3.80	.....
	584	Cambridge and Seaford Railroad Company..	27.24	.....
	585	Delaware Railroad Company	117.00	.....
	586	Delaware and Chesapeake Railway Company	54.30	.....
5061	587	Delaware, Maryland and Virginia Railroad Company.	97.53	.....
	588	Philadelphia and Baltimore Central Railroad Company.	73.68	.....
	589	Chester Creek Railroad Company	6.69	.....
	590	South Chester Railroad Company	3.78	.....

DEFENDANTS' EXHIBIT 20-F. 1303

Remarks.	No.	
		5062
Operating road, subsidiary, other relation. Controlling interest in capital stock owned by Pennsylvania R. R.	574	
Subsidiary road, contingent money rental. Contract terminable at the option of either party on 30 days' notice; net receipts after paying charges for use of equipment paid to this company. Contract took effect Jan. 1, 1887. Controlled through ownership of entire capital stock by Nn. Cent. Ry.	575	
Subsidiary road, fixed money rental. Leased May 1, 1863, for 999 years; annual rental, 7 per cent on preferred and 5 per cent on common stock, interest on bonds, and $3,000 for organization expenses.	576	
Subsidiary road, fixed money rental. Leased March 1, 1866, for 999 years to Summit Brh. R. R.; annual rental, $62,500, taxes, charges, etc.	577	5063
Subsidiary road, fixed money rental. Leased Feb. 27, 1863, for 999 years; annual rental, 7 per cent interest on bonds, 6 per cent on capital stock, and taxes.	578	
Operating road, subsidiary.....	579	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	580	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	581	
Subsidiary road, contingent money rental. Contract took effect Nov. 1, 1891, and is terminable at the option of either company upon giving 30 days' notice in writing; net earnings paid to this company.	582	
		5064
Subsidiary road, contingent money rental. Leased Dec. 6, 1883; the lessor receives 40 per cent of net earnings. Leased to Phila., Wilm. & Balt. R. R. with Balt. & Pot. R. R., Dec. 6, 1893, for 99 years; rental, net earnings.	583	
Subsidiary road, contingent money rental. Agreement dated May 16, 1883; took effect June 1, 1883; terminable on 30 days' notice; net earnings paid to this company.	584	
Subsidiary road, contingent money rental. Leased May 5, 1855; renewed April 23, 1875; renewed Jan. 13, 1882; expires May 4, 1897. Annual rental, 6 per cent on capital stock, interest on funded and floating debt, and one-half of any surplus over 6 per cent of net earnings.	585	
Subsidiary road, contingent money rental. Agreement took effect July 1, 1882; terminable on 30 days' notice; net earnings paid to this company.	586	
Subsidiary road, contingent money rental. Agreement dated Aug. 1, 1885; took effect July 1, 1885; terminable on 30 days' notice; net earnings paid to this company.	587	5065
Subsidiary road, contingent money rental. Agreement dated Aug. 1, 1881; took effect Sept. 1, 1881; terminable on 6 months' notice; net earnings paid to this company.	588	
Subsidiary road, fixed money rental. Leased Jan. 13, 1868, for 999 years; rental, 6 per cent on $185,000 of capital stock, interest on bonds, and taxes.	589	
Subsidiary road, included in "operation" of Phila., Wilm. & Balt. R. R. as siding.	590	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
5066		**PENNSYLVANIA RAILROAD COMPANY**—Continued.		
	591	Washington Southern Railway Company....	34.67	.....
	592	Queen Anne's and Kent Railroad Company..	25.90	25.90
	[162]			
5067	593	West Jersey Railroad Company.....	184.84	230.40
	594	Alloway and Quinton Railroad Company....	4.22	.....
	595	West Jersey and Atlantic Railroad Company.	39.74	.....
	[176]			
	822	**LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY.**	859.15	1,448.61
5068	823	Detroit and Chicago Railroad Company.....	62.31	.....
	824	Detroit, Hillsdale and Southwestern Railroad Company.	65.20	.....
	825	Detroit, Monroe and Toledo Railroad Company	62.36	.....
	826	Erie and Kalamazoo Railroad Company.....	.....	.....
	827	Fort Wayne and Jackson Railroad Company..	97.83	.....
5069	828	Jamestown and Franklin Railroad Company..	50.91	.....
	829	Kalamazoo and White Pigeon Railroad Company.	36.57	.....
	830	Kalamazoo, Allegan and Grand Rapids Railroad Company.	58.42	.....

DEFENDANTS' EXHIBIT 20-F. 1305

5070

Remarks.	No.	
Subsidiary road, contingent money rental. Agreement went into effect Nov. 1, 1891, terminable at option of either party on 30 days' notice. Rental, entire net earnings.	591	
Operating road, subsidiary, other relation. Controlled through ownership of a majority of capital stock.	592	
	[163]	
		5071
Operating road, subsidiary, other relation.....	593	
Subsidiary road, fixed money rental. Leased Jan. 1, 1892. May be terminated upon 6 months' written notice. Rental, $1 per annum.	594	
Subsidiary road, contingent money rental. Leased Dec. 29, 1879, terminable at one year's notice; lessee to furnish equipment and operate the road at cost, paying lessor any surplus from operation.	595	
	[177]	
Operating road, independent. "Line operated" includes 7.20 miles leased from Battle Ck. & Sturgis Ry.	822	5072
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	823	
Subsidiary road, fixed money rental. Leased Sept. 5, 1881, in perpetuity; annual rental, $54,000, and $500 for organization expenses.	824	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	825	
Subsidiary road, other relation. Included in branches of L. Shore & Mich. Sn. Ry.	826	
Subsidiary road, contingent money rental. Leased Aug. 24, 1882, in perpetuity, from Sept. 1, 1882; annual rental, 5½ per cent on preferred stock; should net earnings in any year, after Aug. 24, 1887, exceed 8 per cent on preferred stock, lessee will pay amount of such excess up to 2 per cent on common stock. Organization expenses, $1,500.	827	
Subsidiary road, contingent money rental. Leased Jan. 1, 1890, for 5 years; annual rental, 30 per cent of gross earnings, and all taxes, except those imposed by United States or State of Pennsylvania upon tonnage, dividends, or interest on bonds.	828	5073
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	829	
Subsidiary road, fixed money rental. Leased Sept. 21, 1869, for 999 years; annual rental, 6 per cent on capital stock, interest on bonds, and all taxes and assessments.	830	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
5074		**LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY—Continued.**		
	831	Mahoning Coal Railroad Company.....	50.20	.....
	832	Northern Central Michigan Railroad Company	61.14	.....
	833	Oberlin and La Grange Railway Company....	4.00	.....
	834	Silver Creek and Dunkirk Railway Company.	8.71	.....
5075	835	Sturgis, Goshen and Saint Louis Railroad Company.	28.28	.....
	836	Toledo and Ohio Northern Railway Company..	4.20	.....
	[178]			
	837	**New York, Chicago and Saint Louis Railroad Company.**	502.83	531.13
	838	Chicago and State Line Railroad Company..	9.96	.....
5076	839	Pittsburgh and Lake Erie Railroad Company.	70.93	168.53
	840	Ellwood Connecting Railroad Company.....	.68	.....
	841	Pittsburgh, McKeesport and Youghiogheny Railroad Company.	95.68	.....
	842	Youghiogheny Northern Railroad Company.	1.92	.....
	857	**MICHIGAN CENTRAL RAILROAD COMPANY.**	270.07	1,633.52
	858	Battle Creek and Sturgis Railway Company..	41.00	.....
5077	859	Bay City and Battle Creek Railway Company.	18.00	.....
	860	Canada Southern Bridge Company.....	3.66	.....

DEFENDANTS' EXHIBIT 20-F. 1307

Remarks.	No.	
		5078
Subsidiary road, contingent money rental. Leased July 1, 1884, in perpetuity; annual rental, 40 per cent of gross earnings; if that is insufficient to pay interest on bonds, 5 per cent on preferred stock, and $1,000 for corporate expenses, lessee will advance necessary amount and charge same against future rental.	831	
Subsidiary road, other relation. Owned entirely by L. Shore & Mich. Sn. Ry.	832	
Subsidiary road, contingent money rental. "Train service operated by L. Shore & Mich. Sn. Ry." under contract dated March 29, 1884, for 10 years.	833	
Subsidiary road, other relation. Capital stock all held by L. Shore & Mich. Sn. Ry.	834	
		5079
Subsidiary road, other relation. Controlled through ownership of capital stock and bonds.	835	
Subsidiary road. "Line owned" not in operation.....	836	
		[179]
Operating road, subsidiary, other relation. Controlled through ownership of capital stock.	837	
Subsidiary road, fixed money rental. Leased in perpetuity to Ft. Wayne & Ill. R. R.; annual rental, $100, organization expenses up to $500, all taxes, assessments, etc. Ft. Wayne & Ill. R. R. merged into N. Y., Chic. & St. L. R. R.	838	
Operating road, subsidiary, other relation. Controlled through ownership of capital stock.	839	5080
Subsidiary road, other relation. Controlled through ownership of entire capital stock. Used as a siding by Pittsb. & L. Erie R. R.	840	
Subsidiary road, fixed money rental. Leased Jan. 1, 1894, for 999 years; Pittsb. & L. Erie R. R. and L. Shore & Mich. Sn. Ry. guarantee 6 per cent on capital stock and interest on bonds.	841	
Subsidiary road, contingent money rental. Leased for 50 years from April 1, 1883; rental depends upon a provisional agreement.	842	
Operating road, independent. Of "line operated," 378.91 miles not in United States.	857	
Subsidiary road, fixed money rental. Rental, interest on bonds, operating expenses and taxes. The Mich. Cent. R. R. also owns majority of capital stock. Of "line owned," 7.20 miles operated by L. Shore & Mich. Sn. Ry., with Sturgis, Goshen & St. L. Ry.	858	5081
Subsidiary road, fixed money rental. Agreement dated Feb. 1, 1890, in perpetuity; rental, interest on bonds, and taxes.	859	
Subsidiary road, contingent money rental. Operated under agreement dated Dec. 12, 1882, for 21 years, with Can. Sn. Ry., which owns substantially all its capital stock and bonds, the bridge company being credited with its earnings and charged with its expenses.	860	

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	MICHIGAN CENTRAL RAILROAD COMPANY —Continued.		
861	Detroit and Bay City Railroad Company.....	155.00	.....
862	Grayling, Twin Lakes and Northeastern Railroad Company.	27.80	.....
863	Grand River Valley Railroad Company.....	83.79	.....
864	Jackson, Lansing and Saginaw Railroad Company.	295.10	.....
865	Joliet and Northern Indiana Railroad Company	45.00	.....
866	Kalamazoo and South Haven Railroad Company.	39.50	.....
	[180]		
867	Michigan Air Line Railroad Company.....	115.16	.....
868	Michigan, Midland and Canada Railroad Company.	14.68	.....
869	Saginaw Bay and Northwestern Railroad Company.	80.13	.....
870	Toledo and Michigan Belt Railway Company..	3.05	.....
871	Toledo, Canada Southern and Detroit Railway Company.	55.87	.....
890	**PENNSYLVANIA COMPANY**.....	.....	1,213.49
891	Calumet River Railway Company.....	4.43	.....

DEFENDANTS' EXHIBIT 20-F. 1309

Remarks.	No.	
		5086
Subsidiary road, other relation. Under a contract dated March 10, 1891, the Det. & Bay Cy. R. R. gave entire possession and control of its railroad and property to the Mich. Cent. R. R., which agreed to operate the same during its corporate existence. By this contract the lessee was authorized to issue and did issue its bonds to the amount of $4,000,000, bearing interest at 5 per cent and maturing 50 years from March 1, 1881. To secure the payment of said bonds both said companies joined in the execution of a mortgage upon all the railroad property and franchises of Det. & Bay Cy. R. R.	861	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	862	
Subsidiary road, fixed money rental. Leased Jan. 20, 1870, to continue during the corporate existence of lessor; lessee guarantees floating and funded debt of lessor, interest thereon, 5 per cent per annum on stock, taxes, assessments, etc.	863	5087
Subsidiary road, fixed money rental. Leased Sept. 1, 1871, during corporate existence of the two companies; lessee pays principal and interest on bonds of lessor and a dividend of 3½ per cent per annum, also $750 per annum for organization purposes.	864	
Subsidiary road, fixed money rental. Operated under contracts executed Sept. 7 and 26, 1854; on completion turned over to Mich. Cent. R. R. to operate forever at an annual rental of $89,000.	865	
Subsidiary road, fixed money rental. Leased July 1, 1870, in perpetuity; lessee to pay taxes and interest on bonds.	866	
		5088
	[181]	
Subsidiary road, fixed money rental. Leased Jan. 1, 1870, for 999 years, lessee guaranteeing principal and interest on bonds.	867	
Subsidiary road, other relation. Operated under agreement dated Dec. 12, 1882, for 21 years, with Can. Sn. Ry., which owns a majority of its capital stock and all its bonds, Mich., Midl. & Can. R. R. being credited with its earnings and charged with its expenses.	868	
Subsidiary road, other relation. Controlled through ownership of capital stock.	869	
Subsidiary road	870	
Subsidiary road, other relation. Operated under agreement dated Dec. 12, 1882, for 21 years, with Can. Sn. Ry., which owns substantially all its capital stock and bonds, Tol., Can. Sn. & Det. Ry. being credited with its earnings and charged with its expenses.	871	5089
Operating road, independent.....	890	
Subsidiary road, other relation. Controlled through ownership of capital stock. "Line owned" not in operation.	891	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
5090		**PENNSYLVANIA COMPANY**—Continued.		
	892	Cleveland and Pittsburgh Railroad Company..	198.34	.....
	893	Salineville Railroad Company.....	3.07	.....
	[182]			
5091	894	Erie and Pittsburgh Railroad Company.....	84.47	.....
	895	Indianapolis and Vincennes Railroad Company	133.11	.....
	896	**Pittsburgh, Fort Wayne and Chicago Railway Company.**	469.89	.....
	897	Massillon and Cleveland Railroad Company.	12.23	.....
5092	898	New Castle and Beaver Valley Railroad Company.	14.98	.....
	899	Pittsburgh, Ohio Valley and Cincinnati Railroad Company.	15.27	.....
	900	Pittsburgh, Youngstown and Ashtabula Railroad Company.	125.19	.....
	901	South Chicago and Southern Railroad Company.	10.25	.....
	902	State Line and Indiana City Railway Company	7.50	.....
	903	Toledo, Walhonding Valley and Ohio Railroad Company.	125.40	.....
5093	904	Cincinnati and Muskingum Valley Railway Company.	148.45	148.45
	905	Grand Rapids and Indiana Railroad Company.	436.20	592.10

DEFENDANTS' EXHIBIT 20-F. 5011

Remarks.	No.	5094
Subsidiary road, fixed money rental. Leased to Pennsylvania R. R. Dec. 1, 1871, for 999 years; lessee guarantees principal, interest, and sinking fund charges on bonds, 7 per cent on capital stock, $10,000 for organization annually, taxes, assessments, etc.; lease transferred to Pennsylvania Co., April 14, 1873.	892	
Subsidiary road, other relation. Operated by Pennsylvania Co., for Wm. Jackson, Trustee.	893	

[183]

Subsidiary road, fixed money rental. Leased to Pennsylvania R. R. Mar. 1, 1870, for 999 years; annual rental, 7 per cent on capital stock and bonds; lease transferred to Pennsylvania Co., April 1, 1871.	894	5095
Subsidiary road, contingent money rental. Leased Dec. 28, 1878, for 99 years; net earnings paid to lessor to be applied to payment of interest on bonds.	895	
Subsidiary road, fixed money rental. Leased July 1, 1869, for 999 years; annual rental, interest on bonds, sinking fund, 7 per cent on capital stock, organization expenses and taxes.	896	
Subsidiary road, contingent money rental. Leased May 22, 1869, for 99 years, at a rental of 40 per cent of gross earnings, minimum being fixed at $20,000 a year; lease transferred to Pennsylvania Co., July 1, 1869.	897	
Subsidiary road, contingent money rental. Leased June 29, 1865, for 99 years, at a rental of 40 per cent of gross earnings; lease assigned to Pennsylvania R. R. June 7, 1869, and by the latter to Pennsylvania Co., June 29, 1874, to take effect as of date April 1, 1871.	898	5096
Subsidiary road, other relation. Controlled through ownership of majority of capital stock.	899	
Subsidiary road, contingent money rental. Leased Aug. 1, 1887, for 1 year, and thereafter from year to year subject to termination on 12 months' written notice from either party; operated by lessee at cost.	900	
Subsidiary road, contingent money rental. No contract; operated at cost under a provisional arrangement. Pennsylvania Co. controls the road through ownership of capital stock.	901	
....do	902	
Subsidiary road, contingent money rental. Leased Jan. 17, 1879, for 99 years, each year's surplus, if any, after deducting taxes, repairs, operating expenses, etc., to be paid lessor.	903	5097
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	904	
Operating road, subsidiary, other relation. Controlled by virtue of a contract in effect from Oct. 1, 1869, for 30 years, under which Pennsylvania Co. guarantees certain of its first-mortgage land-grant funds.	905	

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	PENNSYLVANIA COMPANY—Continued.		
906	Cincinnati, Richmond and Fort Wayne Railroad Company.	85.60	.....
907	Muskegon, Grand Rapids and Indiana Railroad Company.	36.85	.....
908	Traverse City Railroad Company.....	26.00	.....
909	**Pittsburgh, Cincinnati, Chicago and Saint Louis Railway Company.**	1,073.73	1,402.34
910	Chartiers Railway Company.....	22.76	.....
911	Chartiers Connecting Railroad Company..	.72	.....
912	Englewood Connecting Railway Company...	2.35	.....
913	Little Miami Railroad Company.....	101.50	.....
914	Columbus and Xenia Railroad Company..	55.00	.....
915	Dayton and Western Railroad Company..	37.99	.....
916	Ohio Connecting Railway Company.....	3.27	.....
917	Pittsburgh, Wheeling and Kentucky Railroad Company.	28.04	.....
918	Steubenville Extension Railroad Company..	1.23	.....
919	Newport and Cincinnati Bridge Company...	.73	.73

DEFENDANTS' EXHIBIT 20-F. 1313

Remarks.	No.	
		5102
Subsidiary road, contingent money rental. Leased Jan. 1, 1871, for 99 years; rental, net earnings. Bond interest guaranteed by Pennsylvania Co., Pittsb., Cin., Chic. & St. L., and Gr. Rap. & Ind. R. Rs., each one-third of any deficiency of net earnings to pay coupons.	906	
Subsidiary road, contingent money rental. Leased Dec. 1, 1886, for 99 years; rental, net earnings, with a minimum guarantee of interest on bonds or $37,500 per annum.	907	
Subsidiary road, contingent money rental. Leased Jan. 1, 1883, for 50 years; rental, net earnings, with a minimum guarantee of interest on bonds or $7,500 per annum.	908	
Operating road, subsidiary, other relation. Controlled through ownership of capital stock and bonds.	909	
		5103
Subsidiary road, contingent money rental. Leased Dec. 8, 1871, for 99 years from Jan. 1, 1872; rental, net earnings.	910	
Subsidiary road, other relation. Controlled through ownership of capital stock.	911	
Subsidiary road, other relation. Operated and maintained at cost, any surplus earnings paid to lessor; controlled through ownership of entire capital stock.	912	
Subsidiary road, fixed money rental. Leased Dec. 1, 1869, for 99 years, renewable forever; annual rental, 8 per cent on capital stock, interest on bonds, and organization expenses.	913	
Subsidiary road, fixed money rental. Leased Nov. 30, 1868, for 99 years, renewable forever; annual rental, 8 per cent on capital stock, interest on bonds; included in lease of Little Miami R. R. to Pennsylvania Co.	914	
Subsidiary road, fixed money rental. Leased Dec. 1, 1869, for 99 years, renewable forever; rental, interest on bonds; included in lease of Little Miami R. R. to Pennsylvania Co.	915	
		5104
Subsidiary road, contingent money rental. Operated at cost; net earnings paid to lessor. Contract dated Dec. 18, 1890, and continuing in force, subject to termination by either party on 30 days' written notice. The Pennsylvania Co. has controlled road through ownership of capital stock since organization, Nov. 22, 1886.	916	
Subsidiary road, contingent money rental. Leased Feb. 25, 1878, for 99 years; lessee operates the road at cost and pays net earnings to lessor.	917	
Subsidiary road, fixed money rental. Owned by Pennsylvania R. R., and leased April 1, 1871, to Pennsylvania Co., for 999 years; sublet Nov. 1, 1876, to Pittsb., Cin. & St. L. Ry. for 25 years; rental, 5 per cent per annum on cost.	918	
Operating road, subsidiary, other relation. The Pittsb., Cin., Chic. & St. L. Ry. operates the bridge for the Newpt. & Cin. Bridge Co. (used by Louisv. & Nashv. R. R. under trackage arrangement); Pennsylvania Co. own majority of capital stock.	919	
		5105

5106 [200]

No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
1195	**ILLINOIS CENTRAL RAILROAD COMPANY..** [Line south of Cairo, Illinois.]	.....	894.41
1196	Canton, Aberdeen and Nashville Railroad Company.	87.89	.....
1197	*Chicago, Saint Louis and New Orleans Railroad Company.*	666.16	.....
5107 1198	*Yazoo and Mississippi Valley Railroad Company.*	947.63	807.27

[214]

	1195	**ILLINOIS CENTRAL RAILROAD COMPANY..** [Line north of Cairo, Illinois.]	705.50	1,993.89
5108	1412	Blue Island Railroad Company.....	3.96	.....
	1413	Chicago and Springfield Railroad Company...	111.47	.....
	1414	Chicago, Havana and Western Railroad Company.	131.62	.....
	1415	Chicago, Madison and Northern Railroad Company.	231.30	.....
5109	1416	Dubuque and Sioux City Railroad Company..	524.01	.....
	1417	Cedar Falls and Minnesota Railroad Company.	75.58	.....

DEFENDANTS' EXHIBIT 20-F. 1315

[201] 5110

Remarks.	No.	
Operating road, independent. "Line operated" includes 140.36 miles leased from Yazoo & Miss. Vy R. R.	1195	
Subsidiary road, fixed money rental. Leased March 31, 1888, until June 1, 1952; rental, net earnings of the road, which lessee guarantees to be $60,000 per annum.	1196	
Subsidiary road, fixed money rental. Leased July 1, 1882, for 400 years; annual rental, 4 per cent on capital stock, interest on bonds, taxes, assessments, etc. On April 3, 1889, this company acquired Miss. & Tenn. R. R.	1197	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock. "Line owned" includes 140.36 miles leased to and operated by Ill. Cent. R. R. Agreement dated Mar. 31, 1888, and to run until June 1, 1952. Rental, net earnings. Any amount under $100,000 guaranteed by lessee.	1198	5411

[215]

Operating road, independent.....	1195	
Subsidiary road, other relation. Controlled through ownership of entire capital stock and bonds.	1412	5112
Subsidiary road, fixed money rental. Leased Dec. 1, 1877, for 50 years from July 1, 1877; in lieu of annual rental lessee issued currency bonds for $2,000,000, secured by lessor on demised property; $1,600,000 of these bonds were used by lessor to pay for the property, the remainder being reserved for improvements, etc.; lessee agrees to pay principal and interest of these bonds, taxes, assessments, etc.	1413	
Subsidiary road, contingent money rental. Leased April 1, 1888, in perpetuity; lessee receives all earnings, pays all expenses, and turns over to lessor any net earnings.	1414	
Subsidiary road, contingent money rental. Line, Chicago to Freeport, Ill., leased March 30, 1888, the remainder from March 1, 1892, in perpetuity, lessor to receive net earnings; lessee owns the entire capital stock and bonds of lessor.	1415	
Subsidiary road, contingent money rental. Leased July 1, 1890, for 16 years; lessee receives all earnings, pays all expenses, and turns over to lessor any net earnings.	1416	5113
Subsidiary road, fixed money rental. Operated since Oct. 1, 1887, by Dubq. & Sioux Cy. R. R., at $1,000 per mile per annum, paid into United States court, where proceedings are pending to test the validity of the lease to Dubq. & Sioux Cy. R. R., dated Sept. 27, 1866.	1417	

5114

No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
	ILLINOIS CENTRAL RAILROAD COMPANY —Continued.		
1418	Kankakee and Southwestern Railroad Company.	131.26	.....
1419	Rantoul Railroad Company.....	74.43	.....
1420	South Chicago Railroad Company.....	4.76	.....

DEFENDANTS' EXHIBIT 20-F. 1317

Remarks.	No.
Subsidiary road, fixed money rental. Leased Aug. 1, 1881, in perpetuity; in lieu of annual rental lessee issued $968,000 registered bonds secured by lessor on demised property; $200,000 of these bonds retired a like amount previously issued and secured by same property; residue was for equipping and improving road, lessee agreeing to pay principal and interest and all taxes, assessments, etc.	1418
Subsidiary road, contingent money rental. Leased Dec. 11, 1886, in perpetuity; lessee receives all earnings, pays all expenses, and turns over to lessor any net earnings.	1419
Subsidiary road, contingent money rental. Leased July 1, 1890, in perpetuity; lessee receives all earnings, pays all expenses, and turns over to lessor any net earnings.	1420

[Defendants' Exhibit 20-G.]

Extracts from

INTERSTATE COMMERCE COMMISSION REPORT, 1895.

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5118 [148]

REPORT OF THE INTERSTATE COMMERCE COMMISSION.

CLASSIFICATION OF RAILWAYS AND MILE

[The above running title cont

No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
12	**BOSTON AND MAINE RAILROAD COMPANY.**	369.81	1,292.46
13	BOSTON AND LOWELL RAILROAD COMPANY.....	96.95	.....
5119			
14	Central Massachusetts Railroad Company...	98.77	.....
15	*Connecticut and Passumpsic Rivers Railroad Company.*	110.30	.....
16	*Nashua and Lowell Railroad Company*.....	14.50	.....
5120			
17	Peterborough Railroad Company.....	10.50	.....
18	*Northern Railroad Company of New Hampshire.*	82.91	.....
5121			
19	Concord and Claremont Railroad Company	70.90	.....
20	Peterborough and Hillsborough Railroad Company.	18.51	.....
21	Stony Brook Railroad Company.....	13.19	.....

DEFENDANTS' EXHIBIT 20-G. 1321

[149] 5122

STATISTICS OF RAILWAYS IN THE UNITED STATES.

AGE FOR THE YEAR ENDING JUNE 30, 1895.

inues throughout the report.]

Remarks.	No.
Operating road, independent. "Line operated" includes 37.15 miles not in the United States.	12
Subsidiary road, fixed money rental. Leased to Boston & Me. R. R., April 1, 1887, for 99 years; rental, 7 per cent on its capital stock for 10 years and 8 per cent thereafter; operating expenses and all interest on debt.	13
	5123
Subsidiary road, contingent money rental. Leased to Boston & Lowell R. R., Oct. 1, 1886, for 99 years; rental, 20 per cent of gross earnings up to $1,000,000 and 25 per cent of any excess over that amount, deducting from said 20 per cent 5 per cent on $2,000,000 of bonds; lessee to pay $1,500 for organization expenses.	14
Subsidiary road, fixed money rental. Leased Jan. 1, 1887, for 99 years, at 5 per cent for 10 years and 6 per cent thereafter on capital stock, interest on bonds, and $3,000 for organization expenses, annually; lease assumed by Boston & Me. R. R.	15
Subsidiary road, contingent money rental. Leased Nov. 10, 1880, for 99 years, to the Boston & Lowell R. R., for $60,000, $4,000 additional in case gross receipts equal or exceed those of 1880, and $1,000 for organization, annually; lease assumed July 12, 1887, by Boston & Me. R. R., which grants in addition to sums stated in lease 1 per cent annually on capital stock.	16
	5124
Subsidiary road, fixed money rental. Leased April 1, 1893, for 93 years; rental, 4 per cent on capital stock, $300 organization expenses, operating expenses, and taxes. Boston & Me. R. R. operates road by reason of being the lessee of the Boston & Lowell R. R.	17
Subsidiary road, fixed money rental. Leased to Boston & Lowell R. R., Jan. 1, 1890, for 99 years; rental, 5 per cent on the Northern R. R. capital stock for the first 7½ years, and 6 per cent on the same thereafter. Also principal and interest on $500,000 first mortgage bonds of the Conc. & Claremont R. R., and $100,000 first mortgage bonds of the Peterb. & Hillsb. R. R. Lease assigned to the Boston & Me. R. R.	18
	5125
Subsidiary road, other relation	19
....do	20
Subsidiary road, fixed money rental. Leased to Boston & Lowell R. R., Jan. 1, 1890, for 99 years; rental, 7 per cent on capital stock, taxes, and $500 for organization expenses per annum; lease assumed by Boston & Me. R. R.	21

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
5126		**BOSTON AND MAINE RAILROAD COMPANY —Continued.**		
	22	Wilton Railroad Company.....	15.50	.....
	[150]			
5127	23	Connecticut River Railroad Company.....	79.85	.....
	24	Danvers Railroad Company.....	9.26	.....
	25	**Eastern Railroad in New Hampshire**.....	16.08	.....
	26	Portsmouth and Dover Railroad Company...	10.88	.....
	27	Kennebunk and Kennebunkport Railroad Company.	4.50	.....
	28	Lowell and Andover Railroad Company.....	8.73	.....
5128	29	Manchester and Keene Railroad Company.....	29.59	.....
	30	Manchester and Lawrence Railroad Company.	22.39	.....
	31	Newburyport Railroad Company.....	26.98	.....
	32	**Portland, Saco and Portsmouth Railroad Company.**	50.76	.....
5129	33	Worcester, Nashua and Rochester Railroad Company.	94.48	.....
	34	MAINE CENTRAL RAILROAD COMPANY.....	314.23	813.76

DEFENDANTS' EXHIBIT 20-G. 1323

Remarks.	No.	
		5130
Subsidiary road, fixed money rental. Leased to Boston & Lowell R. R. for 99 years from Oct., 1883; rental, $16,800, all public taxes, and $150 for organization, annually; July 12, 1874, lease assigned to Boston & Me. R. R. without consent of lessor; Dec. 19, 1890, lessor assented to assignment of lease at a semi-annual rental of $10,200.	22	
		[151]
Subsidiary road, fixed money rental. Leased Jan. 1, 1893, for 99 years; rental 10 per cent on capital stock, 4 per cent interest on bonds, $2,000 for organization expenses.	23	5131
Subsidiary road, fixed money rental. Leased May 30, 1853, for 100 years, at $7,500 per annum.	24	
Subsidiary road, fixed money rental. Leased Oct. 1, 1878, for 60 years and 2 months, to En. R. R. of Mass., for $22,500 per annum.	25	
Subsidiary road, fixed money rental. Leased June 1, 1872, for 50 years from Feb., 1874, to En. R. R. in N. H., at a rental of $46,140 per annum, guaranteed by En. R. R. of Mass. Included in lease of En. R. R. in N. H. to Boston & Me. R. R.	26	
Subsidiary road, fixed money rental. Leased May 15, 1883, for 99 years, for 4½ per cent dividend per annum.	27	
Subsidiary road, fixed money rental. Leased Dec. 1, 1874, for 99 years, at $52,500 per annum, lessee to pay all public taxes.	28	5132
Subsidiary road, other relation. Sold under foreclosure; bonds purchased by Boston & Lowell and Conc. & Montreal R. Rs. Operated by Boston & Me. R. R. for account of these companies, each being credited with one-half of all earnings and charged with one-half of all expenses.	29	
Subsidiary road, fixed money rental. Leased Sept. 1, 1887, for 50 years, for 10 per cent per annum on capital stock and $2,000 per annum for organization.	30	
Subsidiary road, fixed money rental. Leased Feb. 21, 1860, for 100 years, for $225,000 cash, and debt due Boston & Me. R. R. of $75,000.	31	
Subsidiary road, fixed money rental. Contract dated May 4, 1871, to continue in force until such time as En. R. R. of Mass., by default, shall cease to pay regular semi-annual dividend of 3 per cent; contract assigned to Boston & Me. R. R. on purchase of En. R. R. of Mass., May 8, 1890.	32	5133
Subsidiary road, fixed money rental. Leased Jan. 1, 1886, for 50 years, for $250,000 per annum, and all taxes.	33	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock. "Line operated" includes 52.34 miles not in United States.	34	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
5134		**BOSTON AND MAINE RAILROAD COMPANY —Continued.**		
		Maine Central Railroad Company—Continued.		
	35	Androscoggin Railroad Company.....	31.00	.....
	36	Belfast and Moosehead Lake Railroad Company.	33.13	.....
	37	Dexter and Newport Railroad Company.....	14.23	.....
5135				
	38	Dexter and Piscataquis Railroad Company..	16.54	.....
	39	Eastern Maine Railway Company.....	18.80	.....
	40	European and North American Railway Company.	120.34	.....
	41	Knox and Lincoln Railway Company.....	48.39	.....
5136	42	*Portland and Ogdensburg Railway Company.*	109.10	.....
	43	Upper Coos Railroad Company.....	55.00	.....
	44	Portland and Rochester Railroad Company....	54.98	53.86
	45	*Saint Johnsbury and Lake Champlain Railroad Company.*	131.50	131.50
	46	Vermont Valley Railroad Company of 1871....	24.00	24.00
5137	47	Sullivan County Railroad Company.....	26.00	26.00
	48	York Harbor and Beach Railroad Company...	11.27	11.27

Remarks.	No.	
		5138
Subsidiary road, other relation. Leased June 29, 1871, for 999 years. Lessee assumed the payment of $425,000 city of Bath bonds, in aid of the lessor; gave $110,000 in stock scrip redeemable in Me. Cent. R. R. stock, also $200,000 in Me. Cent. R. R. stock, and promissory notes for $33,333.33.	35	
Subsidiary road, fixed money rental. Leased May 10, 1871, for 50 years, at an annual rental of $36,000, and taxes.	36	
Subsidiary road, fixed money rental. Leased Dec. 13, 1888, for 999 years, at an annual rental of $18,000, until Nov. 24, 1898, and $6,100 per annum thereafter, and $250 per annum for organization expenses. Lessee also guarantees the principal and interest of bonds of lessor.	37	5139
Subsidiary road, fixed money rental. Leased Dec. 13, 1888, for 999 years, rental, $13,350, and $250 per annum for organization expenses, and taxes.	38	
Subsidiary road, fixed money rental. Leased May 1, 1883, for 999 years; annual rental, $9,000, all taxes, and $500 for organization expenses.	39	
Subsidiary road, fixed money rental. Leased April 1, 1882, for 999 years; annual rental, $125,000, all taxes, and $500 for expenses of organization; lessee also assumes city of Bangor bonds, amounting to $1,000,000 issued to aid construction of road of lessor.	40	
Subsidiary road, fixed money rental. Leased Aug. 1, 1891, for 999 years, lessee to pay all taxes, interest, and indebtedness of lessor, a dividend of 5 per cent to the stockholders, and $200 for organization expenses.	41	5140
Subsidiary road, fixed money rental. Leased Aug. 20, 1888, for 999 years, lessee to pay all taxes, interest and indebtedness of lessor, and a dividend of 1 per cent per annum for 3 years, and 2 per cent thereafter.	42	
Subsidiary road, fixed money rental. Leased May, 1, 1890, for 999 years; rental, interest on bonds, 6 per cent on capital stock, and $500 for charter obligations.	43	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock; 1.12 miles owned not in operation.	44	
Operating road, subsidiary, other relation. Controlled through ownership or holding of majority of capital stock.	45	
Operating road, subsidiary, contingent money rental. Controlled in the interest of Conn. Riv. R. R., which charges the Vt. Vy. R. R. of 1871 with operating expenses, and credits it with gross receipts and earnings of every kind. Operated by Boston & Me. R. R., as agent, under its lease of the Conn. Riv. R. R.	46	5141
Operating road, subsidiary, other relation. Majority of capital stock owned by Vt. Vy. R. R. of 1871. Net earnings, less taxes, paid lessor. Operated by Boston & Me. R. R., as agents, under its lease of Conn. Riv. R. R.	47	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	48	

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No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
110	**NEW YORK AND NEW ENGLAND RAILROAD COMPANY.**	360.56	558.69
111	Meriden, Waterbury and Connecticut River Railroad Company.	30.34	.....
112	Milford and Woonsocket Railroad Company..	15.33	.....
113	Milford, Franklin and Providence Railroad Company.	4.70	.....
5143 114	*Norwich and Worcester Railroad Company*....	66.16	.....
115	Providence and Springfield Railroad Company.	28.18	.....
116	Rhode Island and Massachusetts Railroad Company in Massachusetts.	6.62	.....
117	Rhode Island and Massachusetts Railroad Company in Rhode Island.	7.08	.....
118	Rockville Railroad Company.....	4.43	.....
5144			
119	Woonsocket and Pascoag Railroad Company..	9.50	.....
120	**NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY.**	276.41	1,464.21
121	Berkshire Railroad Company.....	20.53	.....
122	*Boston and New York Air Line Railroad Company.*	51.50	.....
5145 123	Colchester Railway Company.....	3.59	.....
124	Chatham Railroad Company.....	7.07	.....
125	Harlem River and Port Chester Railroad Company.	11.50	.....
126	*Housatonic Railroad Company*.....	90.12	.....

DEFENDANTS' EXHIBIT 20-G. 1327

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Remarks.	No.	
Operating road, independent. Thomas C. Platt and Marsden J. Perry, Receivers; appointed Dec. 27, 1893, and Jan. 24, 1894, respectively.	110	
Subsidiary road, fixed money rental. Leased Sept. 1, 1892, for 99 years; rental, $22,500 per annum.	111	
Subsidiary road, contingent money rental. Leased Sept. 30, 1887, for 99 years; annual rental, 15 per cent of gross receipts of this road and of the Milf., Frank. & Prov. R. R.	112	
Subsidiary road, contingent money rental. Leased Sept. 30, 1887, for 99 years, for 25 per cent of gross earnings.	113	
Subsidiary road, fixed money rental. Leased Feb. 9, 1869, for 99 years; annual rental, interest on bonds, and 8 per cent on preferred stock.	114	5147
Subsidiary road, fixed money rental. Leased Oct. 1, 1890, for 99 years; rental, 6 per cent on capital stock, interest on bonds, taxes and assessments.	115	
Subsidiary road, fixed money rental. Leased Nov. 21, 1887, for 99 years; annual rental, $10,000 and all taxes, assessments, etc.	116	
Subsidiary road, fixed money rental. Leased Oct. 1, 1887, for 99 years; rental, $10,000, all taxes and assessments.	117	
Subsidiary road, fixed money rental. Since report for 1894 a new contract has been entered into for the purchase of this road for $85,000 in cash. The transfer has been delayed on account of adjustment of certain details. Prior to this arrangement an agreement was made for the sale of the road in exchange for 5 per cent 30-year bonds for $91,275, and the N. Y. & New Eng. R. R. has paid as yearly rental 5 per cent on the proposed purchase price.	118	5148
Subsidiary road, fixed money rental. Leased Feb. 28, 1891, for 99 years; rental, 5 per cent interest on stocks and bonds.	119	
Operating road, independent. On June 30, 1895, the Nantasket Beach R. R., 6.95 miles, was operated by electric power.	120	
Subsidiary road, contingent money rental. Leased April 1, 1893, for 99 years; rental, 6 per cent on capital stock, and all expenses and taxes. "Old lease to the Housatonic R. R. suspended, but not canceled."	121	
Subsidiary road, fixed money rental. Leased Oct. 1, 1882, for 99 years; rental, $120,000 per annum, and interest on its bonds, and the bonds of Colchester R. R.	122	
Subsidiary road, fixed money rental. Leased Sept. 30, 1882, for 999 years. Interest on bonds guaranteed by Boston & N. Y. Air Line R. R.	123	5149
Subsidiary road, contingent money rental. Contract dated Jan. 8, 1888, for 7 years; rental, 30 per cent of gross receipts, payable quarterly.	124	
Subsidiary road, fixed money rental. Leased Sept. 30, 1873, for 99 years, to N. Y., New Hav. & Hartf. R. R., for interest on bonds. The lessee owns entire capital stock of lessor road.	125	
Subsidiary road, fixed money rental. Leased July 1, 1892, for 99 years; rental, 1 per cent dividend on preferred capital stock, and interest on bonds.	126	

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No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY—Continued.		
	Housatonic Railroad Company—Continued.		
127	Danbury and Norwalk Railroad Company...	36.20	.....
128	Naugatuck Railroad Company.....	60.99	.....
129	New Haven and Derby Railroad Company....	16.69	.....
5151			
130	*New Haven and Northampton Company*.....	126.31	.....
131	Holyoke and Westfield Railroad Company..	10.32	.....
132	Old Colony Railroad Company.....	495.20	.....
5152			
133	*Boston and Providence Railroad Company*..	61.19	.....
134	Attleboro', Branch Railroad Company.....	4.00	.....
135	Fall River Railroad Company.....	12.25	.....
136	Nantasket Beach Railroad Company.....	6.95	.....
5153			
137	Plymouth and Middleborough Railroad Company.	15.03	.....
138	Providence, Warren and Bristol Railroad Company.	14.35	.....

Remarks.	No.	
Subsidiary road, fixed money rental. Leased July 1, 1892, for 99 years; rental, 5 per cent dividend on capital stock, interest on bonds, all taxes and assessments. Of "line owned," 5.95 miles operated by Shepaug, Litchf. & Nn. R. R.	127	
Subsidiary road, fixed money rental. Leased April 1, 1887, for 99 years; rental, interest on bonds, and 10 per cent per annum on capital stock.	128	
Subsidiary road, fixed money rental. Leased July 1, 1892, for 99 years; rental, 3 per cent dividend on capital stock until June 30, 1895, and 4 per cent thereafter during term of lease, interest on bonds, all taxes and assessments.	129	5155
Subsidiary road, fixed money rental. Leased April 1, 1887, for 99 years; rental, 1 per cent on capital stock for 3 years, 2 per cent for the second 3 years, 3 per cent for the third 3 years, and 4 per cent thereafter; interest on bonds and taxes.	130	
Subsidiary road, contingent money rental. Leased Dec. 3, 1870, in perpetuity; rental, interest on bonds; in case gross receipts exceed $35,200 per annum, lessee to pay lessor one-half of such excess. Lease assumed by N. Y., New Hav. & Hartf. R. R., with lease of New Hav. & Northamp Co.	131	
Subsidiary road, fixed money rental. Leased Mar. 1, 1893, for 99 years; rental, 7 per cent on capital stock, interest on funded debt, taxes, and organization expenses. Lease includes its interest as lessee.	132	5156
Subsidiary road, fixed money rental. Leased April 1, 1888, for 99 years; annual rental, 10 per cent on capital stock, interest on bonds, taxes and assessments, etc. Excludes one-half of 5 miles owned jointly by Prov. & Worc. and Boston & Prov. R. Rs.	133	
Subsidiary road, fixed money rental. Leased Dec. 31, 1870, for 30 years; annual rental, 7 per cent on capital stock; included in lease to Old Colony R. R.	134	
Subsidiary road, contingent money rental. Leased April 1, 1882, for 99 years; rental, 30 per cent of gross earnings, which is guaranteed to be sufficient to pay interest on bonds.	135	
Subsidiary road, fixed money rental. Leased April 1, 1888, for 99 years; lessee guarantees interest on bonds up to $6,250 pays taxes, and has option of purchasing property after 20 years of the lease for $150,000. Road operated by electric power June 30, 1895.	136	5157
Subsidiary road, fixed money rental. Leased Dec. 1, 1892, for 99 years; rental guarantee 5 per cent on $225,000 capital stock, taxes, and $100 for organization purposes.	137	
Subsidiary road, fixed money rental. Leased July, 1891, for 95 years and 9 months; rental, 5 per cent on capital stock for the first 10 years and 5 per cent on common and preferred stock for remainder of lease; also pay interest and taxes, and not exceeding $500 per annum for salaries.	138	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
5158		**NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY—Continued.**		
	139	Pawtuxet Valley Railroad Company.....	5.67	.....
	140	*Providence and Worcester Railroad Company.*	47.91	.....
	141	*Shore Line Railway Company*.....	49.40	.....
5159	142	Stockbridge and Pittsfield Railroad Company.	22.02	.....
	143	West Stockbridge Railroad Company.....	2.64	.....
	144	Shepaug, Litchfield and Northern Railroad Company.	32.28	38.23

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	435	**NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY.**	819.45	2,404.68
5160	436	Amsterdam, Chuctanunda and Northern Railroad Company.	1.50	.....
	437	Carthage and Adirondack Railway Company..	42.94	.....
	438	Gouverneur and Oswegatchie Railroad Company.	13.05	.....
	439	Mohawk and Malone Railway Company.....	181.50	.....
5161	440	New Jersey Junction Railroad Company.....	4.85	.....
	441	*New York and Harlem Railroad Company*....	135.90	.....
	442	New York and Putnam Railroad Company...	57.16	.....
	443	Mahopac Falls Railroad Company.....	4.05	.....

DEFENDANTS' EXHIBIT 20-G. 1331

Remarks.	No.	
		5162
Subsidiary road, fixed money rental. Leased July 1, 1884, for 99 years; annual rental, 7 per cent on capital stock, interest on bonds, taxes, assessments, etc. Lease assumed by N. Y., New Hav. & Hartf. R. R. April 1, 1892.	139	
Subsidiary road, fixed money rental. Leased July 1, 1892, for 99 years; rental, 10 per cent on capital stock, interest on bonds and taxes. Excludes one-half of 5 miles owned jointy by Prov. & Worc. and Boston & Prov. R. Rs.	140	
Subsidiary road, fixed money rental. Leased Nov. 1, 1870, in perpetuity; annual rental, $100,000.	141	
Subsidiary road, fixed money rental. Leased April 1, 1893, for 99 years; rental, 6 per cent on capital stock, $250 organization expenses, all expenses and taxes. "Old lease to the Housatonic R. R. suspended, but not canceled."	142	5163
Subsidiary road, fixed money rental. Leased April 1, 1893, for 99 years; rental, $1,800 per annum and all taxes.	143	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock. Of "line operated," 5.95 miles owned by Danb. & Norwalk R. R.	144	
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Operating road, independent.....	435	
		5164
Subsidiary road, other relation. Operated under verbal agreement Sept. 23, 1879, to deliver and receive freight to and from Kellogg & Miller's Linseed Oil Works. "Line operated" included as sidings in report of N. Y. Cent. & Hud. Riv. R. R.	436	
Subsidiary road, fixed money rental. Leased Jan. 9, 1893, from May 1, 1893, for term of corporate existence; rental, 4 per cent interest on bonds not exceeding $1,600,000.	437	
Subsidiary road, fixed money rental. Leased July 8, 1892, in perpetuity. Lessee guarantees principal and interest on bonds not exceeding $300,000.	438	
Subsidiary road, fixed money rental. Leased May 1, 1893, in perpetuity; rental, 4 per cent interest, and principal guaranteed, on not exceeding $2,500,000 first-mortgage bonds.	439	
Subsidiary road, fixed money rental. Leased July 1, 1886, for 100 years, with privilege of further term of 100 years, at an annual rental of interest at 4 per cent on its bonds.	440	
		5165
Subsidiary road, fixed money rental. Leased April 1, 1873, for 401 years; annual rental, interest on funded debt, and 8 per cent on capital stock.	441	
Subsidiary road, fixed money rental. Leased Jan. 30, 1894, in perpetuity; rental, 4 per cent interest on first-mortgage bonds and 5 per cent on $1,200,000 first consolidated mortgage forty-year bonds of N. Y. & Nn. Ry. pending retirement.	442	
Subsidiary road, other relation. Operated since Jan. 1, 1894, by N. Y. Cent. & Hud. Riv. R. R., lessee, as a branch of N. Y. & Putnam R. R., which owns entire capital stock.	443	

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No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY—Continued.		
444	*Rome, Watertown and Ogdensburg Railroad Company.*	412.55	.....
445	Niagara Falls Branch Railroad Company...	8.57	.....
446	Oswego and Rome Railroad Company.....	28.49	.....

5167

447	Utica and Black River Railroad Company..	149.81	.....
448	Carthage, Watertown and Sacketts Harbor Railroad Company.	28.81	.....
449	Spuyten Duyvil and Port Morris Railroad Company.	6.04	.....

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450	Tivoli Hollow Railroad Company.....	1.23	.....
451	Troy and Greenbush Railroad Company.....	6.00	.....
452	Troy Union Railroad Company.....	5.00	.....
453	**West Shore Railroad Company**.....	495.20	.....
454	Beech Creek Railroad Company.....	149.73	185.92

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455	Buffalo and Erie Basin Railroad Company....	.25	.25
456	Malone and Saint Lawrence Railway Company	12.10	12.10
457	Wallkill Valley Railroad Company.....	32.88	37.69

DEFENDANTS' EXHIBIT 20-G. 1333

Remarks.	No.	
		5170
Subsidiary road, fixed money rental. Leased Mar. 14, 1891, in perpetuity. Lessee guarantees principal and interest on bonds, 5 per cent on capital stock, and a rental of $15,000 per annum until April 1, 1901, and thereafter $7,000 per annum.	444	
Subsidiary road, fixed money rental. Leased Sept. 21, 1881, in perpetuity, at 7 per cent per annum on capital stock; included in lease to N. Y. Cent. & Hud. Riv. R. R., dated March 14, 1891.	445	
Subsidiary road, fixed money rental. Leased Dec. 2, 1869, in perpetuity; annual rental, interest on first-mortgage bonds and $24,000 cash. Lease amended March 2, 1891; rental, 7 per cent on $350,000 first-mortgage bonds and 5 per cent on $400,000 second-mortgage bonds per annum; included in lease to N. Y. Cent. & Hud. Riv. R. R., dated March 14, 1891.	446	5171
Subsidiary road, fixed money rental. Leased April 14, 1886, for the term of its corporate existence; annual rental, 7 per cent on capital stock, interest on bonds, and $4,500 for organization expenses; included in lease to N. Y. Cent. & Hud. Riv. R. R., dated March 14, 1891.	447	
Subsidiary road, contingent money rental. Leased for the term of its corporate existence for 37½ per cent of gross earnings; included in the lease of Utica & Black Riv. R. R. to Rome, Watert. & Ogdensb. R. R., and to N. Y. Cent. & Hud. Riv. R. R., dated March 14, 1891.	448	
Subsidiary road, fixed money rental. Leased Nov. 1, 1871, for 99 years and 2 months; annual rental, 8 per cent on $989,000 capital stock.	449	
Subsidiary road, other relation. Operated under contract, dated April 3, 1894, with the Van Rensselaer Land Co.	450	5172
Subsidiary road, fixed money rental. Leased Feb. 3, 1851, in perpetuity, at an annual rental of $19,250, taxes, etc.	451	
Subsidiary road, other relation. One-half owned by N. Y. Cent. & Hud. Riv. R. R., and one-fourth each by Del. & Hud. Canal Co. and Fitchburg R. R. These companies pay this proportion of maintenance and operation.	452	
Subsidiary road, fixed money rental. Leased Jan. 1, 1886, for 475 years, with privilege of further term of 500 years; annual rental, interest at 4 per cent on bonds.	453	
Operating road, subsidiary, fixed money rental. Leased Dec. 15, 1890, for 999 years. Lessee guarantees principal and interest of $5,000,000 first-mortgage 4 per cent bonds, and 4 per cent on $5,000,000, capital stock. Under a subsequent agreement the lessee also guarantees the principal and interest of $1,000,000 second-mortgage bonds bearing 5 per cent interest and 4 per cent on $1,000,000 of additional capital stock.	454	5173
Operating road, subsidiary, other relation. Used as a switching road to facilitate delivery of property at docks.	455	
Operating road, subsidiary, fixed money rental. Leased March 1, 1894, for 99 years. Lessee guarantees principal and interest on first-mortgage bonds.	456	
Operating road, subsidiary, other relation. Controlled through ownership of capital stock and bonds held in the interest of W. Shore R. R.	457	

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No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
519	**PENNSYLVANIA RAILROAD COMPANY.....**	528.68	2,762.63
520	Bald Eagle Valley Railroad Company.....	90.08	.....
521	Bedford and Bridgeport Railway Company....	49.17	.....

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522	Bustleton Railroad Company.....	4.16	.....
523	Cambria and Clearfield Railroad Company....	97.71	.....
524	Columbia and Port Deposit Railway Company.	43.53	.....
5176 525	Columbus, Kinkora and Springfield Railroad Company.	14.16	.....
526	Cresson & Irvona Railroad Company.....	28.69	.....
527	Downingtown and Lancaster Railroad Company.	37.58	.....
528	Ebensburg and Black Lick Railroad Company.	14.55	.....

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529	Engelside Railroad Company.....	.17	.....
530	Freehold and Jamesburg Agricultural Railroad Company.	27.54	.....
531	Frederick and Pennsylvania Line Railroad Company.	28.00	.....
532	Hanover and York Railroad Company.....	27.65	.....

DEFENDANTS' EXHIBIT 20-G. 1335

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Remarks.	No.	
Operating road, independent.....	519	
Subsidiary road, contingent money rental. Leased July 1, 1864, for 99 years; rental, 40 per cent of gross receipts. Lease does not apply to Nit any Brh., which is operated for cost. Net earnings paid to Bald Eagle Vy. R. R.	520	
Subsidiary road, contingent money rental. Operated under resolutions of the directors of both companies, which took effect May 1, 1891, and is terminable at the option of either party on 30 days' notice; net earnings payable to this company.	521	

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Subsidary road, contingent money rental. Operated under resolutions of the directors of both companies, which took effect Jan. 1, 1891, and is terminable at the option of either party on 30 days' notice; net earnings payable to this company.	522	
Subsidiary road, contingent money rental. Operated under resolutions of board of directors in effect Sept. 24, 1888, terminable at any time on 30 days' notice; net earnings payable to this company.	523	
Subsidiary road, contingent money rental. Agreement dated July 1, 1890, terminable at any time on 30 days' notice; rental, net earnings.	524	
Subsidiary road, contingent money rental. Lease dated Sept. 23, 1889; runs from year to year, unless terminated by 6 months' notice. Lessee collects all earnings, pays all expenses for operating the road and maintenance of way, and taxes; balance, if any, is paid to lessor.	525	5180
Subsidiary road, contingent money rental. Operated under resolutions of board of directors of both companies, in effect June 28 and July 6, 1894, respectively; terminable at any time by either party on 30 days' notice; rental, net earnings.	526	
Subsidiary road, contingent money rental. This company is the reorganized E. Brandyw. & Waynesb. R. R.; operated under resolutions of board of directors, in effect Aug. 1, 1888, terminable at any time on 30 days' notice; net earnings paid to this company.	527	
Subsidiary road, contingent money rental. Operated under resolutions of board of directors of both companies, in effect Nov. 27 and Dec. 12, 1894, respectively; terminable on 30 days' notice from either party; rental, net earnings.	528	5181
Subsidiary road. "Operated by Pennsylvania R. R. as a siding"	529	
Subsidiary road, contingent money rental. Contract dated July 16, 1879, terminable on 30 days' notice; rental, net earnings.	530	
Subsidiary road, fixed money rental. Leased Jan. 1, 1875, for 999 years; lessee operates the road at cost.	531	
Subsidiary road, contingent money rental. Operated under resolutions of the board of directors of both companies, which took effect Jan. 3, 1893, and is terminable at the option of either party on 30 days' notice; net earnings payable to this company.	532	

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	PENNSYLVANIA RAILROAD COMPANY—Continued.		
533	Harrisburg, Portsmouth, Mount Joy and Lancaster Railroad Company.	53.74	.....
534	Johnsonburg Railroad Company.....	19.69	.....
535	Kensington and Tacony Railroad Company...	6.88	.....
536	Lewisburg and Tyrone Railroad Company.....	85.08	.....
537	Mifflin and Centre County Railroad Company..	12.43	.....
538	Millstone and New Brunswick Railroad Company.	6.64	.....
539	Nescopec Railroad Company.....	11.96	.....
540	New York Bay Railroad Company.....	9.20	.....
541	North and West Branch Railway Company....	47.82	.....
542	Pennsylvania, Schuylkill Valley Railroad Company.	130.22	.....
543	Perth Amboy and Woodbridge Railroad Company.	6.40	.....
544	Philadelphia and Beach Haven Railroad Company.	12.09	.....
545	**Philadelphia and Erie Railroad Company....**	287.56	.....
546	Philadelphia and Long Branch Railroad Company.	49.07	.....
547	Philadelphia, Germantown and Chestnut Hill Railroad Company.	13.87	.....
548	Pittsburgh, Virginia and Charleston Railway Company.	77.33	.....
549	Pomeroy and Newark Railroad Company.....	26.70	.....

DEFENDANTS' EXHIBIT 20-G. 1337

Remarks.	No.	
		5186
Subsidiary road, fixed money rental. Leased Jan. 1, 1861, for 999 years; annual rental, 7 per cent on capital stock, 4 per cent interest on bonds, all taxes levied on stock and bonds, and organization expenses up to $2,000.	533	
Subsidiary road, contingent money rental. Leased July 8, 1889, for 50 years; rental, net earnings. Lessee reserves the right to cancel lease, under certain conditions, at the expiration of 5 years from date of lease.	534	
Subsidiary road, fixed money rental. Leased May 1, 1895, for 20 years; rental, 4 per cent on capital stock, and all taxes.	535	
Subsidiary road, contingent money rental. Leased Jan. 1, 1880, for 99 years; rental, net earnings. "Line owned" includes .24 mile over the Lewisburg Bridge.	536	5187
Subsidiary road, contingent money rental. Leased March 19, 1863, for 999 years; rental, net earnings.	537	
Subsidiary road, contingent money rental. Operated since Feb. 1, 1886, by Pennsylvania R. R., under a temporary arrangement, without any written contract, that company paying all expenses and charging deficiency in net receipts to this company.	538	
Subsidiary road, contingent money rental. Operated under resolutions of board of directors, in effect April 25, 1887, terminable at any time on 30 days' notice; net earnings payable to this company.	539	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	540	
Subsidiary road, contingent money rental. Agreement dated Nov. 23, 1881, to continue until Sept. 1, 1901; net earnings to be paid this company.	541	5188
Subsidiary road, contingent money rental. Leased Dec. 1, 1885, for 50 years; rental, net earnings.	542	
Subsidiary road, contingent money rental. Operated as of date Jan. 1, 1889, by virtue of resolutions adopted May 6, 1889, by stockholders of this company, and June 26, 1889, by directors of Pennsylvania R. R.; net earnings paid to this company.	543	
Subsidiary road; contingent money rental. Operated by Pennsylvania R. R., as agent, under resolution adopted Jan. 1, 1894, terminable on 30 days' notice; rental, net earnings.	544	
Subsidiary road, contingent money rental. Lease executed Jan. 6, 1862; modified Jan. 1, 1870, for 999 years from Jan. 1, 1862; surplus of gross receipts, after paying operating expenses, etc., to be applied to organization expenses and interest on bonds; any balance to be paid lessor.	545	5189
Subsidiary road, contingent money rental. Leased Jan. 1, 1884, for 50 years; any surplus of earnings after paying operating and other expenses to be paid lessor.	546	
Subsidiary road, contingent money rental. Leased May 1, 1883, for 30 years; rental, net earnings.	547	
Subsidiary road, contingent money rental. Leased April 1, 1895, for 30 years; rental, net earnings.	548	
Subsidiary road, contingent money rental. Leased March 1, 1880, for 99 years; rental, net earnings.	549	

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No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	PENNSYLVANIA RAILROAD COMPANY—Continued.		
550	Ridgway and Clearfield Railroad Company....	27.23	.....
551	Riverfront Railroad Company.....	3.86	.....
552	South Fork Railroad Company.....	8.12	.....
5191 553	Southwest Pennsylvania Railway Company...	111.87	.....
554	Sunbury and Lewistown Railway Company...	43.45	.....
555	Sunbury, Hazleton and Wilkesbarre Railway Company.	43.44	.....
556	Susquehanna and Clearfield Railroad Company	24.89	.....
557	Tipton Railroad Company.....	4.44	.....
5192 558	Trenton Delaware Bridge Company.....	.19	.....
559	Tyrone and Clearfield Railway Company.....	134.07	.....
560	**United New Jersey Railroad and Canal Company.**	144.83	.....
561	Belvidere Delaware Railroad Company.....	79.04	.....
562	Enterprise Railroad Company.....	1.50	.....
5193 563	Martins Creek Railway Company of New Jersey.	.14	.....
564	Martins Creek Railway Company of Pennsylvania.	.15	.....
565	Camden and Burlington County Railroad Company.	29.61	.....

Remarks.	No.	
Subsidiary road, contingent money rental. Lease dated Nov. 1, 1894, for 50 years; rental, 5 per cent on bonded debt and taxes, and 6 per cent on capital stock, if earned.	550	
Subsidiary road, fixed money rental. Leased May 1, 1882, for 50 years; rental, $23,000 per annum, and after Jan. 1, 1894, $28,000 per annum.	551	
Subsidiary road, contingent money rental. Agreement dated Aug. 15, 1891, terminable at the option of either party on 30 days' notice in writing; net earnings paid to this company.	552	
Subsidiary road, contingent money rental. Leased April 1, 1893, for one year, renewable every year; net earnings paid to this company. Terminable at the end of any year after 6 months' notice by either party.	553	5195
Subsidiary road, contingent money rental. Leased July 1, 1876, for 99 years; operated for cost and one-half of net earnings after payment of interest on outstanding bonds.	554	
Subsidiary road, contingent money rental. Leased May 1, 1878, for 50 years; net earnings paid to this company.	555	
Subsidiary road, contingent money rental. Operated under resolutions of board of directors adopted Sept. 10, 1884, terminable at the option of either party on 30 days' notice; net earnings paid to this company.	556	
Subsidiary road, contingent money rental. Agreement dated May 1, 1886, terminable at the option of either party on 30 days' notice; net earnings paid to this company.	557	
Subsidiary road, fixed money rental. Trackage contract dated June 20, 1877, for 993 years, 5 months and 10 days; annual rental, $28,000 and taxes.	558	5196
Subsidiary road, fixed money rental. Leased Jan. 1, 1882, for 50 years; lessee to pay annually all taxes, interest on bonds, sinking fund, and 5 per cent on capital stock.	559	
Subsidiary road, fixed money rental. Leased June 30, 1871, for 999 years; annual rental, 10 per cent on capital stock, taxes, interest on funded and other debts, damages, losses, etc.	560	
Subsidiary road, contingent money rental. Leased Jan. 1, 1876, to June 30, 1870; assigned to Pennsylvania R. R. March 7, 1876; revenue to be applied, first, to operation; second, to interest on bonds; any balance to be paid lessor.	561	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	562	
....do	563	5197
....do	564	
Subsidiary road, fixed money rental. Leased April 24, 1868, for the term of its corporate existence, to Camden & Amb. R. R., one of the constituent companies of United N. J. R. R. & Canal Co.; annual rental, 6 per cent on capital stock and bonds and $500 for organization expenses; lease assigned to Pennsylvania R. R. June 30, 1871.	565	

	No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
5198		**PENNSYLVANIA RAILROAD COMPANY—Continued.**		
	566	Mount Holly, Lumberton and Medford Railroad Company.	5.95	.....
	567	**Philadelphia and Trenton Railroad Company.**	26.50	.....
	568	Connecting Railway Company.....	6.75	.....
5199	569	Rocky Hill Railroad and Transportation Company.	2.38	.....
	570	Vincentown Branch Railroad Company.....	2.84	.....
	571	West Chester Railroad Company.....	5.22	.....
	572	Western Pennsylvania Railroad Company.....	120.61	.....
	573	Allegheny Valley Railway Company.....	260.30	260.30
5200	574	Camden and Atlantic Railroad Company.....	68.79	81.67
	575	Philadelphia, Marlton and Medford Railroad Company.	11.98	.....
	576	Cumberland Valley Railroad Company.....	82.18	144.93
	577	Cumberland Valley and Martinsburg Railroad Company.	33.65	.....
	578	Dillsburg and Mechanicsburg Railroad Company.	7.70	.....
5201	579	Southern Pennsylvania Railway and Mining Company.	21.40	.....
	580	Mont Alto Railroad Company.....	17.89	17.89

DEFENDANTS' EXHIBIT 20-G. 1341

Remarks.	No.	
		5202
Subsidiary road, fixed money rental. Leased March 11, 1873, during corporate existence, at $11,189 per annum and taxes; lease assigned to Pennsylvania R. R. June 13, 1871.	566	
Subsidiary road, fixed money rental. Leased June 30, 1871, from United N. J. R. R. & Canal Co. for 999 years; annual rental, 10 per cent on capital stock (excluding 7,650 shares owned by United N. J. R. R. & Canal Co.), taxes, assessments, etc.	567	
Subsidiary road, fixed money rental. Leased Feb. 18, 1863, for 999 years; annual rental, 6 per cent on capital stock, 6 per cent on bonds, and taxes; included in lease to Pennsylvania R. R.	568	
		5203
Subsidiary road, fixed money rental. Leased Nov. 22, 1869, for the term of its charter, to Camden & Amb. R. R., one of the constituent companies of United N. J. R. R. & Canal Co., at 6 per cent per annum on capital stock; lease assigned to Pennsylvania R. R. Nov. 30, 1871.	569	
Subsidiary road, fixed money rental. Leased April 7, 1868, during corporate existence; annual rental, 6 per cent on capital stock owned by individuals, which is $15,000; the other $10,000 is owned by lessee and nothing is paid on it.	570	
Subsidiary road, fixed money rental. Leased Aug. 6, 1879, for 99 years; annual rental, 5 per cent on capital stock, interest on bonds, and taxes.	571	
Subsidiary road, contingent money rental. Leased June 1, 1888, for 40 years; net earnings paid to this company.	572	
Operating road, subsidiary, other relation. Majority of capital stock and about one-fifth of outstanding bonds owned by Pennsylvania R. R.	573	
		5204
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	574	
Subsidiary road, contingent money rental. Leased Jan. 1, 1885, terminable on 30 days' notice; surplus from operation paid lessor.	575	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	576	
Subsidiary road, contingent money rental. Leased March 17, 1888, for 99 years; receipts from operations to be applied to maintain the road, pay operating expenses, taxes, insurance, etc.; balance to be paid lessor.	577	
Subsidiary road, contingent money rental. Leased Jan. 1, 1873, for 99 years; terms of lease same as Cumb. Vy. & Martinsb. R. R.	578	
Subsidiary road, contingent money rental. Leased March 1, 1870, for 199 years; terms of lease same as Cumb. Vy. & Martinsb. R. R.	579	5205
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock and bonds.	580	

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No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	PENNSYLVANIA RAILROAD COMPANY—Continued.		
581	Junction Railroad Company (of Philadelphia)	3.56	3.56
582	**Northern Central Railway Company**	148.24	372.83
583	Elmira and Lake Ontario Railroad Company	99.61	.....
5207			
584	Elmira and Williamsport Railroad Company.	75.50	.....
585	Lykens Valley Railroad and Coal Company..	19.70	.....
586	Shamokin Valley and Pottsville Railroad Company.	29.78	.....
587	Baltimore and Sparrows Point Railroad Company.	5.87	5.87
5208 588	Union Railroad Company (of Baltimore)...	9.65	9.65
589	*Philadelphia, Wilmington and Baltimore Railroad Company.*	116.79	653.59
590	*Baltimore and Potomac Railroad Company*..	93.21	.....
591	Catonsville Short Line Railroad Company.	3.80	.....
592	Cambridge and Seaford Railroad Company..	27.24	.....
593	Delaware Railroad Company	117.00	.....
5209			
594	Delaware and Chesapeake Railway Company	54.30	.....
595	Delaware, Maryland and Virginia Railroad Company.	97.53	.....
596	Philadelphia and Baltimore Central Railroad Company.	73.68	.....

DEFENDANTS' EXHIBIT 20-G. 1343

[183] 5210

Remarks.	No.	
Operating road, subsidiary, other relation. The Pennsylvania, Phila., Wilm. & Balt., and Phila. & Read. R. Rs. use this company's tracks, paying a certain rate per car per mile, the Junction R. R. paying the company moving the traffic for the use of the motive power.	581	
Operating road, subsidiary, other relation. Controlling interest in capital stock owned by Pennsylvania R. R.	582	
Subsidiary road, contingent money rental. Contract terminable at the option of either party on 30 days' notice; net receipts after paying charges for use of equipment paid to this company. Contract took effect Jan. 1, 1887. Controlled through ownership of entire capital stock by Nn. Cent. Ry.	583	5211
Subsidiary road, fixed money rental. Leased May 1, 1863, for 999 years; annual rental, 7 per cent on preferred and 5 per cent on common stock, interest on bonds, and $3,000 for organization expenses.	584	
Subsidiary road, fixed money rental. Leased March 1, 1866, for 999 years to Summit Brh. R. R.; annual rental, $62,500, taxes, charges, etc.	585	
Subsidiary road, fixed money rental. Leased Feb. 27, 1863, for 999 years; annual rental, 7 per cent interest on bonds, 6 per cent on capital stock, and taxes.	586	
Operating road, subsidiary, other relation.....	587	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	588	5212
....*do*.....	589	
Subsidiary road, contingent money rental. Contract took effect Nov. 1, 1891, and is terminable at the option of either company upon giving 30 days' notice in writing; net earnings paid to this company.	590	
Subsidiary road, contingent money rental. Leased to Phila., Wilm. & Balt. R. R. with Balt. & Pot. R. R., Dec. 6, 1893, for 99 years; rental, net earnings.	591	
Subsidiary road, contingent money rental. Agreement dated May 16, 1883; took effect June 1, 1883; terminable on 30 days' notice; net earnings paid to this company.	592	
Subsidiary road, contingent money rental. Leased May 5, 1855; renewed April 23, 1875; renewed Jan. 13, 1882; expires May 4, 1897. Annual rental, 6 per cent on capital stock, interest on funded and floating debt, and one-half of any surplus over 6 per cent of net earnings.	593	5213
Subsidiary road, contingent money rental. Agreement took effect July 1, 1882; terminable on 30 days' notice; net earnings paid to this company.	594	
Subsidiary road, contingent money rental. Agreement dated Aug. 1, 1885; took effect July 1, 1885; terminable on 30 days' notice; net earnings paid to this company.	595	
Subsidiary road, contingent money rental. Agreement dated Aug. 1, 1881; took effect Sept. 1, 1881; terminable on 6 months' notice; net earnings paid to this company.	596	

No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
	PENNSYLVANIA RAILROAD COMPANY—Continued.		
597	Chester Creek Railroad Company.....	6.69	.....
598	Philadelphia and Delaware County Railroad Company.	9.93	.....
599	South Chester Railroad Company.....	3.78	.....
600	Washington Southern Railway Company....	34.67	.....
601	Queen Anne's and Kent Railroad Company..	25.90	25.90
602	West Jersey Railroad Company.....	184.84	230.40
603	Alloway and Quinton Railroad Company....	4.22	.....
604	West Jersey and Atlantic Railroad Company	39.74	.....

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840	**LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY.**	859.15	1,440.77
841	Detroit and Chicago Railroad Company.....	62.31	.....
842	Detroit, Hillsdale and Southwestern Railroad Company.	65.20	.....
843	Detroit, Monroe and Toledo Railroad Company	62.36	.....
844	Erie and Kalamazoo Railroad Company.....	.....	.....
845	Fort Wayne and Jackson Railroad Company..	97.83	.....
846	Jamestown and Franklin Railroad Company..	50.91	.....
847	Kalamazoo and White Pigeon Railroad Company.	36.57	.....
848	Kalamazoo, Allegan and Grand Rapids Railroad Company.	58.42	.....

DEFENDANTS' EXHIBIT 20-G. 1345

Remarks.	No.	
		5218
Subsidiary road, fixed money rental. Leased Jan. 13, 1868, for 999 years; rental, 6 per cent on $185,000 of capital stock, interest on bonds, and taxes.	597	
Subsidiary road, other relation. Operated at cost by the Phila., Wilm. & Balt. R. R. as agent. Profit or loss paid over or charged against this company, according to results at the close of each fiscal year.	598	
Subsidiary road, included in "operation" of Phila., Wilm. & Balt. R. R. as siding.	599	
Subsidiary road, contingent money rental. Agreement went into effect Nov. 1, 1891, terminable at option of either party on 30 days' notice. Rental, entire net earnings.	600	
		5219
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	601	
Operating road, subsidiary, other relation.....	602	
Subsidiary road, fixed money rental. Leased Jan. 1, 1892. May be terminated upon 6 months' written notice. Rental, $1 per annum.	603	
Subsidiary road, contingent money rental. Leased Dec. 29, 1879, terminable at one year's notice; lessee to furnish equipment and operate the road at cost, paying lessor any surplus from operation.	604	

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Operating road, independent. Of "line owned" 7.84 miles leased to N. Y., Chic. & St. L. R. R. "Line operated" includes 7.20 miles leased from Battle Ck. & Sturgis Ry.	840	5220
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	841	
Subsidiary road, fixed money rental. Leased Sept. 5, 1881, in perpetuity; annual rental, $54,000, and $500 for organization expenses.	842	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	843	
Subsidiary road, other relation. Included in branches of L. Shore & Mich Sn. Ry.	844	
Subsidiary road, contingent money rental. Leased Aug. 24, 1882, in perpetuity from Sept. 1, 1882; annual rental, 5½ per cent on preferred stock; should net earnings in any year, after Aug. 24, 1887, exceed 8 per cent on preferred stock, lessee will pay amount of such excess up to 2 per cent on common stock. Organization expenses, $1,500.	845	5221
Subsidiary road, contingent money rental. Leased Jan. 1, 1890, for 5 years; annual rental, 30 per cent of gross earnings, and all taxes, except those imposed by United States or State of Pennsylvania upon tonnage, dividends, or interest on bonds.	846	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	847	
Subsidiary road, fixed money rental. Leased Sept. 21, 1869, for 999 years; annual rental, 6 per cent on capital stock, interest on bonds, and all taxes and assessments.	848	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
5222		**LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY—Continued.**		
	849	Mahoning Coal Railroad Company.....	50.20	.....
	850	Northern Central Michigan Railroad Company.	61.14	.....
	851	Oberlin and La Grange Railway Company.....	4.00	.....
5223				
	852	Silver Creek and Dunkirk Railway Company..	8.71	.....
	853	Sturgis, Goshen and Saint Louis Railroad Company	28.28	.....
	854	Swan Creek Railway Company.....	1.31	.....
	855	Toledo and Ohio Northern Railway Company.	4.20	.....
	856	**New York, Chicago and Saint Louis Railroad Company.**	502.57	530.87
5224	[198]			
	857	Chicago and State Line Railroad Company..	9.96	.....
	858	Pittsburgh and Lake Erie Railroad Company.	71.31	172.06
	859	Ellwood Connecting Railroad Company.....	.68	.....
	860	Mahoning State Line Railroad Company....	3.15	.....
5225	861	Pittsburgh, McKeesport and Youghiogheny Railroad Company.	95.68	.....
	862	Youghiogheny Northern Railroad Company	1.92	.....
	877	**MICHIGAN CENTRAL RAILROAD COMPANY.**	270.07	1,633.52
	878	Battle Creek and Sturgis Railway Company..	41.00	.....

DEFENDANTS' EXHIBIT 20-G. 1347

Remarks.	No.	
Subsidiary road, contingent money rental. Leased July 1, 1884, in perpetuity; annual rental, 40 per cent of gross earnings; if insufficient to pay interest on bonds, 5 per cent on preferred stock, and $1,000 for corporate expenses, lessee will advance necessary amount and charge same against future rental.	849	5226
Subsidiary road, other relation. Capital stock owned entirely by L. Shore & Mich. Sn. Ry.	850	
Subsidiary road, contingent money rental. "Train service operated by L. Shore & Mich. Sn. Ry." under contract dated March 29, 1884, for 10 years. For such service the operating road receives pay at the rate of $5 for each round trip of train, and collects $1 per car for Oberlin & La Grange Ry. on each car of freight received. From any surplus over $5 per round trip is deducted the interest on mortgage at rate of 6 per cent and balance paid to Oberlin & La Grange Ry.	851	5227
Subsidiary road, other relation. Capital stock all held by L. Shore & Mich. Sn. Ry.	852	
Subsidiary road, other relation. Controlled through ownership of capital stock and bonds.	853	
Subsidiary road, other relation. Mileage included in sidings of L. Shore & Mich. Sn. Ry., and is used exclusively for switching purposes; entire capital stock owned by that company.	854	
Subsidiary road. "Line owned" not in operation.....	855	
Operating road, subsidiary, other relation. Controlled through ownership of capital stock.	856	
		5228

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Subsidiary road, fixed money rental. Leased in perpetuity to Ft. Way. & Ill. R. R.; annual rental, $100, organization expenses up to $500, all taxes, assessments, etc. Ft. Way. & Ill. R. R. merged into N. Y., Chic. & St. L. R. R. Aug. 18, 1887.		
Operating road, subsidiary, other relation. Controlled through ownership of capital stock.	858	
Subsidiary road, other relation. Controlled through ownership of entire capital stock. Used as a siding by Pittsb. & L. Erie R. R.	859	
Subsidiary road, fixed money rental. Leased Jan. 14, 1895, for 99 years from Feb. 1, 1895; rental $1,800 per annum, maintenance and taxes.	860	
Subsidiary road, fixed money rental. Leased Jan. 1, 1884, for 999 years; Pittsb. & L. Erie R. R. and L. Shore & Mich. Sn. Ry. guarantee 6 per cent on capital stock and interest on bonds.	861	5229
Subsidiary road, other relation. Leased for 50 years from April 1, 1883; rental depends upon a provisional agreement.	862	
Operating road, independent. Of "Line operated" 378.91 miles not in United States.	877	
Subsidiary road, fixed money rental. Rental, interest on bonds, operating expenses, and taxes. The Mich. Cent. R. R. also owns majority of capital stock. Of "line owned," 7.20 miles operated by L. Shore & Mich. Sn. Ry., with Sturgis, Goshen & St. L. Ry.	878	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
5230		**MICHIGAN CENTRAL RAILROAD COMPANY —Continued.**		
	879	Bay City and Battle Creek Railway Company.	18.00	.....
	880	Canada Southern Bridge Company.....	3.66	.....
	881	Detroit and Bay City Railroad Company.....	155.00	.....
5231				
	882	Grayling, Twin Lakes and Northeastern Railroad Company.	27.80	.....
	883	Grand River Valley Railroad Company.....	83.79	.....
	884	Jackson, Lansing and Saginaw Railroad Company.	295.10	.....
5232	885	Joliet and Northern Indiana Railroad Company	45.00	.....
	886	Kalamazoo and South Haven Railroad Company.	39.50	.....
	[200]			
	887	Lansing Transit Railway Company.....	.78	.....
5233	888	Michigan Air Line Railroad Company.....	115.16	.....
	889	Michigan Midland and Canada Railroad Company.	14.68	.....
	890	Saginaw Bay and Northwestern Railroad Company.	80.13	.....

DEFENDANTS' EXHIBIT 20-G. 1349

Remarks.	No.	
		5234
Subsidiary road, fixed money rental. Agreement dated Feb. 1, 1890, in perpetuity; rental, interest on bonds, and taxes.	879	
Subsidiary road, contingent money rental. Operated under agreement dated Dec. 12, 1882, for 21 years, with Can. Sn. Ry., which owns substantially all its capital stock and bonds, the bridge company being credited with its earnings and charged with its expenses.	880	
Subsidiary road, other relation. Under a contract dated March 10, 1881, the Det. & Bay Cy. R. R. gave entire possession and control of its railroad and property to the Mich. Cent. R. R., which agreed to operate the same during its corporate existence. By this contract the lessee was authorized to issue and did issue its bonds to the amount of $4,000,000, bearing interest at 5 per cent and maturing 50 years from March 1, 1881. To secure the payment of said bonds both said companies joined in the execution of a mortgage upon all the railroad property and franchises of the Det. & Bay Cy. R. R.	881	5235
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	882	
Subsidiary road, fixed money rental. Leased Jan. 20, 1870, to continue during the corporate existence of lessor; lessee guarantees floating and funded debt of lessor, interest thereon, 5 per cent per annum on stock, taxes, assessments, etc.	883	
Subsidiary road, fixed money rental. Leased Sept. 1, 1871, during corporate existence of the two companies; lessee pays principal and interest on bonds of lessor and a dividend of 3½ per cent per annum, also $750 per annum for organization purposes.	884	
Subsidiary road, fixed money rental. Operated under contracts executed Sept. 7 and 26, 1854; on completion turned over to Mich. Cent. R. R. to operate forever at an annual rental of $89,000.	885	5236
Subsidiary road, fixed money rental. Leased July 1, 1870, in perpetuity; lessee to pay taxes and interest on bonds.	886	
		[201]
Subsidiary road, fixed money rental. Leased Feb. 18, 1888, for 99 years from Sept. 15, 1887; rental, $1.00 per annum. Used for switching purposes by Mich. Cent. R. R.	887	
Subsidiary road, fixed money rental. Leased Jan. 1, 1870, for 999 years, lessee guaranteeing principal and interest on bonds.	888	5237
Subsidiary road, other relation. Operated under agreement dated Dec. 12, 1882, for 21 years, with Can. Sn. Ry., which owns a majority of its capital stock and all its bonds, Mich. Midl. & Can. R. R. being credited with its earnings and charged with its expenses.	889	
Subsidiary road, other relation. Controlled through ownership of capital stock.	890	

	No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
5238		**MICHIGAN CENTRAL RAILROAD COMPANY —Continued.**		
	891	Toledo, Canada Southern and Detroit Railway Company.	55.87	.....
	892	Toledo and Michigan Belt Railroad Company	3.05	.....
	911	**PENNSYLVANIA COMPANY**.....	.....	1,225.17
	912	Calumet River Railway Company.....	4.43	.....
5239	913	Cleveland and Pittsburg Railroad Company...	198.34	.....
	914	Salineville Railroad Company.....	3.07	.....
	[202]			
	915	Erie and Pittsburg Railroad Company.....	84.47	.....
5240				
	916	Indianapolis and Vincennes Railroad Company	133.11	.....
	917	Marginal Railroad Company.....	2.96	.....
	918	Pittsburgh, Fort Wayne and Chicago Railway Company.	469.89	.....
	919	Massillon and Cleveland Railroad Company.	12.23	.....
5241				
	920	New Castle and Beaver Valley Railroad Company.	14.98	.....
	921	Pittsburgh, Ohio Valley and Cincinnati Railroad Company.	15.27	.....

DEFENDANTS' EXHIBIT 20-G. 1351

Remarks.	No.	
Subsidiary road, other relation. Operated under agreement dated Dec. 12, 1882, for 21 years, with the Can. Sn. Ry., which owns substantially all its capital stock and bonds, Tol., Can. Sn. & Det. Ry., being credited with its earnings and charged with its expenses.	891	5242
Subsidiary road, other relation. Tol., Can. Sn. & Det. Ry. owns entire capital stock.	892	
Operating road, independent.....	911	
Subsidiary road, other relation. Controlled through ownership of majority of capital stock.	912	
Subsidiary road, fixed money rental. Leased to Pennsylvania R. R. Dec. 1, 1871, for 999 years; lessee guarantees principal, interest, and sinking-fund charges on bonds, 7 per cent on capital stock, $10,000 for organization annually, taxes, assessments, etc.; lease transferred to Pennsylvania Co. April 14, 1873.	913	5243
Subsidiary road, other relation. Operated by Pennsylvania Co. for Wm. Jackson, Trustee.	914	

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Subsidiary road, fixed money rental. Leased to Pennsylvania R. R. Mar. 1, 1870, for 999 years; annual rental, 7 per cent on capital stock and bonds, $2,500 for organization expenses and taxes; lease transferred to Pennsylvania Co., April 1, 1871.	915	5244
Subsidiary road, contingent money rental. Leased Jan. 1, 1879, for 99 years; net earnings paid to lessor to be applied to payment of interest on bonds. Majority of capital stock owned by lessee.	916	
Subsidiary road, other relation. Branch line connecting certain industries in Beaver Falls, Pa., with main line of Pittsb., Ft. Wayne and Chic. Ry., and is operated by this company in connection with that road. It is not an organized company.	917	
Subsidiary road, fixed money rental. Leased July 1, 1869, for 999 years; annual rental, interest on bonds, sinking fund, 7 per cent on capital stock, organization expenses, and taxes.	918	
Subsidiary road, contingent money rental. Leased May 22, 1869, for 99 years at a rental of 40 per cent of gross earnings, minimum being fixed at $20,000 a year; lease transferred to Pennsylvania Co., July 1, 1869.	919	5245
Subsidiary road, contingent money rental. Leased June 29, 1865, for 99 years, at a rental of 40 per cent of gross earnings; lease assigned to Pennsylvania R. R. June 7, 1869, and by the latter to Pennsylvania Co., June 29, 1874, to take effect as of date April 1, 1871.	920	
Subsidiary road, other relation. Controlled through ownership of majority of capital stock.	921	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
		PENNSYLVANIA COMPANY—Continued.		
5246	922	Pittsburgh, Youngstown and Ashtabula Railroad Company.	125.09	.....
	923	Rochester, Beaver Falls and Western Railway Company.	.55	.....
	924	South Chicago and Southern Railroad Company.	10.25	.....
	925	State Line and Indiana City Railway Company	7.50	.....
5247	926	Toledo, Walhonding Valley and Ohio Railroad Company.	125.40	.....
	927	Rolling Mill Railroad Company.....	.71	.....
	928	Cincinnati and Muskingum Valley Railway Company.	148.45	148.45
	929	Cleveland and Marietta Railway Company....	97.00	104.70
	930	Grand Rapids and Indiana Railroad Company.	436.32	592.22
	931	Cincinnati, Richmond and Fort Wayne Railroad Company.	85.60	.....
5248	932	Muskegon, Grand Rapids and Indiana Railroad Company.	36.85	.....
	933	Traverse City Railroad Company.....	26.00	.....
	934	**Pittsburgh, Cincinnati, Chicago and Saint Louis Railway Company.**	1,073.78	1,402.62
	935	Chartiers Railway Company.....	22.76	.....
	936	Chartiers Connecting Railroad Company..	.72	.....
	937	Englewood Connecting Railway Company..	2.35	.....
5249	938	Little Miami Railroad Company.....	101.50	.....
	939	Columbus and Xenia Railroad Company...	55.00	.....
	940	Dayton and Western Railroad Company...	37.99	.....

DEFENDANTS' EXHIBIT 20-G. 1353

Remarks.	No.	
Subsidiary road, contingent money rental. Leased Aug. 1, 1887, for 1 year, and thereafter from year to year subject to termination on 12 months' written notice from either party; operated by lessee at cost. Majority of capital stock held by lessee since July 20, 1887.	922	5250
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	923	
Subsidiary road, other relation. No contract; operated at cost under a provisional arrangement. Pennsylvania Co. controls the road through ownership of majority of capital stock.	924	
Subsidiary road, other relation. No contract; operated at cost under a provisional arrangement. Pennsylvania Co. controls the road through ownership of entire capital stock.	925	
Subsidiary road, contingent money rental. Leased Jan. 17, 1879, for 99 years, each year's surplus, if any, after deducting taxes, repairs, operating expenses, etc., to be paid lessor.	926	5251
Subsidiary road, other relation. Controlled through ownership of capital stock. Operated by Pa. Co.	927	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	928	
....do	929	
Operating road, subsidiary, other relation. Controlled by virtue of a contract in effect from Oct. 1, 1869, for 30 years, under which Pennsylvania Co. guarantees certain of its first-mortgage land-grant bonds.	930	
Subsidiary road, contingent money rental. Leased Jan. 1, 1871, for 99 years; rental, net earnings. Bond interest guaranteed by Pennsylvania Co., Pittsb., Cin., Chic. & St. L., and Gr. Rap. & Ind. R. Rs., each one-third of any deficiency of net earnings to pay coupons.	931	5252
Subsidiary road, contingent money rental. Leased Dec. 1, 1886, for 99 years; rental, net earnings, with a minimum guarantee of interest on bonds or $37,500 per annum.	932	
Subsidiary road, contingent money rental. Leased Jan. 1, 1883, for 50 years; rental, net earnings, with a minimum guarantee of interest on bonds or $7,500 per annum.	933	
Operating road, subsidiary, other relation. Controlled through ownership of capital stock and bonds.	934	
Subsidiary road, contingent money rental. Leased Dec. 8, 1871, for 99 years from Jan. 1, 1872; rental, net earnings.	935	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	936	
Subsidiary road, other relation. Operated and maintained at cost, any surplus earnings paid to lessor; controlled through ownership of entire capital stock.	937	
Subsidiary road, fixed money rental. Leased Dec. 1, 1869, for 99 years, renewable forever; annual rental, 8 per cent on capital stock, interest on bonds, and organization expenses.	938	5253
Subsidiary road, fixed money rental. Leased Nov. 30, 1868, for 99 years, renewable forever; annual rental, 8 per cent on capital stock, interest on bonds; included in lease of Little Miami R. R. to Pennsylvania Co.	939	
Subsidiary road, fixed money rental. Leased Dec. 1, 1869, for 99 years, renewable forever; rental, interest on bonds; included in lease of Little Miami R. R. to Pennsylvania Co.	940	

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	Pittsburgh, Cincinnati, Chicago and Saint Louis Railway Company—Continued.		
941	Ohio Connecting Railway Company.....	3.27	.....

[204]

5255	942	Pittsburgh, Wheeling and Kentucky Railroad Company.	28.04	.....
	943	Steubenville Extension Railroad Company..	1.23	.....
	944	Newport and Cincinnati Bridge Company...	.73	.73
	945	Pittsburgh, Chartiers and Youghiogheny Railway Company.	15.74	17.14
5256				

[220]

	1212	**ILLINOIS CENTRAL RAILROAD COMPANY..** [Line south of Cairo, Illinois.]	.....	894.41
	1213	Canton, Aberdeen and Nashville Railroad Company.	87.89	.....
	1214	Chicago, Saint Louis and New Orleans Railroad Company.	666.16	.....
5257	1215	Yazoo and Mississippi Valley Railroad Company.	947.63	807.27

DEFENDANTS' EXHIBIT 20-G. 1355

Remarks.	No.
Subsidiary road, contingent money rental. Operated at cost; net earnings paid to lessor. Contract dated Dec. 18, 1890, and continuing in force, subject to termination by either party on 30 days' written notice. The Pennsylvania Co. has controlled road through ownership of capital stock since organization, Nov. 22, 1886.	941

5258

[205]

Subsidiary road, contingent money rental. Leased Feb. 25, 1878, for 99 years; lessee operates the road at cost and pays net earnings to lessor.	942
Subsidiary road, fixed money rental. Owned by Pennsylvania R. R., and leased April 1, 1871, to Pennsylvania Co. for 999 years; sublet Nov. 1, 1876, to Pittsb., Cin. & St. L. Ry. for 25 years; rental, 5 per cent per annum on cost.	943
Operating road, subsidiary, other relation. The Pittsb., Cin., Chic. & St. L. Ry. operates the bridge for the Newpt. & Cin. Bridge Co. (used by Louisv. & Nashv. R. R. under trackage arrangement); Pennsylvania Co. owns majority of capital stock.	944
Operating road, subsidiary, other relation. Controlled jointly by the Pittsb., Cin., Chic. & St. L. Ry. and Pittsb. & L. Erie R. R. through joint ownership of entire capital stock, as per agreement dated Jan. 25, 1892.	945

5259

5260

[221]

Operating road, independent. "Line operated" includes 140.36 miles leased from Yazoo & Miss. Vy. R. R.	1212
Subsidiary road, contingent money rental. Leased March 31, 1888, until June 1, 1952; rental, net earnings of the road, which lessee guarantees to be $60,000 per annum.	1213
Subsidiary road, fixed money rental. Leased July 1, 1882, for 400 years; annual rental, 4 per cent on capital stock, interest on bonds, taxes, assessments, etc. On April 4, 1889, this company acquired Miss. & Tenn. R. R.	1214
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock. "Line owned" includes 140.36 miles leased to and operated by Ill. Cent. R. R. Agreement dated March 31, 1888, and to run until June 1, 1952. Rental, net earnings. Any amount under $100,000 guaranteed by lessee.	1215

5261

5262 [234]

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
1212	**ILLINOIS CENTRAL RAILROAD COMPANY..** [Line north of Cairo, Illinois.]	705.50	1,993.89
1446	Blue Island Railroad Company.....	3.96	.....
1447	Chicago and Springfield Railroad Company...	111.47	.....
5263			
1448	Chicago, Havana and Western Railroad Company.	131.62	.....
1449	Chicago, Madison and Northern Railroad Company.	231.30	.....
1450	Dubuque and Sioux City Railroad Company...	524.01	.....
1451	Cedar Falls and Minnesota Railroad Company.	75.58	.....
5264			
1452	Kankakee and Southwestern Railroad Company.	131.26	.....
1453	Rantoul Railroad Company.....	74.43	.....
1454	South Chicago Railroad Company.....	4.76	.....
1455	Mound City Railway Company.....	2.87	2.87

DEFENDANTS' EXHIBIT 20-G. 1357

[235] 5265

Remarks.	No.
Operating road, independent.....	1212
Subsidiary road, other relation. Controlled through ownership of entire capital stock and bonds.	1446
Subsidiary road, fixed money rental. Leased Dec. 1, 1877, for 50 years from July 1, 1877; in lieu of annual rental lessee issued currency bonds for $2,000,000, secured by lessor on demised property; $1,600,000 of these bonds were used by lessor to pay for the property, the remainder being reserved for improvements, etc.; lessee agrees to pay principal and interest of these bonds, taxes, assessments, etc.	1447
	5266
Subsidiary road, contingent money rental. Leased April 1, 1888, in perpetuity; lessee receives all earnings, pays all expenses, and turns over to lessor any net earnings.	1448
Subsidiary road, contingent money rental. Line, Chicago to Freeport, Ill., leased March 30, 1888, the remainder from March 1, 1892, in perpetuity, lessor to receive net earnings; lessee owns the entire capital stock and bonds of lessor.	1449
Subsidiary road, contingent money rental. Leased Jan. 1, 1895, for 56 years and 7 months; lessee receives all earnings, pays all expenses, and turns over to lessor any net earnings. Includes lease to Ill. Cent. R. R. of Cedar Falls & Minn. R. R.	1450
Subsidiary road, fixed money rental. Operated since Oct. 1, 1887, by Dubq. & Sioux Cy. R. R., at $1,500 per mile per annum, paid into United States court, where proceedings are pending to test the validity of the lease to Dubq. & Sioux Cy. R. R., dated Sept. 27, 1866.	1451
	5267
Subsidiary road, fixed money rental. Leased Aug. 1, 1881, in perpetuity; in lieu of annual rental lessee issued $968,000 registered bonds secured by lessor on demised property; $200,000 of these bonds retired a like amount previously issued and secured by same property; residue was for equipping and improving road, lessee agreeing to pay principal and interest and all taxes, assessments, etc.	1452
Subsidiary road, contingent money rental. Leased Dec. 11, 1886, in perpetuity; lessee receives all earnings, pays all expenses, and turns over to lessor any net earnings.	1453
Subsidiary road, contingent money rental. Leased July 1, 1890, in perpetuity; lessee receives all earnings, pays all expenses, and turns over to lessor any net earnings.	1454
Operating road, subsidiary, other relation. Controlled through ownership of capital stock.	1455

[Defendants' Exhibit 20-H.]

5268

Extracts from

INTERSTATE COMMERCE COMMISSION REPORT, 1896.

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5269

5270 [124]

REPORT OF THE INTERSTATE COMMERCE COMMISSION.

CLASSIFICATION OF RAILWAYS AND MILE

[The above running title cont

No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
12	**BOSTON AND MAINE RAILROAD COMPANY.**	369.81	1,716.76
13	BOSTON AND LOWELL RAILROAD COMPANY.....	96.95	.....

5271

14	Central Massachusetts Railroad Company...	98.77	.....
15	*Connecticut and Passumpsic Rivers Railroad Company.*	110.30	.....
16	*Nashua and Lowell Railroad Company*.....	14.50	.....

5272

17	Peterborough Railroad Company.....	10.50	.....
18	*Northern Railroad Company of New Hampshire.*	82.91	.....

5273

19	Concord and Claremont Railroad Company	70.90	.....
20	Peterborough and Hillsborough Railroad Company.	18.51	.....
21	Stony Brook Railroad Company.....	13.19	.....

DEFENDANTS' EXHIBIT 20-H. 1361

[125] 5274

STATISTICS OF RAILWAYS IN THE UNITED STATES.

AGE FOR THE YEAR ENDING JUNE 30, 1896.

inues throughout the report.]

Remarks.	No.
Operating road, independent. "Line operated" includes 40.17 miles not in United States.	12
Subsidiary road, fixed money rental. Leased to Boston & Me. R. R., April 1, 1887, *for* 99 *years; rental,* 7 *per cent on its capital stock for* 10 *years and* 8 *per cent thereafter, operating expenses and all interest on debt.*	13
	5275
Subsidiary road, contingent money rental. Leased to Boston & Lowell R. R., Oct. 1, 1886, for 99 years; rental, 20 per cent of gross earnings up to $1,000,000 and 25 per cent of any excess over that amount, deducting from said 20 per cent 5 per cent on $2,000,000 of bonds; lessee to pay $1,500 for organization expenses.	14
Subsidiary road, fixed money rental. Leased Jan. 1, 1887, *for* 99 *years, at* 5 *per cent for* 10 *years and* 6 *per cent thereafter on capital stock, interest on bonds, and* $3,000 *for organization expenses, annually; lease assumed by Boston & Me. R. R.*	15
Subsidiary road, contingent money rental. Leased Nov. 10, 1880, *for* 99 *years to the Boston & Lowell R. R., for* $60,000, $4,000 *additional in case gross receipts equal or exceed those of* 1880, *and* $1,000 *for organization, annually; lease assumed July* 12, 1887, *by Boston & Me. R. R., which grants in addition to sums stated in lease* 1 *per cent annually on capital stock.*	16
	5276
Subsidiary road, fixed money rental. Leased April 1, 1893, for 93 years; rental, 4 per cent on capital stock, $300 organization expenses, operating expenses, and taxes. Boston & Me. R. R. operates road by reason of being the lessee of the Boston & Lowell R. R.	17
Subsidiary road, fixed money rental. Leased to Boston & Lowell R. R., Jan. 1, 1890, *for* 99 *years; rental,* 5 *per cent on the Northern R. R. capital stock for the first* 7½ *years, and* 6 *per cent on the same thereafter. Also principal and interest on* $500,000 *first mortgage bonds of the Conc. & Claremont R. R. and* $100,000 *first mortgage bonds of the Peterb. & Hillsb. R. R. Lease assigned to the Boston & Me. R. R.*	18
	5277
Subsidiary road, other relation.....	19
....do	20
Subsidiary road, fixed money rental. Leased to Boston & Lowell R. R., Jan. 1, 1890, for 99 years; rental 7 per cent on capital stock, taxes, and $500 for organization expenses per annum; lease assumed by Boston & Me. R. R.	21

5278 [126]

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	BOSTON AND MAINE RAILROAD COMPANY —Continued.		
22	Wilton Railroad Company.....	15.50	.....
23	CONCORD AND MONTREAL RAILROAD COMPANY...	208.47	.....
5279			
24	Concord and Portsmouth Railroad Company	47.50	.....
25	Franklin and Tilton Railroad Company.....	5.00	.....
26	Killkenny Lumber Company's Railroad.....	6.27	.....
27	Lake Shore Railroad Company.....	17.28	.....
28	Manchester and North Weare Railroad Company.	24.50	.....
5280 29	Nashua, Acton and Boston Railroad Company.	20.83	.....
30	New Boston Railroad Company.....	5.19	.....
31	Pemigewasset Valley Railroad Company....	22.93	.....
32	Profile and Franconia Notch Railroad Company.	12.84	.....
33	Suncook Valley Railroad Company.....	17.37	.....
5281 34	Suncook Valley Extension Railroad Company	4.46	.....
35	Tilton and Belmont Railroad Company.....	4.17	.....
36	Whitefield and Jefferson Railroad Company.	33.69	.....
37	Connecticut River Railroad Company.....	79.85	.....
38	Danvers Railroad Company.....	9.26	.....

DEFENDANTS' EXHIBIT 20-H. 1363

[127] 5282

Remarks.	No.	
Subsidiary road, fixed money rental. Leased to Boston and Lowell R. R. for 99 years from Oct., 1883; rental, $16,800, all public taxes, and $150 for organization, annually; July 12, 1874, lease assigned to Boston & Me. R. R. without consent of lessor; Dec. 19, 1890, lessor assented to assignment of lease at a semi-annual rental of $10,200.	22	
Subsidiary road, fixed money rental. Leased April 1, 1895, for 91 years; rental, 7 per cent on capital stock, interest on bonds, operating expenses, all taxes and expenses of organization; lessee assumes all traffic balances due from lessor to other railroads.	23	5283
Subsidiary road, fixed money rental. Contract dated May 26, 1862, for 99 years from Jan. 1, 1862; rental, 7 per cent on capital stock and $500 for organization annually.	24	
Subsidiary road, fixed money rental. Leased Oct. 8, 1895, for 91 years from April 1, 1895; rental $1 annually, with such additional sums as may be necessary to keep up the organization of lessor. Lease assigned to Boston & Me. R. R.	25	
Subsidiary road, used for transporting logs to main line.....	26	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	27	
Subsidiary road, other relation. Controlled through ownership of capital stock.	28	
Subsidiary road, other relation. Controlled through ownership of majority of capital stock. Leased to Boston & Me. R. R., June 29, 1895.	29	5284
Subsidiary road, fixed money rental. Leased June 19, 1893, for 99 years; rental, $2,800 per annum. Lease assigned to Boston & Me. R. R., June 29, 1895.	30	
Subsidiary road, fixed money rental. Leased to Boston, Conc. & Montreal R. R., Feb. 1, 1892, for 100 years; rental, 6 per cent per annum on capital stock, and in addition $300 annually, organization expenses and all taxes. Lease assumed by Conc. & Montreal R. R. Lease assigned to Boston & Me. R. R., June 29, 1895.	31	
Subsidiary road, other relation. Controlled through ownership of capital stock.	32	
Subsidiary road, fixed money rental. Leased March 1, 1870, for 42 years, to Manch. & Law. and Concord R. Rs. at an annual rental of $14,400 and $300 for organization.	33	
Subsidiary road, other relation. Controlled through ownership of capital stock.	34	5285
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	35	
Subsidiary road, other relation. Controlled through ownership of capital stock.	36	
Subsidiary road, fixed money rental. Leased Jan. 1, 1893, for 99 years; rental 10 per cent on capital stock, 4 per cent interest on bonds, $2,000 for organization expenses.	37	
Subsidiary road, fixed money rental. Leased May 30, 1853, for 100 years, at $7,500 per annum.	38	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
5286		**BOSTON AND MAINE RAILROAD COMPANY —Continued.**		
	39	**Eastern Railroad in New Hampshire**.....	16.08	.....
	40	Portsmouth and Dover Railroad Company..	10.88	.....
	41	Kennebunk and Kennebunkport Railroad Company.	4.50	.....
	42	Lowell and Andover Railroad Company.....	8.73	.....
5287	43	Manchester and Keene Railroad Company....	29.59	.....
	44	Manchester and Lawrence Railroad Company.	22.39	.....
	45	Newburyport Railroad Company.....	26.98	.....
	46	**Portland, Saco and Portsmouth Railroad Company.**	50.76	.....
5288				
	47	Worcester, Nashua and Rochester Railroad Company.	94.48	.....
	48	MAINE CENTRAL RAILROAD COMPANY.....	345.23	813.76
	49	Belfast and Moosehead Lake Railroad Company.	33.13	.....
	50	Dexter and Newport Railroad Company.....	14.23	.....
	51	Dexter and Piscataquis Railroad Company..	16.54	.....
5289				
	52	Eastern Maine Railway Company.....	18.80	.....
	53	European and North American Railway Company.	120.34	.....

DEFENDANTS' EXHIBIT 20-H. 1365

Remarks.	No.	
Subsidiary road, fixed money rental. Leased Oct. 1, 1878, for 60 years and 2 months, to En. R. R. of Mass., for $22,500 per annum.	39	5290
Subsidiary road, fixed money rental. Leased June 1, 1872, for 50 years from Feb., 1874, to En. R. R. in N. H., at a rental of $46,140 per annum, guaranteed by En. R. R. of Mass. Included in lease of En. R. R. in N. H. to Boston & Me. R. R.	40	
Subsidiary road, fixed money rental. Leased May 15, 1883, for 99 years, for 4½ per cent dividend per annum.	41	
Subsidiary road, fixed money rental. Leased Dec. 1, 1874, for 99 years, at $52,500 per annum, lessee to pay all public taxes.	42	
Subsidiary road, other relation. Sold under foreclosure; bonds purchased by Boston & Lowell and Conc. & Montreal R. Rs. Operated by Boston & Me. R. R. for account of these companies, each being credited with one-half of all earnings and charged with one-half of all expenses.	43	5291
Subsidiary road, fixed money rental. Leased Sept. 1, 1887, for 50 years, for 10 per cent per annum on capital stock and $2,000 per annum for organization.	44	
Subsidiary road, fixed money rental. Leased Feb. 21, 1860, for 100 years, for $225,000 cash, and debt due Boston & Me. R. R. of $75,000.	45	
Subsidiary road, fixed money rental. Contract dated May 4, 1871, to continue in force until such time as En. R. R. of Mass., by default, shall cease to pay regular semi-annual dividend of 3 per cent; contract assigned to Boston & Me. R. R. on purchase of En. R. R. of Mass., May 8, 1890.	46	5292
Subsidiary road, fixed money rental. Leased Jan. 1, 1886, for 50 years, for $250,000 per annum and all taxes.	47	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock. "Line operated" includes 52.34 miles not in United States.	48	
Subsidiary road, fixed money rental. Leased May 10, 1871, for 50 years, at an annual rental of $36,000 and taxes.	49	
Subsidiary road, fixed money rental. Leased Dec. 13, 1888, for 999 years, at an annual rental of $18,000 until Nov. 24, 1898, and $6,100 per annum thereafter, and $250 per annum for organization expenses. Lessee also guarantees the principal and interest of bonds of lessor.	50	
Subsidiary road, fixed money rental. Leased Dec. 13, 1888, for 999 years, rental, $13,350, and $250 per annum for organization expenses, and taxes.	51	5293
Subsidiary road, fixed money rental. Leased May 1, 1883, for 999 years; annual rental, $9,000, all taxes, and $500 for organization expenses.	52	
Subsidiary road, fixed money rental. Leased April 1, 1882, for 999 years; annual rental, $125,000, all taxes, and $500 for expenses of organization; lessee also assumes city of Bangor bonds, amounting to $1,000,000, issued to aid construction of road of lessor.	53	

5294 [128]

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	BOSTON AND MAINE RAILROAD—Continued.		
	MAINE CENTRAL RAILROAD COMPANY—Continued.		
54	Knox and Lincoln Railway Company.....	48.39	.....
55	*Portland and Ogdensburg Railway Company.*	109.10	.....
5295			
56	Upper Coos Railroad Company.....	55.00	.....
57	Portland and Rochester Railroad Company...	54.98	53.86
58	*Saint Johnsbury and Lake Champlain Railroad Company.*	131.50	131.50
59	Vermont Valley Railroad Company of 1871....	24.00	24.00
60	Sullivan County Railroad Company.....	26.00	26.00
5296			
61	York Harbor and Beach Railroad Company...	11.27	11.27
[130]			
106	**NEW ENGLAND RAILROAD COMPANY**.....	360.56	527.75
107	Milford and Woonsocket Railroad Company...	15.33	.....
108	Milford, Franklin and Providence Railroad Company.	4.70	.....
109	*Norwich and Worcester Railroad Company*....	66.16	.....
5297			
110	Providence and Springfield Railroad Company.	27.73	.....
111	Rhode Island and Massachusetts Railroad Company in Massachusetts.	6.62	.....
112	Rhode Island and Massachusetts Railroad Company of Rhode Island.	7.08	.....
113	Rockville Railroad Company.....	4.48	.....
114	Woonsocket and Pascoag Railroad Company...	9.50	.....

DEFENDANTS' EXHIBIT 20-H. 1367

[129] 5298

Remarks.	No.	
Subsidiary road, fixed money rental. Leased Aug. 1, 1891, for 999 years, lessee to pay all taxes, interest, and indebtedness of lessor, a dividend of 5 per cent to the stockholders, and $200 for organization expenses.	54	
Subsidiary road, fixed money rental. Leased Aug. 20, 1888, for 999 years, lessee to pay all taxes, interest, and indebtedness of lessor, and a dividend of 1 per cent per annum for 3 years and 2 per cent thereafter.	55	5299
Subsidiary road, fixed money rental. Leased May 1, 1890, for 999 years; rental, interest on bonds, 6 per cent on capital stock and $500 for charter obligations.	56	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock; 1.12 miles owned not in operation.	57	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	58	
Operating road, subsidiary, contingent money rental. Controlled in the interest of Conn. Riv. R. R., which charges the Vt. Vy. R. R. of 1871 with operating expenses, and credits it with gross receipts and earnings of every kind. Operated by Boston & Me. R. R. as agent, under its lease of the Conn. Riv. R. R.	59	
Operating road, subsidiary, other relation. Entire capital stock owned by Vt. Vy. R. R. of 1871. Net earnings, less taxes, paid lessor. Operated by Boston & Me. R. R., as agents, under its lease of Conn. Riv. R. R.	60	5300
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	61	

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Operating road, independent.....	106	
Subsidiary road, fixed money rental. Leased April 1, 1896, for one year; rental, $3,600 per annum.	107	
Subsidiary road, fixed money rental. Leased April 1, 1896, for one year; rental, $2,400 and all expenses.	108	
Subsidiary road, fixed money rental. Leased Feb. 9, 1869, for 99 years; annual rental, interest on bonds, and 8 per cent on preferred stock.	109	5301
Subsidiary road, fixed money rental. Leased Oct. 1, 1890, for 99 years; rental, 6 per cent on capital stock, interest on bonds, taxes and assessments.	110	
Subsidiary road, fixed money rental. Leased Nov. 21, 1887, for 99 years; annual rental, $10,000 and all taxes, assessments, etc.	111	
Subsidiary road, fixed money rental. Leased Oct. 1, 1887, for 99 years; rental, $10,000, all taxes and assessments.	112	
Subsidiary road, fixed money rental. Agreement entered into March 31, 1896; rental, $10 per day. Lease terminable on 30 days' notice by either party.	113	
Subsidiary road, fixed money rental. Leased Feb. 28, 1891, for 99 years; rental, 5 per cent interest on stocks and bonds.	114	

	No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
5302	115	**NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY.**	276.41	1,464.21
	116	Berkshire Railroad Company	20.53	.....
	117	*Boston and New York Air Line Railroad Company.*	51.50	.....
	118	Colchester Railway Company	3.59	.....
5303	119	Chatham Railroad Company	7.07	.....
	120	Danbury and Norwalk Railroad Company	36.20	.....
	121	Harlem River and Port Chester Railroad Company.	11.50	.....
	122	*Housatonic Railroad Company*	90.12	.....
5304	123	Naugatuck Railroad Company	60.99	.....
	[132]			
	124	New Haven and Derby Railroad Company	16.69	.....
	125	*New Haven and Northampton Company*	126.31	.....
5305	126	Holyoke and Westfield Railroad Company	10.32	.....
	127	Old Colony Railroad Company	495.20	.....

Remarks.	No.	
Operating road, independent. On June 30, 1895, the Nantasket Beach R. R., 6.95 miles, was operated by electric power.	115	5306
Subsidiary road, contingent money rental. Leased April 1, 1893, for 99 years; rental, 6 per cent on capital stock, all expenses, taxes, and $250 for maintenance of organization. "Old lease to the Housatonic R. R. suspended, but not canceled."	116	
Subsidiary road, fixed money rental. Leased Oct. 1, 1882, for 99 years; rental, $120,000 per annum, and interest on its bonds, and the bonds of Colchester R. R.	117	
Subsidiary road, fixed money rental. Leased Oct. 1, 1882, for 999 years. Interest on bonds guaranteed by Boston & N. Y. Air Line R. R.	118	
Subsidiary road, contingent money rental. Contract in effect Nov. 22, 1894. Terminable after 30 days' notice by either party. Lessee equips, maintains, operates railroad, collects all revenue and pays to the lessor 30 per cent of gross receipts.	119	5307
Subsidiary road, fixed money rental. Leased July 1, 1892, for 99 years; rental, 5 per cent dividend on capital stock, interest on bonds, all taxes and assessments. Of "line owned," 5.95 miles operated by Shepaug, Litchf. & Nn. R. R.	120	
Subsidiary road, fixed money rental. Leased Sept. 30, 1873, for 99 years, to N. Y., New Hav. & Hartf. R. R., for interest on bonds. The lessee owns entire capital stock of lessor road.	121	
Subsidiary road, fixed money rental. Leased July 1, 1892, for 99 years; rental, 1 per cent dividend on preferred capital stock, and interest on bonds.	122	
Subsidiary road, fixed money rental. Leased April 1, 1887, for 99 years; rental, interest on bonds, and 10 per cent per annum on capital stock.	123	5308

[133]

Subsidiary road, fixed money rental. Leased July 1, 1892, for 99 years; rental, 3 per cent dividend on capital stock until June 30, 1895, and 4 per cent thereafter, during term of lease, interest on bonds, all taxes and assessments.	124	
Subsidiary road, fixed money rental. Leased April 1, 1887, for 99 years; rental, 1 per cent on capital stock for 3 years, 2 per cent for the second 3 years, 3 per cent for the third 3 years, and 4 per cent thereafter; interest on bonds, and taxes.	125	
Subsidiary road, contingent money rental. Leased Dec. 3, 1870, in perpetuity; rental, 50 per cent of gross receipts subject to interest on bonds of $260,000, guaranteed by New Hav. & Northamp. Co. Lease assumed by N. Y., New Hav. & Hartf. R. R., with lease of New Hav. & Northamp. Co.	126	5309
Subsidiary road, fixed money rental. Leased Mar. 1, 1893, for 99 years; rental, 7 per cent on capital stock, interest on funded debt, taxes, and organization expenses. Lease includes its interest as lessee.	127	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
5310		**NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY—Continued.**		
	128	*Boston and Providence Railroad Company*..	61.19	.....
	129	Attleboro' Branch Railroad Company.....	4.00	.....
	130	Fall River Railroad Company.....	12.25	.....
5311	131	Nantasket Beach Railroad Company.....	6.95	.....
	132	Plymouth and Middleborough Railroad Company.	15.17	.....
	133	Providence, Warren and Bristol Railroad Company.	14.35	.....
	134	Pawtuxet Valley Railroad Company.....	5.67	.....
5312	135	*Providence and Worcester Railroad Company*.	47.91	.....
	136	*Shore Line Railway Company*.....	49.40	.....
	137	Stockbridge and Pittsfield Railroad Company..	22.02	.....
	138	West Stockbridge Railroad Company.....	2.64	.....
	139	Shepaug, Litchfield and Northern Railroad Company.	32.28	38.23
5313				
	[150]			
	470	**NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY.**	819.45	2,409.84
	471	Amsterdam, Chuctanunda and Northern Railroad Company.	1.50	.....

DEFENDANTS' EXHIBIT 20-H. 1871

Remarks.	No.	
		5314
Subsidiary road, fixed money rental. Leased April 1, 1888, for 99 years; annual rental, 10 per cent on capital stock, interest on bonds, taxes and assessments, etc. Excludes one-half of 5 miles owned jointly by Prov. & Worc. and Boston & Prov. R. Rs.	128	
Subsidiary road, fixed money rental. Leased Dec. 31, 1870, for 30 years; annual rental, 7 per cent on capital stock; included in lease to Old Colony R. R.	129	
Subsidiary road, contingent money rental. Leased April 1, 1882, for 99 years; rental, 30 per cent of gross earnings, which is guaranteed to be sufficient to pay interest on bonds.	130	
Subsidiary road, fixed money rental. Leased April 1, 1888, for 99 years; lessee guarantees interest on bonds up to $6,250, pays taxes, and has option of purchasing property after 20 years of the lease for $150,000. Road operated by electric power June 30, 1895.	131	5315
Subsidiary road, contingent money rental. Leased Dec. 4, 1891. No returns to be made to the road for 25 years; thereafter 30 per cent of gross receipts for remainder of lease.	132	
Subsidiary road, fixed money rental. Leased July, 1891, for 95 years and 9 months; rental, 5 per cent on capital stock for the first ten years and 5 per cent on common and preferred stock for remainder of lease; also pay interest and taxes, and not exceeding $500 per annum for salaries.	133	
Subsidiary road, fixed money rental. Leased July 1, 1884, for 99 years; annual rental, 7 per cent on capital stock, interest on bonds, taxes, assessments, etc. Lease assumed by N. Y., New Hav. & Hartf. R. R., April 1, 1892.	134	
Subsidiary road, fixed money rental. Leased July 1, 1892, for 99 years; rental, 10 per cent on capital stock, interest on bonds, and taxes. Excludes one-half of 5 miles owned jointly by Prov. & Worc. and Boston & Prov. R. Rs.	135	5316
Subsidiary road, fixed money rental. Leased Nov. 1, 1870, in perpetuity; annual rental, $100,000.	136	
Subsidiary road, fixed money rental. Leased April 1, 1893, for 99 years; rental, 6 per cent on capital stock, $250 organization expenses, all expenses and taxes. "Old lease to the Housatonic R. R. suspended, but not canceled."	137	
Subsidiary road, fixed money rental. Leased April 1, 1893, for 99 years; rental, $1,800 per annum and all taxes.	138	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock. Of "line operated," 5.95 miles owned by Danb. & Norwalk R. R.	139	5317

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Operating road, independent.....	470	
Subsidiary road, other relation. Operated under verbal agreement Sept. 23, 1879, to deliver and receive freight to and from Kellogg & Miller's Linseed Oil Works. "Line operated" included as sidings in N. Y. Cent. & Hud. Riv. R. R.	471	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
		NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY—Continued.		
5318	472	Carthage and Adirondack Railway Company..	46.10	.....
	473	Gouverneur and Oswegatchie Railroad Company.	13.05	.....
	474	Mohawk and Malone Railway Company.....	181.50	.....
	475	New Jersey Junction Railroad Company.....	4.85	.....
5319	476	*New York and Harlem Railroad Company*.....	135.90	.....
	477	New York and Putnam Railroad Company....	57.16	.....
	478	Mahopac Falls Railroad Company.....	4.05	.....
	479	New York Central Niagara River Railroad Company.	2.81	.....
	480	*Rome, Watertown and Ogdensburg Railroad Company.*	412.55	.....
5320		—		
	481	Buffalo, Thousand Islands and Portland Railroad Company.	.03	.....
	482	Niagara Falls Branch Railroad Company....	8.57	.....
	483	Oswego and Rome Railroad Company.....	28.49	.....
	484	Utica and Black River Railroad Company...	149.81	.....
5321				
	485	Carthage, Watertown and Sacketts Harbor Railroad Company.	28.81	.....
	486	Spuyten Duyvil and Port Morris Railroad Company.	6.04	.....

DEFENDANTS' EXHIBIT 20-H. 1873

Remarks.	No.	
Subsidiary road, fixed money rental. Leased Jan. 9, 1893, from May 1, 1893, for term of corporate existence; rental, 4 per cent interest on bonds not exceeding $1,600,000.	472	5322
Subsidiary road, fixed money rental. Leased July 8, 1892, in perpetuity. Lessee guarantees principal and interest on bonds not exceeding $300,000.	473	
Subsidiary road, fixed money rental. Leased May 1, 1893, in perpetuity; rental, 4 per cent interest, and principal guaranteed on not exceeding $2,500,000 first-mortgage bonds.	474	
Subsidiary road, fixed money rental. Leased July 1, 1886, for 100 years, with privilege of further term of 100 years, at an annual rental of interest at 4 per cent on its bonds.	475	
Subsidiary road, fixed money rental. Leased April 1, 1873, for 401 years; annual rental, interest on funded debt, and 8 per cent on capital stock.	476	5323
Subsidiary road, fixed money rental. Leased Jan. 30, 1894, in perpetuity; rental, 4 per cent interest on first-mortgage bonds and 5 per cent on $1,200,000 first consolidated mortgage forty-year bonds of N. Y. & Nn. Ry. pending retirement.	477	
Subsidiary road, other relation. Operated since Jan. 1, 1894, as a branch of N. Y. & Putnam R. R. by N. Y. Cent. & Hud. Riv. R. R., lessee. N. Y. & Putnam R. R. owns entire capital stock.	478	
Subsidiary road, other relation.....	479	
Subsidiary road, fixed money rental. Leased Mar. 14, 1891, in perpetuity. Lessee guarantees principal and interest on bonds, 5 per cent on capital stock, and a rental of $15,000 per annum until April 1, 1901, and thereafter $7,000 per annum.	480	5324
Subsidiary road, other relation. "Line owned" not in operation..	481	
Subsidiary road, fixed money rental. Leased Sept. 21, 1881, in perpetuity, at 7 per cent per annum on capital stock; included in lease to N. Y. Cent. & Hud. Riv. R. R., dated March 14, 1891.	482	
Subsidiary road, fixed money rental. Leased Dec. 2, 1869, in perpetuity; annual rental, interest on first-mortgage bonds and $24,000 cash. Lease amended March 2, 1891; rental, 7 per cent on $350,000 first-mortgage bonds and 5 per cent on $400,000 second-mortgage bonds per annum; included in lease to N. Y. Cent. & Hud. Riv. R. R., dated March 14, 1891.	483	
Subsidiary road, fixed money rental. Leased April 14, 1886, for the term of its corporate existence; annual rental, 7 per cent on capital stock, interest on bonds, and $4,500 for organization expenses; included in lease to N. Y. Cent. & Hud. Riv. R. R., dated March 14, 1891.	484	5325
Subsidiary road, contingent money rental. Leased for the term of its corporate existence for 37½ per cent of gross earnings; included in the lease of Utica & Black Riv. R. R. to Rome, Watert. & Ogdensb. R. R., and to N. Y. Cent. & Hud Riv. R. R., dated March 14, 1891.	485	
Subsidiary road, fixed money rental. Leased Nov. 1, 1871, to Dec. 31, 1970; annual rental, 8 per cent on $989,000 capital stock.	486	

5326 [152]

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY—Continued.		
487	Tivoli Hollow Railroad Company	1.23	.....
488	Troy and Greenbush Railroad Company	6.00	.....
489	Troy Union Railroad Company	5.00	.....
5327 490	**West Shore Railroad Company**	495.20	.....
491	Beech Creek Railroad Company	149.73	192.33
492	Buffalo Erie Basin Railroad Company	.25	.25
493	Saint Lawrence and Adirondack Railway Company.	10.20	77.80
5328 494	Wallkill Valley Railroad Company	32.88	37.69

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519	**PENNSYLVANIA RAILROAD COMPANY**	529.76	2,783.93
520	Bald Eagle Valley Railroad Company	90.43	.....
521	Bedford and Bridgeport Railway Company	49.17	.....
5329 522	Bustleton Railroad Company	4.16	.....
523	Cambria and Clearfield Railroad Company	97.64	.....
524	Columbia and Port Deposit Railway Company.	43.21	.....

DEFENDANTS' EXHIBIT 20-H. 1875

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Remarks.	No.	
Subsidiary road, other relation. Operated under contract dated April 3, 1894, with the Van Rensselaer Land Co.	487	
Subsidiary road, fixed money rental. Leased Feb. 3, 1851, in perpetuity, at an annual rental of $19,250.	488	
Subsidiary road, other relation. One-half owned by N. Y. Cent. & Hud. Riv. R. R., and one-fourth each by Del. & Hud. Canal Co. and Fitchburg R. R. These companies pay this proportion of maintenance and operation.	489	
Subsidiary road, fixed money rental. Leased Jan. 1, 1886, for 475 years, with privilege of further term of 500 years; annual rental, interest at 4 per cent on bonds.	490	5331
Operating road, subsidiary, fixed money rental. Leased Dec. 15, 1890, for 999 years. Lessee guarantees principal and interest of $5,000,000 first-mortgage 4 per cent bonds, and 4 per cent on $5,000,000, capital stock. Under a subsequent agreement the lessee also guarantees the principal and interest of $1,000,000 second-mortgage bonds bearing 5 per cent interest, and 4 per cent on $1,000,000 of additional capital stock.	491	
Operating road, subsidiary, other relation. Used as a switching road to facilitate delivery of property at the docks.	492	
Operating road, subsidiary, other relation. Operated by N. Y. Cent. & Hud. Riv. R. R., on behalf of W. S. Webb, who assumes temporarily the guarantee of the principal and interest of first-mortgage bonds. "Line operated" includes 67.60 miles in Canada.	493	
Operating road, subsidiary, other relation. Controlled through ownership of capital stock and bonds held in the interest of W. Shore R. R.	494	5332

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Operating road, independent.....	519	
Subsidiary road, contingent money rental. Leased July 1, 1864, for 99 years; rental, 40 per cent of gross receipts. Lease does not apply to Nittany Brh., which is operated for cost. Net earnings paid to Bald Eagle Vy. R. R.	520	
Subsidiary road, contingent money rental. Operated under resolutions of the directors of both companies, which took effect May 1, 1891, and terminable at the option of either party on 30 days' notice; net earnings payable to this company.	521	
Subsidiary road, contingent money rental. Operated under resolutions of the directors of both companies, which took effect Jan. 1, 1891, and terminable at the option of either party on 30 days' notice; net earnings payable to this company.	522	5333
Subsidiary road, contingent money rental. Operated under resolutions of board of directors in effect Sept. 24, 1888, terminable at any time on 30 days' notice; net earnings payable to this company.	523	
Subsidiary road, contingent money rental. Agreement dated July 1, 1890, terminable at any time on 30 days' notice; rental, net earnings.	524	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
5334		**PENNSYLVANIA RAILROAD COMPANY**—Continued.		
	525	Columbus, Kinkora and Springfield Railroad Company.	14.16	.....
	526	Cresson and Irvona Railroad Company.....	28.69	.....
	527	Delaware River Railroad and Bridge Company	3.68	.....
5335				
	528	Downingtown and Lancaster Railroad Company	37.58	.....
	529	Ebensburg and Black Lick Railroad Company.	14.75	.....
	530	Engelside Railroad Company.....	.17	.....
	531	Fair Hill Railroad Company.....	.78	.....
5336	532	Freehold and Jamesburg Agricultural Railroad Company.	27.54	.....
	533	Frederick and Pennsylvania Line Railroad Company.	28.00	.....
	534	Hanover and York Railroad Company.....	27.65	.....
	535	Harrisburg, Portsmouth, Mount Joy and Lancaster Railroad Company.	53.74	.....
	536	Johnsonburg Railroad Company.....	19.69	.....
5337	537	Kensington and Tacony Railroad Company....	6.88	.....
	538	Lewisburg and Tyrone Railroad Company.....	85.12	.....
	539	Mifflin and Centre County Railroad Company.	12.43	.....
	540	Millstone and New Brunswick Railroad Company.	6.64	.....

Remarks.	No.	
		5338
Subsidiary road, contingent money rental. Lease dated Sept. 23, 1889; runs from year to year, unless terminated by 6 months' notice. Lessee collects all earnings, pays all expenses for operating the road and maintenance of way, and taxes; balance, if any, is paid to lessor.	525	
Subsidiary road, contingent money rental. Operated under resolutions of board of directors of both companies, in effect June 28 and July 6, 1894, respectively; terminable at any time by either party on 30 days' notice; rental, net earnings.	526	
Subsidiary road, contingent money rental. Operated under resolutions of the directors of both companies, adopted by Del. Riv. R. R. & Brg. Co., April 17, 1896; and by the Pennsylvania R. R., April 22, 1896. Rental, net earnings. Terminable on 30 days' notice from either party.	527	5339
Subsidiary road, contingent money rental. This company is the reorganized E. Brandyw. & Waynesb. R. R.; operated under resolutions of board of directors, in effect Aug. 1, 1888, terminable at any time on 30 days' notice; net earnings paid to this company.	528	
Subsidiary road, contingent money rental. Operated under resolution of board of directors of both companies, in effect Nov. 27 and Dec. 12, 1894, respectively; terminable on 30 days' notice from either party; rental, net earnings.	529	
Subsidiary road. "Operated by Pennsylvania R. R. as a siding."	530	
Subsidiary road, fixed money rental. Leased Feb. 1, 1896, for 20 years; rental, 4 per cent on capital stock, 4 per cent on outstanding debenture certificate, and taxes.	531	
Subsidiary road, contingent money rental. Contract dated July 16, 1879, terminable on 30 days' notice; rental, net earnings.	532	5340
Subsidiary road, fixed money rental. Leased Jan. 1, 1875, for 999 years; lessee operates the road at cost.	533	
Subsidiary road, contingent money rental. Operated under resolutions of the directors of both companies, which took effect Jan. 3, 1893, and terminable at the option of either party on 30 days' notice; net earnings payable to this company.	534	
Subsidiary road, fixed money rental. Leased Jan. 1, 1861, for 999 years; annual rental, 7 per cent on capital stock, 4 per cent interest on bonds, all taxes levied on stock and bonds, and organization expenses up to $2,000.	535	
Subsidiary road, contingent money rental. Leased July 8, 1889, for 50 years; rental, net earnings. Lessee reserves the right to cancel lease, under certain conditions, at the expiration of 5 years from date of lease.	536	
Subsidiary road, fixed money rental. Leased May 1, 1895, for 20 years; rental, 4 per cent on capital stock and all taxes.	537	5341
Subsidiary road, contingent money rental. Leased Jan. 1, 1880, for 99 years; rental, net earnings. "Line owned" includes .24 mile over the Lewisburg Bridge.	538	
Subsidiary road, contingent money rental. Leased Mar. 19, 1863, for 999 years; rental, net earnings.	539	
Subsidiary road, contingent money rental. Operated since Feb. 1, 1886, by Pennsylvania R. R., under a temporary arrangement, without any written contract, that company paying all expenses and charging deficiency in net receipts to this company.	540	

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No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	PENNSYLVANIA RAILROAD COMPANY—Continued.		
541	Nescopec Railroad Company	11.96	.....
542	New York Bay Railroad Company	9.20	.....
543	North and West Branch Railway Company	47.82	.....
5343 544	Pennsylvania Schuylkill Valley Railroad Company.	130.22	.....
545	Perth Amboy and Woodbridge Railroad Company.	6.40	.....
546	Philadelphia and Beach Haven Railroad Company.	12.09	.....
547	Philadelphia and Erie Railroad Company	287.56	.....
5344			
548	Philadelphia and Long Branch Railroad Company.	49.07	.....
549	Philadelphia, Germantown and Chestnut Hill Railroad Company.	13.87	.....
550	Pittsburgh, Virginia and Charleston Railway Company.	77.33	.....
551	Pomeroy and Newark Railroad Company	26.70	.....
552	Ridgway and Clearfield Railroad Company	27.23	.....
553	Riverfront Railroad Company	3.86	.....
5345			
554	South Fork Railroad Company	8.12	.....
555	Southwest Pennsylvania Railway Company	111.87	.....
556	Sunbury and Lewistown Railway Company	43.45	.....

DEFENDANTS' EXHIBIT 20-H. 1879

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Remarks.	No.	
Subsidiary road, contingent money rental. Operated under resolutions of board of directors, in effect April 25, 1887; terminable at any time on 30 days' notice; net earnings payable to this company.	541	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	542	
Subsidiary road, contingent money rental. Agreement dated Nov. 23, 1881, to continue until Sept. 1, 1901; net earnings to be paid this company.	543	
Subsidiary road, contingent money rental. Leased Dec. 1, 1885, for 50 years; rental, net earnings.	544	5347
Subsidiary road, contingent money rental. Operated as of date Jan. 1, 1889, by virtue of resolutions adopted May 6, 1889, by stockholders of this company, and June 26, 1889, by directors of Pennsylvania R. R.; net earnings paid to this company. Terminable at option of either party on 30 days' notice.	545	
Subsidiary road, contingent money rental. Operated by Pennsylvania R. R., as agent, under resolution adopted Jan. 1, 1894; rental, net earnings. Terminable at option of either party on 30 days' notice.	546	
Subsidiary road, contingent money rental. Lease executed Jan. 6, 1862; *modified Jan.* 1, 1870, *for* 999 *years from Jan.* 1, 1862; *surplus of gross receipts, after paying operating expenses, etc., to be applied to organization expenses and interest on bonds; any balance to be paid lessor.*	547	5348
Subsidiary road, contingent money rental. Leased Jan. 1, 1884, for 50 years; any surplus of earnings after paying operating and other expenses to be paid lessor.	548	
Subsidiary road, contingent money rental. Leased May 1, 1883, for 30 years; rental, net earnings.	549	
Subsidiary road, contingent money rental. Leased April 1, 1895, for 30 years; rental, net earnings.	550	
Subsidiary road, contingent money rental. Leased March 1, 1880, for 99 years; rental, net earnings.	551	
Subsidiary road, contingent money rental. Lease dated Nov. 1, 1894, for 50 years; rental, 5 per cent on bonded debt, and taxes, and 6 per cent on capital stock, if earned.	552	
Subsidiary road, fixed money rental. Leased May 1, 1882, for 50 years; rental, $23,000 per annum, and after Jan. 1, 1894, $28,000 per annum.	553	5349
Subsidiary road, contingent money rental. Agreement dated Aug. 15, 1891, terminable at the option of either party on 30 days' notice, in writing; net earnings paid to this company.	554	
Subsidiary road, contingent money rental. Leased April 1, 1893, for one year, renewable every year; net earnings paid to this company. Terminable at the end of any year after 6 months' notice by either party.	555	
Subsidiary road, contingent money rental. Leased July 1, 1876, for 99 years; operated for cost and one-half of net earnings after payment of interest on outstanding bonds.	556	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
5350		**PENNSYLVANIA RAILROAD COMPANY—Continued.**		
	557	Sunbury, Hazleton and Wilkesbarre Railway Company.	43.44	.....
	558	Susquehanna and Clearfield Railroad Company	24.89	.....
	559	Tipton Railroad Company.....	4.44	.....
	560	Trenton Delaware Bridge Company.....	.19	.....
5351	561	Tyrone and Clearfield Railway Company.....	134.51	.....
	562	United New Jersey Railroad and Canal Company.	144.81	.....
	563	Belvidere Delaware Railroad Company.....	80.83	.....
	564	Camden and Burlington County Railroad Company.	29.61	.....
5352	565	Mount Holly, Lumberton and Medford Railroad Company.	5.95	.....
	566	Philadelphia and Trenton Railroad Company	26.50	.....
	567	Connecting Railway Company.....	6.75	.....
	568	Rocky Hill Railroad and Transportation Company.	2.38	.....
5353	569	Vincentown Branch Railroad Company.....	2.84	.....
	570	West Chester Railroad Company.....	5.22	.....

DEFENDANTS' EXHIBIT 20-H. 1381

Remarks.	No.	
		5354
Subsidiary road, contingent money rental. Leased May 1, 1878, for 50 years; net earnings paid to this company.	557	
Subsidiary road, contingent money rental. Operated under resolutions of board of directors adopted Sept. 10, 1884, terminable at the option of either party on 30 days' notice; net earnings paid to this company.	558	
Subsidiary road, contingent money rental. Agreement dated May 1, 1886, terminable at the option of either party on 30 days' notice; net earnings paid to this company.	559	
Subsidiary road, fixed money rental. Trackage contract dated June 20, 1877, for 993 years, 5 months, and 10 days; annual rental, $28,000 and taxes.	560	
Subsidiary road, fixed money rental. Leased Jan. 1, 1882, for 50 years; lessee to pay annually all taxes, interest on bonds, sinking fund, and 5 per cent on capital stock.	561	5355
Subsidiary road, fixed money rental. Leased June 30, 1871, for 999 years; annual rental, 10 per cent on capital stock, taxes, interest on funded and other debts, damages, losses, etc.	562	
Subsidiary road, contingent money rental. Leased Jan. 1, 1876, to June 30, 2870; assigned to Pennsylvania R. R., March 7, 1876; revenue to be applied, first, to operations; second, to interest on bonds; any balance to be paid lessor.	563	
Subsidiary road, fixed money rental. Leased April 24, 1868, for the term of its corporate existence, to Camden & Amb. R. R., one of the constituent companies of United N. J. R. R. & Canal Co.; annual rental, 6 per cent on capital stock and bonds and $500 for organization expenses; lease assigned to Pennsylvania R. R., June 30, 1871.	564	
		5356
Subsidiary road, fixed money rental. Leased May 14, 1869, during corporate existence; rental, 6 per cent on capital stock, interest on bonds, and taxes; lease assigned to Pennsylvania R. R., June 15, 1871.	565	
Subsidiary road, fixed money rental. Leased June 30, 1871, from United N. J. R. R. & Canal Co. for 999 years; annual rental, 10 per cent on capital stock (excluding 7,650 shares owned by United N. J. R. R. & Canal Co.), taxes, assessments, etc.	566	
Subsidiary road, fixed money rental. Leased Feb. 18, 1863, for 999 years; annual rental, 6 per cent on capital stock, 6 per cent on bonds, and taxes; included in lease to Pennsylvania R. R.	567	
Subsidiary road, fixed money rental. Leased Nov. 22, 1869, for the term of its charter, to Camden & Amb. R. R., one of the constituent companies of United N. J. R. R. & Canal Co., at 6 per cent per annum on capital stock; lease assigned to Pennsylvania R. R., Nov. 30, 1871.	568	5357
Subsidiary road, fixed money rental. Leased April 7, 1868, during corporate existence; annual rental, 6 per cent on capital stock and bonds owned by individuals, which is $15,000 each; the other $10,000 is owned by lessee and nothing is paid on it.	569	
Subsidiary road, fixed money rental. Leased Aug. 6, 1879, for 99 years; annual rental, 5 per cent on capital stock, interest on bonds, and taxes.	570	

DEFENDANTS' EXHIBIT 20-H.

5358

No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
	PENNSYLVANIA RAILROAD COMPANY—Continued.		
571	Western Pennsylvania Railroad Company.....	137.10	.....
572	Allegheny Valley Railway Company.....	260.30	260.30
573	Cumberland Valley Railroad Company.....	82.18	144.93
574	Cumberland Valley and Martinsburg Railroad Company.	33.65	.....
575	Dillsburg and Mechanicsburg Railroad Company.	7.70	.....

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	Cumberland Valley Railroad Company—Cont'd.		
576	Southern Pennsylvania Railway and Mining Company.	21.40	.....
577	Mont Alto Railroad Company.....	17.89	17.89
578	Junction Railroad Company (of Philadelphia).	3.56	3.56
579	Northern Central Railway Company.....	148.24	372.83
580	Elmira and Lake Ontario Railroad Company	99.61	.....

5360

581	Elmira and Williamsport Railroad Company	75.50	.....
582	Lykens Valley Railroad and Coal Company.	19.70	.....
583	Shamokin Valley and Pottsville Railroad Company.	29.78	.....
584	Baltimore and Sparrows Point Railroad Company.	5.43	5.43

5361

585	Union Railroad Company (of Baltimore)....	9.65	9.65
586	*Philadelphia, Wilmington and Baltimore Railroad Company.*	116.80	683.39
587	*Baltimore and Potomac Railroad Company.*	93.20	.....

DEFENDANTS' EXHIBIT 20-H. 1383

Remarks.	No.	
		5362
Subsidiary road, contingent money rental. Leased June 1, 1888, for 40 years; net earnings paid to this company.	571	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	572	
....do	573	
Subsidiary road, contingent money rental. Leased March 17, 1888, for 99 years; receipts from operations to be applied to maintain the road, pay operating expenses, taxes, insurance, etc.; balance to be paid lessor.	574	
Subsidiary road, contingent money rental. Leased Jan. 1, 1873, for 99 years; terms of lease same as Cumb. Vy. & Martinsb. R. R.	575	
	[159]	5363
Subsidiary road, contingent money rental. Leased March 1, 1870, for 199 years; terms of lease same as Cumb. Vy. & Martinsb. R. R.	576	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock and bonds.	577	
Operating road, subsidiary, other relation. The Pennsylvania, Phila., Wilm. & Balt., and Phila. & Read. R. Rs. use the company's tracks, paying a certain rate per car per mile, the Junction R. R. paying the company moving the traffic for the use of the motive power.	578	
Operating road, subsidiary, other relation. Controlling interest in capital stock owned by Pennsylvania R. R.	579	
Subsidiary road, contingent money rental. Contract terminable at the option of either party on 30 days' notice; net receipts after paying charges for use of equipment paid to this company. Contract took effect Jan. 1, 1887. Controlled through ownership of entire capital stock by Nn. Cent. Ry.	580	5364
Subsidiary road, fixed money rental. Leased May 1, 1863, for 999 years; annual rental, 7 per cent on preferred and 5 per cent on common stock, interest on bonds, and $3,000 for organization expenses.	581	
Subsidiary road, fixed money rental. Leased April 20, 1896; rental, $35,000 per annum. Terminable on 60 days' written notice by either party.	582	
Subsidiary road, fixed money rental. Leased Feb. 27, 1863, for 999 years; annual rental, 7 per cent interest on bonds, 6 per cent on capital stock, and taxes.	583	
Operating road, subsidiary, other relation	584	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	585	5365
....do	586	
Subsidiary road, contingent money rental. Contract took effect Nov. 1, 1891, and is terminable at the option of either company upon giving 30 days' notice in writing; net earnings paid to this company.	587	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
5366		**PENNSYLVANIA RAILROAD COMPANY**—Continued.		
	588	Catonsville Short Line Railroad Company	3.80	.....
	589	Cambridge and Seaford Railroad Company..	27.24	.....
	590	Delaware Railroad Company.....	117.00	.....
5367	591	Delaware and Chesapeake Railway Company	54.30	.....
	592	Delaware, Maryland and Virginia Railroad Company.	97.53	.....
	593	Philadelphia and Baltimore Central Railroad Company.	73.68	.....
	594	Chester Creek Railroad Company.....	6.69	.....
	595	Philadelphia and Delaware County Railroad Company.	9.93	.....
5368	596	Queen Anne's and Kent Railroad Company.	25.90	.....
	597	South Chester Railroad Company.....	4.50	.....
	598	Washington Southern Railway Company....	37.85	.....
	599	West Jersey and Seashore Railroad Company.	309.57	310.47
	[172]			
	850	**LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY.**	866.99	1,439.90
5369				
	[174]			
	851	Detroit and Chicago Railroad Company.....	62.31	.....
	852	Detroit, Hillsdale and Southwestern Railroad Company.	65.20	.....

DEFENDANTS' EXHIBIT 20-H. 1385

Remarks.	No.	
		5370
Subsidiary road, contingent money rental. Leased to Phila., Wilm. & Balt. R. R., with Balt. & Pot. R. R., Dec. 6, 1893, for 99 years; rental, net earnings.	588	
Subsidiary road, contingent money rental. Agreement dated May 16, 1883; took effect June 1, 1883; terminable on 30 days' notice; net earnings paid to this company.	589	
Subsidiary road, contingent money rental. Leased May 5, 1855; renewed April 23, 1875; renewed Jan. 13, 1882; expires May 4, 1897. Annual rental, 6 per cent on capital stock, interest on funded and floating debt, and one-half of any surplus over 6 per cent of net earnings.	590	
Subsidiary road, contingent money rental. Agreement took effect July 1, 1882; terminable on 30 days' notice; net earnings paid to this company.	591	5371
Subsidiary road, contingent money rental. Agreement dated Aug. 1, 1885; took effect July 1, 1885; terminable on 30 days' notice; net earnings paid to this company.	592	
Subsidiary road, contingent money rental. Agreement dated Aug. 1, 1881; took effect Sept. 1, 1881; terminable on 6 months' notice; net earnings paid to this company.	593	
Subsidiary road, fixed money rental. Leased Jan. 13, 1868, for 999 years; rental, 6 per cent on $185,000 capital stock, interest on bonds, and taxes.	594	
Subsidiary road, other relation. Operated at cost by the Phila., Wilm. & Balt. R. R. as agent. Profit or loss paid over or charged against this company, according to results at the close of each fiscal year.	595	
Subsidiary road, contingent money rental. Operated under resolutions adopted by directors of both companies April 29, 1896, in effect May 1, 1896; terminable on 30 days' notice from either party. Rental, net earnings.	596	5372
Subsidiary road, included in "operation" of Phila., Wilm. & Balt. R. R. as siding.	597	
Subsidiary road, contingent money rental. Agreement went into effect Nov. 1, 1891, terminable at option of either party on 30 days' notice. Rental, entire net earnings.	598	
Operating road, subsidiary, other relation.....	599	
	[173]	
Operating road, independent. "Line owned" includes 7.84 miles leased to N. Y., Chic. & St. L. R. R. for 99 years at a rental of $5,000, which, with .87 mile not used for traffic purposes, once formed a part of main line between Silver Creek and Dunkirk, N. Y. "Line operated" includes 7.20 miles leased from Battle Ck. & Sturgis Ry.	850	5373
	[175]	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	851	
Subsidiary road, fixed money rental. Leased Sept. 5, 1881, in perpetuity; annual rental, $54,000, and $500 for organization expenses.	852	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
5374		**LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY—Continued.**		
	853	Detroit, Monroe and Toledo Railroad Company	62.36	.....
	854	Erie and Kalamazoo Railroad Company.....	.....	.....
	855	Fort Wayne and Jackson Railroad Company..	97.83	.....
	856	Jamestown and Franklin Railroad Company...	50.91	.....
5375				
	857	Kalamazoo and White Pigeon Railroad Company.	36.57	.....
	858	Kalamazoo, Allegan and Grand Rapids Railroad Company.	58.42	.....
	859	Mahoning Coal Railroad Company.....	50.20	.....
	860	Northern Central Michigan Railroad Company	61.14	.....
	861	Oberlin and La Grange Railway Company....	4.00	.....
5376				
	862	Sturgis, Goshen and Saint Louis Railroad Company.	28.28	.....
	863	Swan Creek Railway Company.....	1.31	.....
	864	Toledo and Ohio Northern Railway Company.	4.20	.....
	865	**New York, Chicago and Saint Louis Railroad Company.**	503.95	531.75
5377	866	Chicago and State Line Railroad Company..	9.96	.....
	867	Pittsburgh and Lake Erie Railroad Company..	71.31	177.19
	868	Beaver and Ellwood Railroad Company.....	2.91	.....

Remarks.	No.	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	853	5378
Subsidiary road, other relation. Included in branches of L. Shore & Mich. Sn. Ry.	854	
Subsidiary road, contingent money rental. Leased Aug. 24, 1882, in perpetuity from Sept. 1, 1882; annual rental, 5½ per cent on preferred stock; should net earnings in any year, after Aug. 24, 1887, exceed 8 per cent on preferred stock, lessee will pay amount of such excess up to 2 per cent on common stock. Organization expenses, $1,500.	855	
Subsidiary road, contingent money rental. Leased Jan. 1, 1890, for 5 years; annual rental, 30 per cent of gross earnings, and all taxes, except those imposed by United States or State of Pennsylvania upon tonnage, dividends, or interest on bonds.	856	5379
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	857	
Subsidiary road, fixed money rental. Leased Sept. 21, 1869, for 999 years; annual rental, 6 per cent on capital stock and interest on bonds.	858	
Subsidiary road, contingent money rental. Leased July 1, 1884, in perpetuity; annual rental, 40 per cent of gross earnings; if that is insufficient to pay interest on bonds, 5 per cent on preferred stock, and $1,000 for corporate expenses, lessee will advance necessary amount and charge same against future rental.	859	
Subsidiary road, other relation. Capital stock owned entirely by L. Shore & Mich. Sn. Ry.	860	
Subsidiary road, contingent money rental. "Train service operated by L. Shore & Mich. Sn. Ry." under contract dated May 29, 1884, for 10 years. For such service the operating road receives pay at the rate of $5 for each round trip of train, and collects $1 per car for Oberlin & La Grange Ry. on each car of freight received. From any surplus over $5 per round trip is deducted the interest on mortgage at rate of 6 per cent and balance paid to Oberlin & La Grange Ry.	861	5380
Subsidiary road, other relation. Controlled through ownership of capital stock and bonds.	862	
Subsidiary road, other relation. Mileage included in sidings of L. Shore & Mich. Sn. Ry., and is used exclusively for switching purposes; entire capital stock owned by that company.	863	
Subsidiary road. "Line owned" not in operation.....	864	
Operating road, subsidiary, other relation. Controlled through ownership of capital stock. "Line operated" includes 7.84 miles owned by L. Shore & Mich. Sn. Ry.	865	5381
Subsidiary road, fixed money rental. Leased in perpetuity to Ft. Way. & Ill. R. R.; annual rental, $100, organization expenses up to $500, all taxes, assessments, etc. Ft. Way. & Ill. R. R. merged into N. Y., Chic. & St. L. R. R. Aug. 18, 1887.	866	
Operating road, subsidiary, other relation. Controlled through ownership of capital stock.	867	
Subsidiary road, other relation. Leased Aug. 1, 1895, for one year, with option of continuation at end of each year, under a provisional agreement.	868	

	No.	Name of Road.	Line Owned. Miles	Line Operated. Miles.
5382		**LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY—Continued.**		
	869	Mahoning State Line Railroad Company....	3.16	.....
	870	Pittsburgh, McKeesport and Youghiogheny Railroad Company.	97.89	.....
	871	Youghiogheny Northern Railroad Company	1.92	.....
	872	Thompson Run Coal and Railroad Company.	5.00	.....
	873	Ellwood Connecting Railroad Company.....	.68	.68
5383	[176]			
	889	**MICHIGAN CENTRAL RAILROAD COMPANY.**	270.07	1,642.15
	890	Battle Creek and Sturgis Railway Company..	41.00	.....
	891	Bay City and Battle Creek Railway Company.	18.00	.....
	892	Canada Southern Bridge Company.....	3.66	.....
5384	893	Detroit and Bay City Railroad Company.....	155.00	.....
	894	Detroit, Delray and Dearborn Railroad Company.	4.84	.....
	895	Grayling, Twin Lakes and Northeastern Railroad Company.	27.80	.....
	896	Grand River Valley Railroad Company.....	83.79	.....
5385	897	Jackson, Lansing and Saginaw Railroad Company.	295.10	.....
	898	Joliet and Northern Indiana Railroad Company	45.00	.....

Remarks.	No.	
		5386
Subsidiary road, other relation. Leased Nov. 26, 1895, for 99 years; rental, annual taxes, maintenance and assessments.	869	
Subsidiary road, fixed money rental. Leased Jan. 1, 1894, for 999 years; Pittsb. & L. Erie R. R. and L. Shore & Mich. Sn. Ry. guarantee 6 per cent on capital stock and interest on bonds.	870	
Subsidiary road, other relation. Leased for 50 years from April 1, 1883; rental depends upon a provisional agreement.	871	
Subsidiary road	872	
Operating road, subsidiary, other relation. Controlled through ownership of entire capital stock.	873	
	[177]	5387
Operating road, independent. Of "line operated," 380.04 miles not in United States.	889	
Subsidiary road, fixed money rental. Rental, interest on bonds, operating expenses, and taxes. The Mich. Cent. R. R. also owns a majority of capital stock. Of "line owned," 7.20 miles operated by L. Shore & Mich. Sn. Ry., with Sturgis, Goshen & St. L. Ry.	890	
Subsidiary road, fixed money rental. Agreement dated Feb. 1, 1890, in perpetuity; rental, interest on bonds, and taxes.	891	
Subsidiary road, contingent money rental. Operated under agreement dated Dec. 12, 1882, for 21 years, with Can. Sn. Ry., which owns substantially all its capital stock and bonds, the bridge company being credited with its earnings and charged with its expenses.	892	
Subsidiary road, other relation. Under a contract dated March 10, 1881, the Det. & Bay Cy. R. R. gave entire possession and control of its railroad and property to the Mich. Cent. R. R., which agreed to operate the same during its corporate existence. By this contract the lessee was authorized to issue and did issue its bonds to the amount of $4,000,000, bearing interest at 5 per cent, and maturing 50 years from March 1, 1881. To secure the payment of said bonds both said companies joined in the execution of a mortgage upon all the railroad property and franchises of the Det. & Bay Cy. R. R.	893	5388
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	894	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	895	
Subsidiary road, fixed money rental. Leased Jan. 20, 1870, to continue during the corporate existence of lessor; lessee guarantees floating and funded debt of lessor, interest thereon, 5 per cent per annum on stock, taxes, assessments, etc.	896	5389
Subsidiary road, fixed money rental. Leased Sept. 1, 1871, during corporate existence of the two companies; lessee pays principal and interest on bonds of lessor and a dividend of 3½ per cent per annum, also $750 per annum for organization purposes.	897	
Subsidiary road, fixed money rental. Operated under contracts executed Sept. 7 and 26, 1854; on completion turned over to Mich. Cent. R. R. to operate forever at an annual rental of $89,000.	898	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
5390		**MICHIGAN CENTRAL RAILROAD COMPANY** —Continued.		
	899	Kalamazoo and South Haven Railroad Company.	39.50	.....
	900	Lansing Transit Railway Company.....	.77	.....
	901	Michigan Air Line Railroad Company.....	115.16	.....
	902	Michigan Midland and Canada Railroad Company.	14.68	.....
5391	903	Saginaw Bay and Northwestern Railroad Company.	82.79	.....
	904	Toledo, Canada Southern and Detroit Railway Company.	55.87	.....
	905	Toledo and Michigan Belt Railroad Company	3.05	.....
	[178]			
	917	**PENNSYLVANIA COMPANY**.....	.....	1,225.17
	918	Calumet River Railway Company.....	4.43	.....
5392	919	Cleveland and Pittsburgh Railroad Company..	198.34	.....
	920	**Erie and Pittsburgh Railroad Company**.....	84.47	.....
	921	Indianapolis and Vincennes Railroad Company	133.11	.....
5393	922	Marginal Railroad Company.....	2.96	.....
	923	**Pittsburgh, Fort Wayne and Chicago Railway Company.**	469.89	.....

DEFENDANTS' EXHIBIT 20-H. 1391

Remarks.	No.	
		5394
Subsidiary road, fixed money rental. Leased July 1, 1870, in perpetuity; lessee to pay taxes and interest on bonds.	899	
Subsidiary road, fixed money rental. Leased Feb. 18, 1888, for 99 years from Sept. 15, 1887; rental, $1.00 per annum. Used for switching purposes by Mich. Cent. R. R.	900	
Subsidiary road, fixed money rental. Leased Jan. 1, 1870, for 999 years, lessee guaranteeing principal and interest on bonds.	901	
Subsidiary road, other relation. Operated under agreement dated Dec. 12, 1882, for 21 years, with Can. Sn. Ry., which owns a majority of its capital stock and all its bonds, Mich. Midl. & Can. R. R. being credited with its earnings and charged with its expenses.	902	
Subsidiary road, other relation. Controlled through ownership of capital stock.	903	5395
Subsidiary road, other relation. Operated under agreement dated Dec. 12, 1882, for 21 years, with the Can. Sn. Ry., which owns substantially all its capital stock and bonds, Tol., Can. Sn. & Det. Ry. being credited with its earnings and charged with its expenses.	904	
Subsidiary road, other relation. Tol., Can. Sn. & Det. Ry. owns entire capital stock.	905	
		[179]
Operating road, independent	917	
Subsidiary road, other relation. Controlled through ownership of majority of capital stock.	918	
Subsidiary road, fixed money rental. Leased to Pennsylvania R. R., Dec. 1, 1871, for 999 years; lessee guarantees principal, interest, and sinking-fund charges on bonds, 7 per cent on capital stock, $10,000 for organization annually, taxes, assessments, etc.; lease transferred to Pennsylvania Co., April 14, 1873.	919	5396
Subsidiary road, fixed money rental. Leased to Pennsylvania R. R., Mar. 1, 1870, for 999 years; annual rental, 7 per cent on capital stock and bonds, $2,500 for organization expenses, and taxes. Lease transferred to Pennsylvania Co., April 1, 1871.	920	
Subsidiary road, contingent money rental. Leased Jan. 1, 1879, for 99 years; lessee agrees to operate and maintain road for cost of such service; net earnings paid to lessor to be applied to payment of interest on bonds. Majority of capital stock owned by lessee.	921	
Subsidiary road, other relation. Branch line connecting certain industries in Beaver Falls, Pa., with main line of Pittsb., Ft. Wayne & Chic. Ry., and is operated by this company in connection with that road. It is not an organized company.	922	5397
Subsidiary road, fixed money rental. Leased July 1, 1869, for 999 years, to Pennsylvania R. R.; annual rental, interest on bonds, sinking fund, 7 per cent on capital stock, organization expenses, and taxes. Pennsylvania Co. acts as agent or operator for lessee company.	923	

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	PENNSYLVANIA COMPANY—Continued.		
	Pittsburgh, Fort Wayne and Chicago Railway Company—Continued.		
924	Massillon and Cleveland Railroad Company.	12.23	.....
925	New Castle and Beaver Valley Railroad Company.	14.98	.....
926	Pittsburgh, Ohio Valley and Cincinnati Railroad Company.	15.27	.....
927	Pittsburgh, Youngstown and Ashtabula Railroad Company.	125.09	.....
928	Rochester, Beaver Falls and Western Railway Company.	.55	.....
929	South Chicago and Southern Railroad Company	10.25	.....
930	State Line and Indiana City Railway Company	7.56	.....
931	Salineville Railroad Company.....	3.07	.....
932	Toledo, Walhonding Valley and Ohio Railroad Company.	125.40	.....
933	Rolling Mill Railroad Company.....	.71	.....
934	Cincinnati and Muskingum Valley Railway Company.	148.45	148.45
935	Cleveland and Marietta Railway Company....	97.00	104.70
936	Grand Rapids and Indiana Railroad Company.	436.32	592.23
937	Cincinnati, Richmond and Fort Wayne Railroad Company.	85.60	.....
938	Muskegon, Grand Rapids and Indiana Railroad Company.	36.85	.....
939	Traverse City Railroad Company.....	26.00	.....
940	**Pittsburgh, Cincinnati, Chicago and Saint Louis Railway Company.**	1,073.78	1,402.62
941	Chartiers Railway Company.....	22.76	.....

DEFENDANTS' EXHIBIT 20-H. 1393

Remarks.	No.	
		5402
Subsidiary road, contingent money rental. Leased May 22, 1869, for 99 years, at a rental of 40 per cent of gross earnings, minimum being fixed at $20,000 a year; lease transferred to Pennsylvania Co., July 1, 1869.	924	
Subsidiary road, contingent money rental. Leased June 29, 1865, for 99 years, at a rental of 40 per cent of gross earnings; lease assigned to Pennsylvania R. R. June 7, 1869, and by the latter to Pennsylvania Co., June 29, 1874, to take effect as of date April 1, 1871.	925	
Subsidiary road, other relation. Operated by the Pennsylvania Co. for cost of such service. Controlled through ownership of majority of capital stock.	926	5403
Subsidiary road, contingent money rental. Leased Aug. 1, 1887, for 1 year, and thereafter from year to year subject to termination on 12 months' written notice from either party; operated by lessee at cost. Majority of capital stock held by lessee since July 20, 1887.	927	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	928	
Subsidiary road, other relation. No contract; operated at cost under a provisional arrangement. Pennsylvania Co. controls the road through ownership of entire capital stock.	929	
....do	930	
Subsidiary road, other relation. Operated by Pennsylvania Co. for Wm. Jackson, Trustee.	931	
Subsidiary road, contingent money rental. Leased Jan. 17, 1879, for 99 years; lessee agrees to operate and maintain road for cost of such service. Pennsylvania Co. controls road through ownership of capital stock.	932	5404
Subsidiary road, other relation. Controlled through ownership of capital stock.	933	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	934	
....do	935	
Operating road, subsidiary, other relation. Controlled by virtue of a contract in effect from Oct. 1, 1869, for 30 years, under which Pennsylvania Co. guarantees certain of its first-mortgage land-grant bonds. Road sold June 10, 1896, under foreclosure to John C. Sims, who operated road from that date to Aug. 1, 1896, pending formation of new company.	936	
Subsidiary road, contingent money rental. Leased Jan. 1, 1871, for 99 years; rental, net earnings. Bond interest guaranteed by the Pennsylvania Co., Pittsb., Cin., Chic. & St. L., and Gr. Rap. & Ind. R. Rs., each one-third of any deficiency of net earnings to pay coupons.	937	5405
Subsidiary road, contingent money rental. Leased Dec. 1, 1886, for 99 years; rental, net earnings, with a minimum guarantee of interest on bonds or $37,500 per annum.	938	
Subsidiary road, contingent money rental. Leased Jan. 1, 1883, for 50 years; rental, net earnings, with a minimum guarantee of interest on bonds or $7,500 per annum.	939	
Operating road, subsidiary, other relation. Controlled through ownership of capital stock and bonds.	940	
Subsidiary road, contingent money rental. Leased Dec. 8, 1871, for 99 years from Jan. 1, 1872; rental, net earnings.	941	

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	PENNSYLVANIA COMPANY—Continued.		
	Pittsburg, Cincinnati, Chicago and Saint Louis Railway Company—Continued.		
942	Chartiers Connecting Railroad Company..	.72	.....
[180]			
943	Englewood Connecting Railway Company...	2.35	.....
944	Little Miami Railroad Company.....	101.50	.....
945	Columbus and Xenia Railroad Company..	55.00	.....
946	Dayton and Western Railroad Company...	37.99	.....
947	Ohio Connecting Railway Company.....	3.27	.....
948	Pittsburgh, Wheeling and Kentucky Railroad Company.	28.04	.....
949	Steubenville Extension of Pennsylvania Railroad Company.	1.23	.....
950	Newport and Cincinnati Bridge Company...	.73	.73
951	Pittsburgh, Chartiers and Youghiogheny Railway Company.	15.74	17.14
[196]			
1218	**ILLINOIS CENTRAL RAILROAD COMPANY**... [Line south of Cairo, Illinois.]	.....	894.41
1219	Canton, Aberdeen and Nashville Railroad Company.	87.89	.....

DEFENDANTS' EXHIBIT 20-H. 1395

Remarks.	No.	
		5410
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	942	
	[181]	
Subsidiary road, other relation. Operated and maintained at cost, any surplus earnings paid to lessor; controlled through ownership of entire capital stock.	943	
Subsidiary road, fixed money rental. Leased Dec. 1, 1869, for 99 years, renewable forever; annual rental, 8 per cent on capital stock, interest on bonds, and organization expenses.	944	
		5411
Subsidiary road, fixed money rental. Leased Nov. 30, 1868, for 99 years, renewable forever; annual rental, 8 per cent on capital stock, interest on bonds; included in lease of Little Miami R. R. to Pennsylvania Co.	945	
Subsidiary road, fixed money rental. Leased Dec. 1, 1869, for 99 years, renewable forever; rental, interest on bonds; included in lease of Little Miami R. R. to Pennsylvania Co.	946	
Subsidiary road, contingent money rental. Operated at cost since Oct. 20, 1890; net earnings paid to lessor. The Pennsylvania Co. has controlled road through ownership of entire capital stock since organization, Nov. 22, 1886.	947	
Subsidiary road, contingent money rental. Leased Feb. 25, 1878, for 99 years; lessee operates the road at cost and pays net earnings to lessor.	948	
Subsidiary road, fixed money rental. There is no corporation known as the Steubenville Extension R. R. Company. The piece of road called the Steubenville Extension, virtually owned by the Pennsylvania Co., was built by the Pennsylvania R. R. Co., and upon the organization of the Pennsylvania Co. in 1871, the latter leased this piece of road for 999 years, paying for the lease a sum equivalent to cost of construction. In 1876 it was subleased for a term of 25 years to the Pittsb., Cin. & St. L. Ry., now the Pittsb., Cin., Chic. & St. L. Ry., at an annual interest rental based upon the original cost.	949	
		5412
Operating road, subsidiary, other relation. The Pittsb., Cin., Chic. & St. L. Ry. operates the bridge for the Newpt. & Cin. Bridge Co. (used by Louisv. & Nashv. R. R. under trackage arrangement;) Pennsylvania Co. owns majority of capital stock.	950	
Operating road, subsidiary, other relation. Controlled jointly by the Pittsb., Cin., Chic. & St. L. Ry. and Pittsb. & L. Erie R. R. through joint ownership of entire capital stock, as per agreement dated Jan. 25, 1892.	951	
		5413
	[197]	
Operating road, independent. "Line operated" includes 140.36 miles leased from Yazoo & Miss. Vy. R. R.	1218	
Subsidiary road, contingent money rental. Leased March 31, 1888, until June 1, 1952; rental, net earnings of the road, which lessee guarantees to be $60,000 per annum.	1219	

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	ILLINOIS CENTRAL RAILROAD COMPANY—Continued.		
	[Line south of Cairo, Illinois—Continued.]		
1220	Chicago, Saint Louis and New Orleans Railroad Company.	666.16	.....
1221	Yazoo and Mississippi Valley Railroad Company.	947.63	807.27
	[210]		
1218	**ILLINOIS CENTRAL RAILROAD COMPANY..**	705.50	2,232.93
	[Line north of Cairo, Illinois.]		
1455	Blue Island Railroad Company.....	3.96	.....
1456	Chicago and Springfield Railroad Company....	111.47	.....
1457	Chicago, Havana and Western Railroad Company.	131.62	.....
1458	Chicago, Madison and Northern Railroad Company.	231.30	.....
1459	Dubuque and Sioux City Railroad Company...	599.59	.....
1460	Kankakee and Southwestern Railroad Company.	131.26	.....
1461	Rantoul Railroad Company.....	74.43	.....
1462	Saint Louis, Alton and Terre Haute Railroad Company.	14.40	.....

DEFENDANTS' EXHIBIT 20-H. 1897

Remarks.	No.
Subsidiary road, fixed money rental. Leased July 1, 1882, for 400 years; annual rental, 4 per cent on capital stock, interest on bonds, taxes, assessments, etc. On April 4, 1889, this company acquired Miss. & Tenn. R. R.	1220
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock. "Line owned" includes 140.36 miles leased to and operated by Ill. Cent. R. R. Agreement dated March 31, 1888, and to run until June 1, 1952. Rental, net earnings. Any amount under $100,000 guaranteed by lessee.	1221
	5418
	[211] 5419
Operating road, independent.....	1218
Subsidiary road, other relation. Controlled through ownership of entire capital stock and bonds. Net earnings go to the Ill. Cent. R. R.	1455
Subsidiary road, fixed money rental. Leased Dec. 1, 1877, for 50 years from July 1, 1877; in lieu of annual rental, lessee issued currency bonds for $2,000,000, secured by lessor on demised property; $1,600,000 of these bonds were used by lessor to pay for the property, the remainder being reserved for improvements, etc.; lessee agrees to pay principal and interest of these bonds, taxes, assessments, etc.	1456
Subsidiary road, contingent money rental. Leased April 1, 1888, in perpetuity; lessee receives all earnings, pays all expenses, and turns over to lessor any net earnings.	1457
	5420
Subsidiary road, contingent money rental. Line, Chicago to Freeport, Ill., leased March 30, 1888, the remainder from March 1, 1892, in perpetuity; lessor to receive net earnings; lessee owns the entire capital stock and bonds of lessor.	1458
Subsidiary road, other relation. Leased from Jan. 1, 1895, for 12 years; lessee receives all earnings; the net receipts applied to payment of interest on 4 per cent gold bonds of the Ill. Cent. R. R., and out of the residue a fund to be provided for the payment of said bonds at maturity.	1459
Subsidiary road, fixed money rental. Leased Aug. 1, 1881, in perpetuity; in lieu of annual rental, lessee issued $968,000 registered bonds, secured by lessor on demised property; $200,000 of these bonds retired a like amount previously issued and secured by same property; residue was for equipping and improving road, lessee agreeing to pay principal and interest on all taxes, assessments, etc.	1460
	5421
Subsidiary road, contingent money rental. Leased Dec. 11, 1886, in perpetuity; lessee receives all earnings, pays all expenses, and turns over to lessor any net earnings.	1461
Subsidiary road, fixed money rental. Leased Oct. 1, 1895, for 99 years; rental, interest on bonds, 2¼ per cent dividends on capital stock, expenses of operation, maintenance and taxes. The Ill. Cent. R. R. assumes all obligations of this company as lessee to the owners of the several railroads leased to and heretofore operated by it.	1462

5422

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	ILLINOIS CENTRAL RAILROAD COMPANY—Continued.		
	[Line north of Cairo, Illinois—Continued.]		
1463	Belleville and Carondelet Railroad Company	17.30	.....
1464	Belleville and Eldorado Railroad Company..	50.20	.....

5423 [212]

	ILLINOIS CENTRAL RAILROAD COMPANY—Continued.		
	[Line north of Cairo, Illinois.]		
	Saint Louis, Alton and Terre Haute Railroad Company—Continued.		
1465	Belleville and Southern Illinois Railroad Company.	56.40	.....
1466	Chicago, Saint Louis and Paducah Railway Company.	53.50	.....

5424

1467	Saint Louis Southern Railroad Company....	30.00	.....
1468	Carbondale and Shawneetown Railroad Company.	17.24	.....
1469	South Chicago Railroad Company.....	4.76	.....

DEFENDANTS' EXHIBIT 20-H. 1399

Remarks. No. 5425

Subsidiary road, fixed money rental. Leased June 1, 1883, for 983 years, at a rental including operation, maintenance, and $30,000, the interest on first-mortgage bonds. Entire capital stock owned by St. L., Alt. & T. Haute R. R. 1463

Subsidiary road, contingent money rental. Leased July 1, 1880, for 985 years; annual rental, 30 per cent of the first $125,000 gross earnings and 15 per cent of earnings in excess thereof; minimum guaranteed to be 7 per cent on $220,000 first-mortgage bonds. 1464

[213] 5426

Subsidiary road, contingent money rental. Leased Oct. 1, 1866, for 999 years; annual rental, 40 per cent of first $7,000 earnings per mile per annum, except on coal and on the business from Bellev. & Eldo. R. R., St. L. Sn. R. R. and St. L. & S. Wn. R. R., the rate being 30 per cent, 30 per cent of earnings in excess thereof not exceeding $14,000, and 20 per cent of all earnings in excess of $14,000. 1465

Subsidiary road, contingent money rental. Leased March 1, 1888, for 978 years; annual rental, 30 per cent gross earnings; principal and interest of $1,000,000 5 per cent gold bonds guaranteed. Entire capital stock owned by St. L., Alt. & T. Haute R. R. 1466 4275

Subsidiary road, contingent money rental. Leased Dec. 1, 1886, for 980 years; annual rental, 30 per cent of gross earnings, guaranteed to be at least $32,000, all taxes, assessments, etc. 1467

Subsidiary road, fixed money rental. Leased Dec. 1, 1886, for 980 years, at $10,000 per annum; included in lease of St. L. Sn. R. R. to St. L., Alt. & T. Haute R. R. 1468

Subsidiary road, contingent money rental. Leased July 1, 1890, in perpetuity; lessee receives all earnings, pays all expenses, and turns over to lessor any net earnings. 1469

[Defendants' Exhibit 20-I.]

5428

Extracts from

INTERSTATE COMMERCE COMMISSION REPORT, 1897.

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5430 [118]

REPORT OF THE INTERSTATE COMMERCE COMMISSION.

TABLE I. CLASSIFICATION OF RAILWAYS AND MILE

[The above running title cont

No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
13	**BOSTON AND MAINE RAILROAD COMPANY.**	370.08	1,717.73
14	BOSTON AND LOWELL RAILROAD COMPANY.....	96.95	.....
5431			
15	Central Massachusetts Railroad Company...	98.77	.....
16	*Connecticut and Passumpsic Rivers Railroad Company.*	110.30	.....
17	*Nashua and Lowell Railroad Company*.....	14.50	.....
5432			
18	*Northern Railroad Company of New Hampshire.*	82.91	.....
19	Concord and Claremont Railroad Company	70.90	.....
20	Peterborough and Hillsborough Railroad Company.	18.51	.....
5433			
21	Peterborough Railroad Company.....	10.50	.....
22	Stony Brook Railroad Company.....	13.19	.....

DEFENDANTS' EXHIBIT 20-I. 1403

[119] 5434

STATISTICS OF RAILWAYS IN THE UNITED STATES.

AGE FOR THE YEAR ENDING JUNE 30, 1897.

inues throughout the report.]

Remarks.	No.	
Operating road, independent. "Line operated" includes 41.28 miles not in United States.	13	
Subsidiary road, fixed money rental. Leased to Boston & Me. R. R., April 1, 1887, for 99 years; rental, 7 per cent on its capital stock for 10 years, and 8 per cent thereafter, operating expenses and all interest on debt.	14	5435
Subsidiary road, contingent money rental. Leased to Boston & Lowell R. R., Oct. 1, 1886, for 99 years; rental, 20 per cent of gross earnings up to $1,000,000 and 25 per cent of any excess over that amount, deducting from said 20 per cent 5 per cent on $2,000,000 of bonds; lessee to pay $1,500 for organization expenses.	15	
Subsidiary road, fixed money rental. Leased Jan. 1, 1887, for 99 years, at 5 per cent for 10 years and 6 per cent thereafter on capital stock, interest on bonds, and $3,000 for organization expenses, annually; lease assumed by Boston & Me. R. R.	16	
Subsidiary road, contingent money rental. Leased Oct. 1, 1880, for 99 years to the Boston & Lowell R. R., for $60,000, $4,000 additional in case gross receipts equal or exceed those of 1880, and $1,000 for organization, annually; lease assumed July 12, 1887, by Boston & Me. R. R., which grants in addition to sums stated in lease 1 per cent annually on capital stock.	17	5436
Subsidiary road, fixed money rental. Leased to Boston & Lowell R. R., Jan. 1, 1890, for 99 years; rental, 5 per cent on the Northern R. R. capital stock for the first 7½ years, and 6 per cent on the same thereafter. Also principal and interest on $500,000 first mortgage bonds of the Conc. & Claremont R. R. and $100,000 first mortgage bonds of the Peterb. & Hillsb. R. R. Lease assigned to Boston & Me. R. R.	18	
Subsidiary road, other relation	19	
....do	20	5437
Subsidiary road, fixed money rental. Leased April 1, 1893, for 93 years; rental, 4 per cent on capital stock, $300 organization expenses, operating expenses, and taxes. Boston & Me. R. R. operates road by reason of being the lessee of Boston & Lowell R. R.	21	
Subsidiary road, fixed money rental. Leased to Boston & Lowell R. R., Jan. 1, 1890, for 99 years; rental, 7 per cent on capital stock, taxes, and $500 per annum for organization expenses; lease assumed by Boston & Me. R. R.	22	

	No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
5438		**BOSTON AND MAINE RAILROAD COMPANY —Continued.**		
	23	Wilton Railroad Company.....	15.50	.....
	[120]			
5439	24	CONCORD AND MONTREAL RAILROAD COMPANY....	208.47	.....
	25	Concord and Portsmouth Railroad Company.	47.50	.....
	26	Franklin and Tilton Railroad Company.....	5.00	.....
	27	Lake Shore Railroad Company.....	17.28	.....
5440	28	Manchester and North Weare Railroad Company.	24.50	.....
	29	Nashua, Acton and Boston Railroad Company	20.90	.....
	30	New Boston Railroad Company.....	5.19	.....
	31	Pemigewasset Valley Railroad Company....	22.93	.....
	32	Profile and Franconia Notch Railroad Company.	12.84	.....
5441	33	Suncook Valley Railroad Company.....	17.37	.....
	34	Suncook Valley Extension Railroad Company	4.46	.....
	35	Tilton and Belmont Railroad Company.....	4.17	.....
	36	Whitefield and Jefferson Railroad Company.	33.69	.....
	37	Connecticut River Railroad Company.....	79.85	.....

DEFENDANTS' EXHIBIT 20-I. 1405

Remarks.	No.	
		5442
Subsidiary road, fixed money rental. Leased to Boston & Lowell R. R. for 99 years from Oct., 1883; rental, $16,800, all public taxes, and $150 for organization, annually; July 12, 1874, lease assigned to Boston & Me. R. R. without consent of lessor; Dec. 19, 1890, lessor assented to assignment of lease at a semiannual rental of $10,200.	23	
		[121]
Subsidiary road, fixed money rental. Leased April 1, 1895, for 91 years; rental, 7 per cent on capital stock, interest on bonds, operating expenses, all taxes and expenses of organization; lessee assumes all traffic balances due from lessor to other railroads.	24	5443
Subsidiary road, fixed money rental. Contract dated May 26, 1862, for 99 years, from Jan. 1, 1862; rental, 7 per cent on capital stock and $500 for organization annually.	25	
Subsidiary road, fixed money rental. Leased Oct. 8, 1895, for 91 years from April 1, 1895; rental, $1 annually, with such additional sums as may be necessary to keep up the organization of lessor. Lease assigned to Boston & Me. R. R.	26	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	27	
Subsidiary road, other relation. Controlled through ownership of capital stock.	28	5444
Subsidiary road, other relation. Controlled through ownership of majority of capital stock. Leased to Boston and Me. R. R., June 29, 1895.	29	
Subsidiary road, fixed money rental. Leased June 19, 1893, for 99 years; rental, $2,800 per annum. Lease assigned to Boston & Me. R. R., June 29, 1895.	30	
Subsidiary road, fixed money rental. Leased to Boston, Conc. & Montreal R. R., Feb. 1, 1892, for 100 years; rental, 6 per cent per annum on capital stock, and in addition, $300 annually for organization expenses, and all taxes. Lease assumed by Conc. & Montreal R. R. Lease assigned to Boston & Me. R. R., June 29, 1895.	31	
Subsidiary road, other relation. Controlled through ownership of capital stock.	32	
Subsidiary road, fixed money rental. Leased Jan. 1, 1870, for 42 years, to Manch. & Law. and Concord R. Rs. at an annual rental of $14,400, and $300 for organization.	33	5445
Subsidiary road, other relation. Controlled through ownership of capital stock.	34	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	35	
Subsidiary road, other relation. Controlled through ownership of capital stock.	36	
Subsidiary road, fixed money rental. Leased Jan. 1, 1893, for 99 years; rental, 10 per cent on capital stock, 4 per cent interest on bonds, $2,000 for organization expenses.	37	

	No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
5446		**BOSTON AND MAINE RAILROAD COMPANY** —Continued.		
	38	Danvers Railroad Company.....	9.26	.....
	39	**Eastern Railroad in New Hampshire**.....	16.08	.....
	40	Portsmouth and Dover Railroad Company..	10.88	.....
	41	Kennebunk and Kennebunkport Railroad Company.	4.50	.....
5447	42	Lowell and Andover Railroad Company.....	8.73	.....
	43	Manchester and Keene Railroad Company....	29.59	.....
	44	Manchester and Lawrence Railroad Company.	22.39	.....
	45	Newburyport Railroad Company.....	26.98	.....
	46	**Portland, Saco and Portsmouth Railroad Company.**	50.76	.....
5448				
	47	Worcester, Nashua and Rochester Railroad Company.	94.48	.....
	48	MAINE CENTRAL RAILROAD COMPANY.....	345.23	813.76
	49	Belfast and Moosehead Lake Railroad Company.	33.13	.....
	50	Dexter and Newport Railroad Company.....	14.23	.....
5449	51	Dexter and Piscataquis Railroad Company..	16.54	.....
	52	Eastern Maine Railway Company.....	18.80	.....
	53	European and North American Railway Company.	120.34	.....

Remarks.	No.	
		5450
Subsidiary road, fixed money rental. Leased May 30, 1853, for 100 years, at $7,500 per annum.	38	
Subsidiary road, fixed money rental. Leased Oct. 1, 1878, for 60 years and 2 months, to En. R. R. of Mass., for $22,500 per annum.	39	
Subsidiary road, fixed money rental. Leased June 1, 1872, for 50 years from Feb., 1874, to En. R. R. in N. H., at a rental of $46,140 per annum, guaranteed by En. R. R. of Mass. Included in lease of En. R. R. in N. H. to Boston & Me. R. R.	40	
Subsidiary road, fixed money rental. Leased May 15, 1883, for 99 years, for 4½ per cent dividend per annum.	41	
Subsidiary road, fixed money rental. Leased Dec. 1, 1874, for 99 years, at $52,500 per annum, lessee to pay all public taxes.	42	5451
Subsidiary road, other relation. Sold under foreclosure; bonds purchased by Boston & Lowell and Conc. & Montreal R. Rs. Operated by Boston & Me. R. R. for account of these companies, each being credited with one-half of all earnings and charged with one-half of all expenses.	43	
Subsidiary road, fixed money rental. Leased Sept. 1, 1887, for 50 years, for 10 per cent per annum on capital stock and $2,000 per annum for organization.	44	
Subsidiary road, fixed money rental. Leased Feb. 21, 1860, for 100 years, for $225,000 cash, and debt due Boston & Me. R. R. of $75,000.	45	
Subsidiary road, fixed money rental. Contract dated May 4, 1871, to continue in force until such time as En. R. R. of Mass., by default, shall cease to pay regular semi-annual dividend of 3 per cent; contract assigned to Boston & Me. R. R. on purchase of En. R. R. of Mass., May 8, 1890.	46	5452
Subsidiary road, fixed money rental. Leased Jan. 1, 1886, for 50 years, for $250,000 per annum and all taxes.	47	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock. "Line operated" includes 52.34 miles not in United States.	48	
Subsidiary road, fixed money rental. Leased May 10, 1871, for 50 years, at an annual rental of $36,000 and taxes.	49	
Subsidiary road, fixed money rental. Leased Dec. 13, 1888, for 999 years, at an annual rental of $18,000 until Nov. 24, 1898, and $6,100 per annum thereafter, and $250 per annum for organization expenses. Lessee also guarantees the principal and interest of bonds of lessor.	50	
Subsidiary road, fixed money rental. Leased Dec. 13, 1888, for 999 years, rental, $13,350, and $200 per annum for organization expenses, and taxes.	51	5453
Subsidiary road, fixed money rental. Leased May 1, 1883, for 999 years; annual rental, $9,000, all taxes, and $500 for organization expenses.	52	
Subsidiary road, fixed money rental. Leased April 1, 1882, for 999 years; annual rental, $125,000, all taxes, and $500 for expenses of organization; lessee also assumes City of Bangor bonds, amounting to $1,000,000, issued to aid construction of road of lessor.	53	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
5454		**BOSTON AND MAINE RAILROAD COMPANY**—Continued.		
		Maine Central Railroad Company—Continued.		
	54	Knox and Lincoln Railway Company.....	48.39	.....
	[122]			
5455	55	*Portland and Ogdensburg Railway Company.*	109.10	.....
	56	Upper Coos Railroad Company.....	55.00	.....
	57	Mount Washington Railroad Company.....	3.33	3.33
	58	Portland and Rochester Railroad Company...	54.98	53.86
	59	*Saint Johnsbury and Lake Champlain Railroad Company.*	131.50	131.50
5456	60	Vermont Valley Railroad Company of 1871....	24.00	24.00
	61	Sullivan County Railroad Company.....	26.00	26.00
	62	York Harbor and Beach Railroad Company...	11.27	11.27
5457	[124]			
	106	**NEW ENGLAND RAILROAD COMPANY**.....	361.39	527.76
	107	Milford and Woonsocket Railroad Company..	15.33	.....
	108	Milford, Franklin and Providence Railroad Company.	4.70	.....

DEFENDANTS' EXHIBIT 29-I. 1409

Remarks.	No.	
		5458
Subsidiary road, fixed money rental. Leased Aug. 1, 1891, for 999 years, lessee to pay all taxes, interest, and indebtedness of lessor, a dividend of 5 per cent to the stockholders, and $200 for organization expenses.	54	
	[123]	
Subsidiary road, fixed money rental. Leased Aug. 20, 1888, for 999 years, lessee to pay all taxes, interest, and indebtedness of lessor, and a dividend of 1 per cent per annum for 3 years, and 2 per cent thereafter.	55	5459
Subsidiary road, fixed money rental. Leased May 1, 1890, for 999 years; rental, interest on bonds, 6 per cent on capital stock, and $500 for charter obligations.	56	
Operating road, subsidiary, other relation. Cog-wheel road. Operated only during the summer months.	57	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock; 1.12 miles owned not in operation.	58	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	59	
Operating road, subsidiary, contingent money rental. Operated by the Boston & Me. R. R., as agent, under its lease of the Conn. Riv. R. R., the Vt. Vy. R. R. of 1871 receiving gross earnings less operating expenses, taxes and interest, with a minimum guarantee of a sufficient sum to pay 4 per cent on entire capital stock.	60	5460
Operating road, subsidiary, contingent money rental. Gross earnings, less operating expenses, interest, and taxes, paid lessor, with a minimum guarantee of a sufficient amount to pay 8 per cent on entire capital stock. Operated by Boston & Me. R. R., as agent, under its lease of Conn. Riv. R. R. Entire capital stock owned by Vt. Vy. R. R. of 1871.	61	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	62	
	[125]	5461
Operating road, independent	106	
Subsidiary road, fixed money rental. Leased April 1, 1897, for 5 years; rental, $4,200 per annum and 12½ per cent of the gross earnings of this road and the Milf., Frank. & Prov. R. R. in excess of $40,000, per annum.	107	
Subsidiary road, fixed money rental. Leased April 1, 1897, for 5 years; rental, $1,800 and all expenses; also, 12½ per cent of gross receipts in excess of $40,000.	108	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
5462		**NEW ENGLAND RAILROAD COMPANY—** Continued.		
	109	*Norwich and Worcester Railroad Company...*	66.16	.....
	110	Providence and Springfield Railroad Company	27.73	.....
	111	Rhode Island and Massachusetts Railroad Company in Massachusetts.	6.62	.....
	112	Rhode Island and Massachusetts Railroad Company of Rhode Island.	7.08	.....
5463	113	Rockville Railroad Company.....	5.23	.....
	114	Woonsocket and Pascoag Railroad Company..	9.45	.....
	115	**NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY.**	325.81	1,464.21
	116	Berkshire Railroad Company.....	20.53	.....
	117	*Boston and New York Air Line Railroad Company.*	51.50	.....
5464	118	Colchester Railway Company.....	3.59	.....
	119	Chatham Railroad Company.....	7.07	.....
	120	Danbury and Norwalk Railroad Company.....	36.20	.....
	121	Harlem River and Port Chester Railroad Company.	11.50	.....
5465				
	[126]			
	122	*Housatonic Railroad Company*.....	90.12	.....
	123	Naugatuck Railroad Company.....	60.99	.....

DEFENDANTS' EXHIBIT 20-I. 1411

Remarks.	No.	
Subsidiary road, fixed money rental. Leased Feb. 9, 1869, for 99 years; annual rental, interest on bonds and 8 per cent on preferred stock.	109	
Subsidiary road, fixed money rental. Leased July 1, 1896, for 93 years; rental, 6 per cent on capital stock, interest on bonds, taxes, and assessments.	110	
Subsidiary road, fixed money rental. Leased Nov. 21, 1887, for 99 years; annual rental, $10,000 and all taxes, assessments, etc.	111	
Subsidiary road, fixed money rental. Leased Oct. 1, 1887, for 99 years; rental, $10,000, all taxes, and assessments.	112	
Subsidiary road, fixed money rental. Agreement entered into March 31, 1896; rental, $10 per day. Lease terminable on 30 days' notice by either party.	113	5467
Subsidiary road, other relation. Operated under temporary arrangement. Entire capital stock and bonds owned by New Eng. R. R.	114	
Operating road, independent. On June 30, 1895, the Nantasket Beach R. R., 6.95 miles, was operated by electric power.	115	
Subsidiary road, contingent money rental. Leased April 1, 1893, for 99 years; rental, 6 per cent on capital stock, all expenses, taxes, and $200 for maintenance of organization. "Old lease to the Housatonic R. R. suspended, but not canceled."	116	
Subsidiary road, fixed money rental. Leased Oct. 1, 1882, for 99 years; rental, $120,000 per annum, and interest on its bonds and the bonds of Colchester R. R.	117	5468
Subsidiary road, fixed money rental. Leased Oct. 1, 1882, for 999 years. Interest on bonds guaranteed by Boston & N. Y. Air Line R. R.	118	
Subsidiary road, contingent money rental. Contract in effect Nov. 22, 1894. Terminable after 30 days' notice by either party. Lessee equips, maintains, and operates railroad, collects all revenue, and pays to the lessor 30 per cent of gross receipts.	119	
Subsidiary road, fixed money rental. Leased July 1, 1892, for 99 years; rental, 5 per cent dividend on capital stock, interest on bonds, all taxes and assessments. Of "line owned," 5.95 miles operated by Shepaug, Litchf. & Nn. R. R.	120	
Subsidiary road, fixed money rental. Leased Sept. 30, 1873, for 99 years, to N. Y., New Hav. & Hartf. R. R., for interest on bonds. The lessee owns entire capital stock of lessor road.	121	5469

[127]

Subsidiary road, fixed money rental. Leased July 1, 1892, for 99 years; rental, 1 per cent dividend on preferred capital stock, interest on bonds, all taxes, and assessments.	122	
Subsidiary road, fixed money rental. Leased April 1, 1887, for 99 years; rental, interest on bonds, and 10 per cent per annum on capital stock.	123	

	No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
5470		**NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY—Continued.**		
	124	New Haven and Derby Railroad Company....	16.69	.....
	125	*New Haven and Northampton Company*.....	126.31	.....
	126	Holyoke and Westfield Railroad Company...	10.32	.....
5471				
	127	**Old Colony Railroad Company**.....	507.45	.....
	128	*Boston and Providence Railroad Company*...	61.19	.....
	129	Attleboro Branch Railroad Company.....	4.00	.....
5472	130	Nantasket Beach Railroad Company.....	6.95	.....
	131	Plymouth and Middleborough Railroad Company.	15.03	.....
	132	Providence, Warren and Bristol Railroad Company.	14.35	.....
	133	Pawtuxet Valley Railroad Company.....	5.67	.....
5473				
	134	*Providence and Worcester Railroad Company*.	47.91	.....
	135	Stockbridge and Pittsfield Railroad Company..	22.02	.....

DEFENDANTS' EXHIBIT 20-I. 1413

Remarks.	No.	
		5474
Subsidiary road, fixed money rental. Leased July 1, 1892, for 99 years; rental, 3 per cent dividend on capital stock until June 30, 1895, and 4 per cent thereafter during term of lease, interest on bonds, all taxes and assessments.	124	
Subsidiary road, fixed money rental. Leased April 1, 1887, for 99 years; rental, 1 per cent on capital stock for 3 years, 2 per cent for the second 3 years, 3 per cent for the third 3 years, and 4 per cent thereafter; interest on bonds and taxes.	125	
Subsidiary road, contingent money rental. Leased Dec. 3, 1870, in perpetuity; rental, 50 per cent of gross receipts subject to interest on bonds of $260,000, guaranteed by New Hav. & Northamp. Co. Lease assumed by N. Y., New Hav. & Hartf. R. R., with lease of New Hav. & Northamp. Co.	126	
		5475
Subsidiary road, fixed money rental. Leased Mar. 1, 1893, for 99 years; rental, 7 per cent on capital stock, interest on funded debt, taxes and organization expenses. Lease includes its interest as lessee.	127	
Subsidiary road, fixed money rental. Leased April 1, 1888, for 99 years; annual rental, 10 per cent on capital stock, interest on bonds, taxes and assessments, etc. Excludes one-half of 5 miles owned jointly by Prov. & Worc. and Boston & Prov. R. Rs.	128	
Subsidiary road, fixed money rental. Leased Dec. 31, 1870, for 30 years; annual rental, 7 per cent on capital stock; included in lease to Old Colony R. R.	129	
		5476
Subsidiary road, fixed money rental. Leased April 1, 1888, for 99 years; lessee guarantees interest on bonds up to $6,250, pays taxes, and has option of purchasing property after 20 years of lease for $150,000. Road operated by electric power June 30, 1895.	130	
Subsidiary road, contingent money rental. Leased Dec. 4, 1891, for 99 years. No returns to be made to the road for 25 years; thereafter 30 per cent of gross receipts for remainder of lease.	131	
Subsidiary road, fixed money rental. Leased July, 1891, for 95 years and 9 months; rental, 5 per cent on capital stock for the first 10 years and 5 per cent on common and preferred stock for remainder of lease; also pay interest and taxes, and not exceeding $500 per annum for salaries.	132	
Subsidiary road, fixed money rental. Leased July 1, 1884, for 99 years; annual rental, 7 per cent on capital stock, interest on bonds, taxes, assessments, etc. Lease assumed by N. Y., New Hav. & Hartf. R. R., April 1, 1892.	133	
		5477
Subsidiary road, fixed money rental. Leased July 1, 1892, for 99 years; rental, 10 per cent on capital stock, interest on bonds and taxes. Excludes one-half of 5 miles owned jointly by Prov. & Worc. and Boston & Prov. R. Rs.	134	
Subsidiary road, fixed money rental. Leased April 1, 1893, for 99 years; rental, 6 per cent on capital stock, $250 organization expenses, all expenses and taxes. "Old lease to the Housatonic R. R. suspended, but not canceled."	135	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
5478		**NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY—Continued.**		
	136	West Stockbridge Railroad Company.....	2.64	.....
	137	Shepaug, Litchfield and Northern Railroad Company.	32.28	38.23
	[144]			
5479	470	**NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY.**	819.45	2,409.88
	471	Amsterdam, Chuctanunda and Northern Railroad Company.	1.50	.....
	472	Carthage and Adirondack Railway Company..	46.10	.....
	473	Gouverneur and Oswegatchie Railroad Company.	13.05	.....
	474	Mohawk and Malone Railway Company.....	181.50	.....
	475	New Jersey Junction Railroad Company.....	4.85	.....
5480				
	476	*New York and Harlem Railroad Company*....	135.90	.....
	477	New York and Putnam Railroad Company....	57.16	.....
	478	Mahopac Falls Railroad Company.....	4.05	.....
	479	New York Central Niagara River Railroad Company.	2.81	.....
5481	480	*Rome, Watertown and Ogdensburg Railroad Company.*	412.55	.....
	481	Buffalo, Thousand Islands and Portland Railroad Company.	.03	.....

DEFENDANTS' EXHIBIT 20-I. 1415

Remarks.	No.	
		5482
Subsidiary road, fixed money rental. Leased April 1, 1893, for 99 years; rental, $1,800 per annum and all taxes.	136	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock. Of "line operated," 5.95 miles owned by Danb. & Norwalk R. R.	137	
	[145]	
Operating road, independent	470	
		5483
Subsidiary road, other relation. Operated under verbal agreement, Sept. 23, 1879, to deliver and receive freight to and from Kellogg & Miller's Linseed Oil Works. "Line operated" included as sidings in N. Y. Cent. & Hud. Riv. R. R.	471	
Subsidiary road, fixed money rental. Leased Jan. 9, 1893, from May 1, 1893, for term of corporate existence. Lessee guarantees principal and interest on bonds not exceeding $1,600,000.	472	
Subsidiary road, fixed money rental. Leased July 8, 1892, in perpetuity. Lessee guarantees principal and interest on bonds not exceeding $300,000.	473	
Subsidiary road, fixed money rental. Leased May 1, 1893, in perpetuity; rental, 4 per cent interest, and principal guaranteed, on not exceeding $2,500,000 first-mortgage bonds.	474	
Subsidiary road, fixed money rental. Leased July 1, 1886, for 100 years, with privilege of further term of 100 years, at an annual rental of interest at 4 per cent on its outstanding bonds.	475	
		5484
Subsidiary road, fixed money rental. Leased April 1, 1873, for 401 years; annual rental, interest on funded debt, and 8 per cent on capital stock.	476	
Subsidiary road, fixed money rental. Leased Jan. 30, 1894, in perpetuity; rental, 4 per cent interest on first-mortgage bonds and 5 per cent on $1,200,000 first consolidated mortgage forty-year bonds of N. Y. & Nn. Ry. pending retirement.	477	
Subsidiary road, other relation. Operated since Jan. 1, 1894, as a branch of N. Y. & Putnam R. R. by N. Y. Cent. & Hud. Riv. R. R., lessee. N. Y. & Putnam R. R. owns entire capital stock.	478	
Subsidiary road, other relation	479	
Subsidiary road, fixed money rental. Leased Mar. 14, 1891, in perpetuity. Lessee guarantees principal and interest on bonds, 5 per cent on capital stock, and a rental of $15,000 per annum until April 1, 1901, and thereafter $7,000 per annum.	480	5485
Subsidiary road, other relation. "Line owned" not in operation	481	

5486 [146]

No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
	NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY—Continued.		
	Rome, Watertown and Ogdensburg Railroad Company—Continued.		
482	Niagara Falls Branch Railroad Company....	8.57	.....
483	Oswego and Rome Railroad Company.....	28.49	.....
5487			
484	Utica and Black River Railroad Company...	149.81	.....
485	Carthage, Watertown and Sackets Harbor Railroad Company.	28.81	.....
486	Spuyten Duyvil and Port Morris Railroad Company.	6.04	.....
5488 487	Tivoli Hollow Railroad Company.....	1.23	.....
488	Troy and Greenbush Railroad Company.....	6.00	.....
489	Troy Union Railroad Company.....	5.00	.....
490	**West Shore Railroad Company**.....	495.20	.....
491	Beech Creek Railroad Company.....	148.00	202.78
5489			
492	Cambria County Railroad Company.....	9.49	.....
493	Buffalo Erie Basin Railroad Company.....	.25	.25
494	Saint Lawrence and Adirondack Railway Company.	10.20	65.10

Remarks.	No.	
Subsidiary road, fixed money rental. Leased Sept. 21, 1881, in perpetuity, at 7 per cent per annum on capital stock; included in lease to N. Y. Cent. & Hud. Riv. R. R., dated March 14, 1891.	482	
Subsidiary road, fixed money rental. Leased Dec. 2, 1869, in perpetuity; annual rental, interest on first-mortgage bonds and $24,000 cash. Lease amended March 2, 1891; rental, 7 per cent on $350,000 first-mortgage bonds and 5 per cent on $400,000 second-mortgage bonds per annum; included in lease to N. Y. Cent. & Hud. Riv. R. R., dated March 14, 1891.	483	5491
Subsidiary road, fixed money rental. Leased April 14, 1886, for the term of its corporate existence; annual rental, 7 per cent on capital stock, interest on bonds, and $4,500 for organization expenses; included in lease to N. Y. Cent. & Hud. Riv. R. R., dated March 14, 1891.	484	
Subsidiary road, contingent money rental. Leased for the term of its corporate existence for 37½ per cent of gross earnings; included in the lease of Utica & Black Riv. R. R. to Rome, Watert. & Ogdensb. R. R., and to N. Y. Cent. & Hud. Riv. R. R., dated March 14, 1891.	485	
Subsidiary road, fixed money rental. Leased Nov. 1, 1871, to Dec. 31, 1970; annual rental, 8 per cent on $989,000 capital stock.	486	
Subsidiary road, other relation. Operated under contract dated April 3, 1894, with the Van Rensselaer Land Co.	487	5492
Subsidiary road, fixed money rental. Leased Feb. 3, 1851, in perpetuity, at an annual rental of $19,250.	488	
Subsidiary road, other relation. One-half owned by N. Y. Cent. & Hud. Riv. R. R., and one-fourth each by Del. & Hud. Canal Co. and Fitchburg R. R. These companies pay this proportion of maintenance and operation.	489	
Subsidiary road, fixed money rental. Leased Jan. 1, 1886, for 475 years, with privilege of further term of 500 years; annual rental, interest at 4 per cent on bonds.	490	
Operating road, subsidiary, fixed money rental. Leased Dec. 15, 1890, for 999 years. Lessee guarantees principal and interest of $5,000,000 first-mortgage 4 per cent bonds and 4 per cent on $5,000,000, capital stock. Under a subsequent agreement the lessee also guarantees the principal and interest of $1,000,000 second-mortgage bonds bearing 5 per cent interest and 4 per cent on $1,000,000 of additional capital stock.	491	5493
Subsidiary road, other relation. Controlled through ownership of capital stock.	492	
Operating road, subsidiary, other relation. Used as a switching road to facilitate delivery of property at the docks.	493	
Operating road, subsidiary, other relation. Operated by N. Y. Cent. & Hud. Riv. R. R., on behalf of W. S. Webb, who assumes temporarily the guarantee of the principal and interest of first-mortgage bonds. "Line operated" includes 54.90 miles in Canada, 13.20 miles of which is leased from Grand Trunk Ry.	494	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
5494		**NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY—Continued.**		
		West Shore Railroad Company—Continued		
	495	Wallkill Valley Railroad Company.....	32.88	37.69
	[148]			
	522	**PENNSYLVANIA RAILROAD COMPANY.....**	532.71	2,817.61
5495	523	Bald Eagle Valley Railroad Company.....	90.43	.....
	524	Bedford and Bridgeport Railway Company....	49.17	.....
	525	Bustleton Railroad Company.....	4.16	.....
	526	Cambria and Clearfield Railroad Company.....	97.68	.....
5496				
	527	Columbia and Port Deposit Railway Company.	43.21	.....
	528	Columbus, Kinkora and Springfield Railroad Company.	14.16	.....
	529	Cresson and Irvona Railroad Company.....	29.54	.....
	530	Delaware River Railroad and Bridge Company	10.20	.....
5497				
	531	Downingtown and Lancaster Railroad Company.	37.58	.....
	532	Ebensburg and Black Lick Railroad Company.	14.75	.....
	533	Engelside Railroad Company.....	.17	.....

DEFENDANTS' EXHIBIT 20-I. 1419

Remarks.	No.	
		5498
Operating road, subsidiary, other relation. Controlled through ownership of capital stock and bonds held in the interest of W. Shore R. R.	495	
	[149]	
Operating road, independent.....	522	
Subsidiary road, contingent money rental. Leased July 1, 1864, for 99 years; rental, 40 per cent of gross receipts. Lease does not apply to Nittany Brh., which is operated for cost. Net earnings paid to Bald Eagle Vy. R. R.	523	5499
Subsidiary road, contingent money rental. Operated under resolutions of the directors of both companies, adopted April 29 and May 27, 1891, and is terminable at the option of either party on 30 days' notice; net earnings payable to this company.	524	
Subsidiary road, contingent money rental. Operated under resolutions of the directors of both companies, which took effect Jan. 1, 1891, and is terminable at the option of either party on 30 days' notice; net earnings payable to this company.	525	
Subsidiary road, contingent money rental. Operated under resolutions of boards of directors of both companies, in effect Sept. 24, 1888, terminable at any time on 30 days' notice ; net earnings payable to this company.	526	5500
Subsidiary road, contingent money rental. Agreement dated July 1, 1890, terminable at any time on 30 days' notice; rental, net earnings.	527	
Subsidiary road, contingent money rental. Lease dated Sept. 23, 1889; runs from year to year unless terminated by 6 months' notice. Lessee collects all earnings, pays all expenses for operating the road and maintenance of way, and taxes; balance, if any, is paid to lessor.	528	
Subsidiary road, contingent money rental. Operated under resolutions of boards of directors of both companies, in effect June 28 and July 6, 1894, respectively; terminable at any time by either party on 30 days' notice; rental, net earnings.	529	
Subsidiary road, contingent money rental. Operated under resolutions of the directors of both companies, adopted by Del. Riv. R. R. & Brg. Co., April 17, 1896, and by Pennsylvania R. R. April 22, 1896. Rental, net earnings. Terminable on 30 days' notice from either party.	530	5501
Subsidiary road, contingent money rental. Operated under resolutions of board of directors of each company, in effect Aug. 1, 1888; terminable at any time on 30 days' notice; net earnings paid to this company.	531	
Subsidiary road, contingent money rental. Operated under resolutions of boards of directors of both companies, in effect Nov. 27 and Dec. 12, 1894, respectively; terminable on 30 days' notice from either party; rental, net earnings.	532	
Subsidiary road. "Operated by Pennsylvania R. R. as a siding," pending execution of a formal contract.	533	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
		PENNSYLVANIA RAILROAD COMPANY—Continued.		
	534	Fair Hill Railroad Company	.78	.....
	535	Freehold and Jamesburg Agricultural Railroad Company.	27.54	.....
	536	Harrisburg, Portsmouth, Mount Joy and Lancaster Railroad Company.	53.06	.....
5503	537	Johnsonburg Railroad Company	25.70	.....
	538	Kensington and Tacony Railroad Company	6.89	.....
	539	Lewisburg and Tyrone Railroad Company	85.12	.....
	[150]			
	540	Millstone and New Brunswick Railroad Company.	6.64	.....
5504				
	541	Nescopec Railroad Company	11.96	.....
	542	New York Bay Railroad Company	9.20	.....
	543	North and West Branch Railway Company	47.82	.....
	544	Pennsylvania, Schuylkill Valley Railroad Company.	130.22	.....
	545	Perth Amboy and Woodbridge Railroad Company.	6.40	.....
5505				
	546	Philadelphia and Beach Haven Railroad Company.	12.09	.....

Remarks.	No.	
Subsidiary road, fixed money rental. Leased Feb. 1, 1896, for 20 years; rental, 4 per cent on capital stock, 4 per cent on outstanding debenture certificate, and taxes.	534	5506
Subsidiary road, contingent money rental. Contract dated July 16, 1879, terminable on 30 days' notice; rental, net earnings.	535	
Subsidiary road, fixed money rental. Leased Jan. 1, 1861, for 999 years; annual rental, 7 per cent on capital stock, 4 per cent interest on bonds, all taxes levied on stock and bonds, and organization expenses up to $2,000.	536	
Subsidiary road, contingent money rental. Leased July 8, 1889, for 50 years; rental, net earnings. Lessee reserves the right to cancel lease, under certain conditions, at the expiration of 5 years from date of lease.	537	5507
Subsidiary road, fixed money rental. Leased May 1, 1895, for 20 years; rental, 4 per cent on capital stock, and all taxes.	538	
Subsidiary road, contingent money rental. Leased Jan. 1, 1880, for 99 years; rental, net earnings. "Line owned" includes .24 mile over the Lewisburg Bridge.	539	

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Subsidiary road, contingent money rental. Operated by Pennsylvania R. R. since Jan. 1, 1897, by virtue of certain resolutions adopted by board of directors of each company; rental, net earnings; terminable at option of either party on 30 days' notice.	540	5508
Subsidiary road, contingent money rental. Operated under resolutions of board of directors of each company, in effect April 25, 1887, terminable at any time on 30 days' notice; net earnings payable to this company.	541	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	542	
Subsidiary road, contingent money rental. Agreement dated Nov. 23, 1881, to continue until Sept. 1, 1901; net earnings to be paid this company.	543	
Subsidiary road, contingent money rental. Leased Dec. 1, 1885, for 50 years; rental, net earnings.	544	
Subsidiary road, contingent money rental. Operated as of date Jan. 1, 1889, by virtue of resolutions adopted May 6, 1889, by stockholders of this company, and June 26, 1889, by directors of Pennsylvania R. R.; net earnings paid to this company. Terminable at option of either party on 30 days' notice.	545	5509
Subsidiary road, contingent money rental. Operated by Pennsylvania R. R., as agent, under resolution adopted Jan. 1, 1894, terminable on 30 days' notice; rental, net earnings. Terminable at option of either party on 30 days' notice.	546	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
		PENNSYLVANIA RAILROAD COMPANY—Continued.		
5510	547	**Philadelphia and Erie Railroad Company**	301.62	.....
	548	Philadelphia and Long Branch Railroad Company.	49.07	.....
	549	Philadelphia, Bustleton and Trenton Railroad Company.	3.55	.....
5511	550	Philadelphia, Germantown and Chestnut Hill Railroad Company.	13.87	.....
	551	Pittsburgh, Virginia and Charleston Railway Company.	77.33	.....
	552	Pomeroy and Newark Railroad Company	26.70	.....
	553	Ridgway and Clearfield Railroad Company	27.23	.....
	554	Riverfront Railroad Company	4.62	.....
	555	South Fork Railroad Company	9.59	.....
5512	556	Southwest Pennsylvania Railway Company	111.87	.....
	557	Sunbury and Lewistown Railway Company	55.88	.....
	558	Sunbury, Hazleton and Wilkesbarre Railway Company.	43.44	.....
	559	Susquehanna and Clearfield Railroad Company	24.89	.....
	560	Tipton Railroad Company	4.44	.....
5513	561	Trenton Delaware Bridge Company	.19	.....
	562	Tyrone and Clearfield Railway Company	134.51	.....
	563	**United New Jersey Railroad and Canal Company.**	144.81	.....
	564	Belvidere Delaware Railroad Company	80.83	.....

DEFENDANTS' EXHIBIT 20-I. 1423

Remarks.	No.	
		5514
Subsidiary road, contingent money rental. Lease executed Jan. 6, 1862; modified Jan. 1, 1870, for 999 years from Jan. 1, 1862; surplus of gross receipts, after paying operating expenses, etc., to be applied to organization expenses and interest on bonds; any balance to be paid lessor.	547	
Subsidiary road, contingent money rental. Leased Jan. 1, 1884, for 50 years; any surplus of earnings after paying operating and other expenses to be paid lessor.	548	
Subsidiary road, other relation. Used by Pennsylvania R. R. as a siding.	549	
Subsidiary road, contingent money rental. Leased May 1, 1883, for 30 years; rental, net earnings.	550	5515
Subsidiary road, contingent money rental. Leased April 1, 1895, for 30 years; rental, net earnings.	551	
Subsidiary road, contingent money rental. Leased March 1, 1880, for 99 years; rental, net earnings.	552	
Subsidiary road, contingent money rental. Lease dated Nov. 1, 1894, for 50 years; rental, 5 per cent on bonded debt, and taxes, and 6 per cent on capital stock, if earned.	553	
Subsidiary road, fixed money rental. Leased May 1, 1882, for 50 years; rental, $23,000 per annum, and after Jan. 1, 1894, $28,000 per annum.	554	
Subsidiary road, contingent money rental. Agreement dated Aug. 15, 1891, terminable at the option of either party on 30 days' notice, in writing; net earnings paid to this company.	555	
Subsidiary road, contingent money rental. Leased April 1, 1873, for one year, renewable every year; net earnings paid to this company. Terminable at the end of any year after 6 months' notice by either party.	556	5516
Subsidiary road, contingent money rental. Leased Oct. 1, 1896, for 79 years; operated for cost and one-half of net earnings after payment of interest on outstanding bonds.	557	
Subsidiary road, contingent money rental. Leased May 1, 1878, for 50 years; net earnings paid to this company.	558	
Subsidiary road, contingent money rental. Operated under resolutions of board of directors of each company, in effect Sept. 10, 1884, terminable at the option of either party on 30 days' notice; net earnings paid to this company.	559	
Subsidiary road, contingent money rental. Agreement dated May 1, 1886, terminable at the option of either party on 30 days' notice; net earnings paid to this company.	560	
Subsidiary road, fixed money rental. Trackage contract dated June 20, 1877, for 993 years, 5 months, and 10 days; annual rental, $32,000 and taxes.	561	5517
Subsidiary road, fixed money rental. Leased Jan. 1, 1882, for 50 years; lessee to pay annually all taxes, interest on bonds, sinking fund, and 5 per cent on capital stock.	562	
Subsidiary road, fixed money rental. Leased June 30, 1871, for 999 years; annual rental, 10 per cent on capital stock, taxes, interest on funded and other debts, damages, losses, etc.	563	
Subsidiary road, contingent money rental. Leased Jan. 1, 1876, to June 30, 2870; assigned to Pennsylvania R. R., March 7, 1876; revenue to be applied, first, to operations; second, to interest on bonds; any balance to be paid lessor.	564	

	No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
5518		**PENNSYLVANIA RAILROAD COMPANY**—Continued.		
		United New Jersey Railroad and Canal Company—Continued.		
	565	Camden and Burlington County Railroad Company.	29.61	.....
	566	Mount Holly, Lumberton and Medford Railroad Company.	5.95	.....
5519	567	**Philadelphia and Trenton Railroad Company**	26.50	.....
	568	Connecting Railway Company.....	6.75	.....
	[152]			
	569	Rocky Hill Railroad and Transportation Company.	2.38	.....
5520	570	Vincentown Branch Railroad Company.....	2.84	.....
	571	West Chester Railroad Company.....	5.22	.....
	572	Western Pennsylvania Railroad Company.....	137.44	.....
5521	573	York, Hanover and Frederick Railroad Company.	55.65	.....
	574	Allegheny Valley Railway Company.....	260.30	260.30
	575	Cumberland Valley Railroad Company.....	82.18	162.82
	576	Cumberland Valley and Martinsburg Railroad Company.	33.65	.....
	577	Dillsburg and Mechanicsburg Railroad Company.	7.70	.....

DEFENDANTS' EXHIBIT 20-I. 1425

Remarks.	No.	
Subsidiary road, fixed money rental. Leased April 24, 1868, for the term of its corporate existence, to Camden & Amb. R. R., one of the constituent companies of United N. J. R. R. & Canal Co.; annual rental, 6 per cent on capital stock and bonds and $500 for organization expenses; lease assigned to Pennsylvania R. R., June 30, 1871.	565	
Subsidiary road, fixed money rental. Leased May 14, 1869, during corporate existence; rental, 6 per cent on capital stock, interest on bonds, and taxes; lease assigned to Pennsylvania R. R., June 15, 1871.	566	
Subsidiary road, fixed money rental. Leased June 30, 1871, *from United N. J. R. R. & Canal Co. for* 999 *years; annual rental,* 10 *per cent on capital stock (excluding* 7,650 *shares owned by United N. J. R. R. & Canal Co.), taxes, assessments, etc.*	567	5523
Subsidiary road, fixed money rental. Leased Feb. 18, 1863, for 999 years; annual rental, 6 per cent on capital stock, 6 per cent on bonds, and taxes; included in lease to Pennsylvania R. R.	568	

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Subsidiary road, fixed money rental. Leased Nov. 22, 1869, for the term of its charter, to Camden & Amb. R. R., one of the constituent companies of United N. J. R. R. & Canal Co., at 6 per cent per annum on capital stock; lease assigned to Pennsylvania R. R., Nov. 30, 1871.	569	5524
Subsidiary road, fixed money rental. Leased April 7, 1868, during corporate existence; annual rental, 6 per cent on capital stock owned by individuals, and bonds, which is $15,000 each; of capital stock, $10,000 is owned by lessee and nothing is paid on it.	570	
Subsidiary road, fixed money rental. Leased Aug. 6, 1879, for 99 years; annual rental, 5 per cent on capital stock, interest on bonds, and taxes.	571	
Subsidiary road, fixed money rental. Leased Jan. 1, 1897, for 50 years; rental, interest on bonds, taxes on capital stock and bonds, organization expenses not exceeding $1,000 per annum, and 6 per cent dividend on capital stock, if earned.	572	
Subsidiary road, contingent money rental. Operated under resolutions of boards of directors of both companies, adopted March 2 and 10, 1897, terminable at option of either party on 30 days' notice; rental, net earnings.	573	5525
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	574	
....do	575	
Subsidiary road, contingent money rental. Leased March 17, 1888, for 99 years; receipts from operations to be applied to maintain the road, pay operating expenses, taxes, insurance, etc.; balance to be paid lessor.	576	
Subsidiary road, contingent money rental. Leased Jan. 1, 1873, for 99 years; terms of lease same as Cumb. Vy. & Martinsb. R. R.	577	

	No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
		PENNSYLVANIA RAILROAD COMPANY—Continued.		
5526	578	Mont Alto Railroad Company.....	17.89	.....
	579	Southern Pennsylvania Railway and Mining Company.	21.40	.....
	580	Junction Railroad Company (of Philadelphia).	3.56	3.56
5557	581	**Northern Central Railway Company**.....	148.24	379.92
	582	Elmira and Lake Ontario Railroad Company	99.61	.....
	583	Elmira and Williamsport Railroad Company	75.50	.....
	584	Lykens Valley Railroad and Coal Company..	19.70	.....
	585	Shamokin Valley and Pottsville Railroad Company.	36.87	.....
5528	586	Baltimore and Sparrows Point Railroad Company.	5.43	5.43
	587	Union Railroad Company (of Baltimore)....	9.65	9.65
	588	*Philadelphia, Wilmington and Baltimore Railroad Company.*	117.38	683.91
	589	*Baltimore and Potomac Railroad Company*..	93.20	.....
	590	Catonsville Short Line Railroad Company.	3.80	.....
5529	591	Cambridge and Seaford Railroad Company..	27.24	.....
	592	Delaware Railroad Company.....	116.94	.....
	593	Delaware and Chesapeake Railway Company	54.30	.....
	594	Delaware, Maryland and Virginia Railroad Company.	97.53	.....

Remarks.	No.	
		5530
Subsidiary road, contingent money rental. Leased Jan. 1, 1897, for 25 years; terms of lease same as Cumb. Vy. & Martinsb. R. R.	578	
Subsidiary road, contingent money rental. Leased March 1, 1870, for 199 years; terms of lease same as Cumb. Vy. & Martinsb. R. R.	579	
Operating road, subsidiary, other relation. The Pennsylvania and Phila., Wilm. & Balt. R. Rs. and the Phila. & Read. Ry. use the company's tracks, paying a certain rate per car per mile, the Junction R. R. paying the company moving the traffic for the use of the motive power.	580	
Operating road, subsidiary, other relation. Controlling interest in capital stock owned by Pennsylvania R. R.	581	5531
Subsidiary road, contingent money rental. Contract terminable at the option of either party on 30 days' notice; net receipts after paying charges for use of equipment paid to this company. Contract took effect Jan. 1, 1887. Controlled through ownership of entire capital stock by Nn. Cent. Ry.	582	
Subsidiary road, fixed money rental. Leased May 1, 1863, for 999 years; annual rental, 7 per cent on preferred and 5 per cent on common stock, interest on bonds, and $3,000 for organization expenses.	583	
Subsidiary road, fixed money rental. Leased April 20, 1896; rental, $35,000 per annum. Terminable on 60 days' written notice by either party.	584	
Subsidiary road, fixed money rental. Leased Feb. 27, 1863, for 999 years; annual rental, 7 per cent interest on bonds, 6 per cent on capital stock, and taxes.	585	
Operating road, subsidiary, other relation.....	586	5532
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	587	
....*do*.....	588	
Subsidiary road, contingent money rental. Contract took effect Nov. 1, 1891, and is terminable at the option of either company upon giving 30 days' notice in writing; net earnings paid to this company.	589	
Subsidiary road, contingent money rental. Leased to Phila., Wilm. & Balt. R. R., with Balt. & Pot. R. R., Dec. 6, 1893, for 99 years; rental, net earnings.	590	
Subsidiary road, contingent money rental. Agreement dated May 16, 1883; took effect June 1, 1883; terminable on 30 days' notice; net earnings paid to this company.	591	5533
Subsidiary road, contingent money rental. Leased May 1, 1897, terminable by six months' written notice from either party; rental, net earnings.	592	
Subsidiary road, contingent money rental. Agreement took effect July 1, 1882; terminable on 30 days' written notice by either party; net earnings paid to this company.	593	
Subsidiary road, contingent money rental. Agreement dated Aug. 1, 1885; took effect July 1, 1885; terminable on 30 days' notice; net earnings paid to this company.	594	

5534 [154]

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	PENNSYLVANIA RAILROAD COMPANY—Continued.		
	Philadelphia, Wilmington and Baltimore Railroad Company—Continued.		
595	Philadelphia and Baltimore Central Railroad Company.	73.68	.....
596	Chester Creek Railroad Company.....	6.69	.....
5535 597	Philadelphia and Delaware County Railroad Company.	9.93	.....
598	Queen Anne's and Kent Railroad Company..	25.90	.....
599	South Chester Railroad Company.....	4.50	.....
600	Washington Southern Railway Company....	37.85	.....
601	West Jersey and Seashore Railroad Company.	309.57	310.47

5536 [170]

857	**LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY.**	862.15	1,439.66
858	Detroit and Chicago Railroad Company.....	61.31	.....
859	Detroit, Hillsdale and Southwestern Railroad Company.	65.20	.....
5537 860	Detroit, Monroe and Toledo Railroad Company	54.75	.....
861	Erie and Kalamazoo Railroad Company.....	.....	.....

DEFENDANTS' EXHIBIT 20-I. 1429

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Remarks.	No.
Subsidiary road, contingent money rental. Agreement dated Aug. 1, 1881; took effect Sept. 1, 1881; terminable on 6 months' notice; net earnings paid to this company.	595
Subsidiary road, fixed money rental. Leased Jan. 13, 1868, for 999 years; rental, 6 per cent on $185,000 capital stock, interest on bonds, and taxes.	596
Subsidiary road, contingent money rental. Operated under resolutions of boards of directors of both companies, adopted, respectively, June 26 and 29, 1894, terminable on 30 days' notice from either party; rental, net earnings.	597
Subsidiary road, contingent money rental. Operated under resolutions adopted by both companies convened, April 29, 1896, in effect May 1, 1896; terminable on 30 days' notice from either party; rental, net earnings.	598
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	599
Subsidiary road, contingent money rental. Agreement went into effect Nov. 1, 1891, terminable at option of either party on 30 days' notice. Rental, entire net earnings.	600
Operating road, subsidiary, other relation.....	601

5539

5540

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Operating road, independent. "Line owned" excludes 7.84 miles leased to N. Y., Chic. & St. L. R. R. for 99 years at a rental of $5,000, which, with .87 mile not used for traffic purposes, once formed a part of main line between Silver Creek and Dunkirk, N. Y. "Line operated" includes 7.20 miles leased from Battle Ck. & Sturgis Ry.	857
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	858
Subsidiary road, fixed money rental. Leased Sept. 5, 1881, in perpetuity; annual rental, $54,000, and $500 for organization expenses.	859
Subsidiary road, contingent money rental. Leased July 1, 1856, in perpetuity. Lessee pays operating expenses and all fixed charges, and receives gross surplus from operation. Capital stock, except one share, owned by L. Shore & Mich Sn. Ry.	860
Subsidiary road, other relation. Included in branches of L. Shore & Mich Sn. Ry.	861

5541

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
		LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY—Continued.		
5542	862	Fort Wayne and Jackson Railroad Company..	97.83	.....
	863	Jamestown and Franklin Railroad Company...	50.91	.....
5543	864	Kalamazoo and White Pigeon Railroad Company.	36.54	.....
	865	Kalamazoo, Allegan and Grand Rapids Railroad Company.	58.45	.....
	866	Mahoning Coal Railroad Company.....	50.20	.....
	867	Northern Central Michigan Railroad Company	61.36	.....
5544	868	Oberlin and La Grange Railway Company.....	4.00	.....
	869	Sturgis, Goshen and Saint Louis Railroad Company.	28.28	.....
	870	Swan Creek Railway Company.....	1.31	.....
	871	Toledo and Ohio Northern Railway Company.	4.20	.....
	872	**New York, Chicago and Saint Louis Railroad Company.**	504.52	532.32
5545	873	Chicago and State Line Railroad Company..	9.96	.....
	874	Pittsburgh and Lake Erie Railroad Company..	71.31	177.19

DEFENDANTS' EXHIBIT 20-I. 1431

Remarks.	No.	
		5546
Subsidiary road, contingent money rental. Leased Aug. 24, 1882, in perpetuity, from Sept. 1, 1882; annual rental, 5½ per cent on preferred stock; $1,500 for organization expenses, taxes, assessments, etc. Should net earnings in any year, after Aug. 24, 1887, exceed 8 per cent on preferred stock, lessee will pay amount of such excess up to 2 per cent on common stock.	862	
Subsidiary road, contingent money rental. Leased Jan. 1, 1895, for 5 years; annual rental, 30 per cent of gross earnings, and all taxes except those imposed by United States or State of Pennsylvania upon tonnage, dividends, or interest on bonds.	863	
Subsidiary road, contingent money rental. Leased May 1, 1897, in perpetuity. Lessee pays operating expenses and all fixed charges, and receives gross surplus from operation. Capital stock owned by L. Shore & Mich. Sn. Ry.	864	5547
Subsidiary road, fixed money rental. Leased Sept. 21, 1869, for 999 years; annual rental, 6 per cent on capital stock, interest on bonds.	865	
Subsidiary road, contingent money rental. Leased July 1, 1884, in perpetuity; annual rental, 40 per cent of gross earnings; if that is insufficient to pay interest on bonds, 5 per cent on preferred stock, and $1,000 for corporate expenses, lessee will advance necessary amount and charge same against future rental.	866	
Subsidiary road, contingent money rental. Leased May 1, 1897, in perpetuity. Lessee pays operating expenses and all fixed charges, and receives gross surplus from operation. Capital stock owned entirely by L. Shore & Mich. Sn. Ry.	867	
Subsidiary road, contingent money rental. "Train service operated by L. Shore & Mich. Sn. Ry." under contract dated May 29, 1884, for 10 years. For such service the operating road receives pay at the rate of $5 for each round trip of a train, and collects $1 per car for Oberlin & La Grange Ry. on each car of freight received. From any surplus over $5 per round trip is deducted the interest on mortgage at rate of 6 per cent and balance paid to Oberlin & La Grange Ry.	868	5548
Subsidiary road, other relation. Controlled through ownership of capital stock and bonds.	869	
Subsidiary road, other relation. Mileage included in sidings of L. Shore & Mich. Sn. Ry., and is used exclusively for switching purposes; entire capital stock owned by that company.	870	
Subsidiary road. "Line owned" not in operation.....	871	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock. "Line operated" includes 7.84 miles owned by L. Shore & Mich. Sn. Ry.	872	5549
Subsidiary road, fixed money rental. Leased in perpetuity to Ft. Way. & Ill. R. R.; annual rental, $100, organization expenses up to $500, all taxes, assessments, etc. Ft. Way. & Ill. R. R. merged into N. Y., Chic. & St. L. R. R. Aug. 18, 1887.	873	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	874	

5550

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY—Continued.		
	New York, Chicago and St. Louis Railroad Company—Continued.		
875	Beaver and Ellwood Railroad Company.....	5.01	.....
876	Mahoning State Line Railroad Company....	3.16	.....
877	Pittsburgh, McKeesport and Youghiogheny Railroad Company.	97.89	.....

5551

878	Youghiogheny Northern Railroad Company	1.92	.....
879	Thompson Run Coal and Railroad Company.	5.00	.....
880	Ellwood Connecting Railroad Company.....	.68	.68

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895	**MICHIGAN CENTRAL RAILROAD COMPANY.**	270.07	1,657.97

5552

896	Battle Creek and Sturgis Railway Company..	41.00	.....
897	Bay City and Battle Creek Railway Company.	18.00	.....
898	Buchanan and Saint Joseph River Railroad Company.	1.80	.....
899	Canada Southern Bridge Company.....	3.66	.....
900	Detroit and Bay City Railroad Company.....	155.00	.....

5553

901	Detroit, Delray and Dearborn Railroad Company.	4.84	.....
902	East Chicago Belt Railroad Company.....	5.44	.....

DEFENDANTS' EXHIBIT 20-I. 1488

Remarks.	No.	
		5554
Subsidiary road, contingent money rental. Leased Aug. 1, 1895, for one year, with option of continuation at the end of each year indefinitely; rental, one-third of first $900 of monthly gross earnings and one-half of all monthly gross earnings in excess thereof.	875	
Subsidiary road, other relation. Leased Nov. 26, 1895, for 99 years; rental, annual taxes, maintenance and assessments; entire capital stock owned by lessee company.	876	
Subsidiary road, fixed money rental. Leased Jan. 1, 1894, for 999 years; Pittsb. & L. Erie R. R. and L. Shore & Mich. Sn. Ry. guarantee 6 per cent on capital stock and interest on bonds.	877	5555
Subsidiary road, other relation. Leased for 50 years from April 1, 1883; rental depends upon a provisional agreement.	878	
Subsidiary road.....	879	
Operating road, subsidiary, other relation. Controlled through ownership of entire capital stock.	880	

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Operating road, independent. Of "line operated," 380.04 miles not in United States.	895	
		5556
Subsidiary road, fixed money rental. Rental, interest on bonds, operating expenses, and taxes. The Mich. Cent. R. R. also owns a majority of capital stock. Of "line owned," 7.20 miles operated by L. Shore & Mich. Sn. Ry. with Sturgis, Goshen & St. L. Ry.	896	
Subsidiary road, fixed money rental. Agreement dated Feb. 1, 1890, in perpetuity; rental, interest on bonds, and taxes.	897	
Subsidiary road, other relation. Used as a spur track by Mich. Cent. R. R., leading to manufacturing institution.	898	
Subsidiary road, contingent money rental. Operated under agreement dated Dec. 12, 1882, for 21 years, with Can. Sn. Ry., which owns substantially all its capital stock and bonds, the Bridge Company being credited with its earnings and charged with its expenses.	899	
Subsidiary road, other relation. Under a contract dated March 10, 1881, the Det. & Bay Cy. R. R. gave entire possession and control of its railroad and property to the Mich. Cent. R. R., which agreed to operate the same during its corporate existence. By this contract the lessee was authorized to issue and did issue its bonds to the amount of $4,000,000, bearing interest at 5 per cent, and maturing 50 years from March 1, 1881. To secure the payment of said bonds both said companies joined in the execution of a mortgage upon all the railroad property and franchises of the Det. & Bay Cy. R. R.	900	5557
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	901	
Subsidiary road, other relation. Controlled through ownership of capital stock.	902	

5558

		Line Owned. Miles.	Line Operated. Miles.
	MICHIGAN CENTRAL RAILROAD COMPANY—Continued.		
903	Grand River Valley Railroad Company.....	83.79	.....
904	Grayling, Twin Lakes and Northeastern Railroad Company.	27.80	.....
905	Jackson, Lansing and Saginaw Railroad Company.	295.10	.....
906	Joliet and Northern Indiana Railroad Company	45.00	.....

5559

907	Kalamazoo and South Haven Railroad Company.	39.50	.....
908	Lansing Transit Railway Company.....	.75	.....
909	Michigan Air Line Railroad Company.....	115.16	.....
910	Michigan Midland and Canada Railroad Company.	14.68	.....
911	Saginaw Bay and Northwestern Railroad Company.	83.01	.....
912	Terminal Railroad Company.....	10.16	.....

5560

913	Toledo, Canada Southern and Detroit Railway Company.	58.92	.....

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923	**PENNSYLVANIA COMPANY**.....	.....	1,225.17
924	Calumet River Railway Company.....	4.43	.....
925	Cleveland and Pittsburgh Railroad Company.	198.34	.....

5561

926	Erie and Pittsburgh Railroad Company.....	84.47	.....

DEFENDANTS' EXHIBIT 20-I. 1435

Remarks.	No.	
		5562
Subsidiary road, fixed money rental. Leased Jan. 20, 1870, to continue during the corporate existence of lessor; lessee guarantees all obligations and 5 per cent per annum on stock.	903	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	904	
Subsidiary road, fixed money rental. Leased Sept. 1, 1871, during corporate existence of the two companies; lessee pays principal and interest on bonds of lessor and a dividend of 3½ per cent per annum, also $750 per annum for organization purposes.	905	
Subsidiary road, fixed money rental. Operated under contracts executed Sept. 7 and 26, 1854; on completion, turned over to Mich. Cent. R. R. to operate forever at an annual rental of $89,000.	906	5563
Subsidiary road, fixed money rental. Leased July 1, 1870, in perpetuity; lessee to pay taxes and interest on bonds.	907	
Subsidiary road, fixed money rental. Leased Feb. 18, 1888, for 99 years from Sept. 15, 1887; rental, $1 per annum. Used for switching purposes by Mich. Cent. R. R.	908	
Subsidiary road, fixed money rental. Leased Jan. 1, 1870, for 999 years, lessee guaranteeing principal and interest on bonds.	909	
Subsidiary road, other relation. Operated under agreement dated Dec. 12, 1882, for 21 years, with Can. Sn. Ry., which owns a majority of its capital stock and all its bonds, Mich. Midl. & Can. R. R., being credited with its earnings and charged with its expenses.	910	
Subsidiary road, other relation. Controlled through ownership of majority of capital stock.	911	
Subsidiary road, other relation. Controlled through ownership of capital stock.	912	5564
Subsidiary road, other relation. Operated under agreement dated Dec. 12, 1882, for 21 years, with the Can. Sn. Ry., which owns substantially all its capital stock and bonds, Tol., Can. Sn. & Det. Ry. being credited with its earnings and charged with its expenses.	913	

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Operating road, independent.....	923	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	924	
Subsidiary road, fixed money rental. Leased to Pennsylvania R. R. Dec. 1, 1871, for 999 years; lessee guarantees principal, interest, and sinking-fund charges on bonds, 7 per cent on capital stock, $10,000 for organization annually, taxes, assessments, etc.; lease transferred to Pennsylvania Co. April 14, 1873.	925	5565
Subsidiary road, fixed money rental. Leased to Pennsylvania R. R. Mar. 1, 1870, for 999 years; annual rental, 7 per cent on capital stock and bonds, $2,500 for organization expenses, and taxes; lease transferred to Pennsylvania Co. April 1, 1871.	926	

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
5566	**PENNSYLVANIA COMPANY—Continued.**		
	Erie and Pittsburgh Railroad Company—Continued.		
927	Indianapolis and Vincennes Railroad Company.	133.11	.....
928	Marginal Railroad Company.....	2.96	.....
929	Pittsburgh, Fort Wayne and Chicago Railway Company.	469.89	.....
5567			
930	Massillon and Cleveland Railroad Company	12.23	.....
931	New Castle and Beaver Valley Railroad Company.	14.98	.....
932	Pittsburgh, Ohio Valley and Cincinnati Railroad Company.	15.27	.....
5568			
933	Pittsburgh, Youngstown and Ashtabula Railroad Company.	125.09	.....
934	Rochester, Beaver Falls and Western Railway Company.	.55	.....
935	South Chicago and Southern Railroad Company.	10.25	.....
936	State Line and Indiana City Railway Company.	7.56	.....
937	Salineville Railroad Company.....	3.07	.....
938	Toledo, Walhonding Valley and Ohio Railroad Company.	125.40	.....
5569			
939	Rolling Mill Railroad Company.....	.71	.....
940	Cincinnati and Muskingum Valley Railway Company.	148.45	148.45
941	Cleveland and Marietta Railway Company...	103.13	110.83
942	Grand Rapids and Indiana Railway Company.	433.24	589.15

DEFENDANTS' EXHIBIT 20-I. 1437

Remarks.	No.	
		5570
Subsidiary road, contingent money rental. Leased Jan. 1, 1879, for 99 years; lessee agrees to operate and maintain road for cost of such service; net earnings paid to lessor to be applied to payment of interest on bonds. Majority of capital stock owned by lessee.	927	
Subsidiary road, other relation. Branch line connecting certain industries in Beaver Falls, Pa., with main line of Pittsb., Ft. Wayne and Chic. Ry., and is operated by this company in connection with that road. It is not an organized company.	928	
Subsidiary road, fixed money rental. Leased July 1, 1869, *for* 999 *years to Pennsylvania R. R.; annual rental, interest on bonds, sinking fund,* 7 *per cent on capital stock, organization expenses, and taxes. Pennsylvania Co. acts as agent or operator for lessee company.*	929	
		5571
Subsidiary road, contingent money rental. Leased May 22, 1869, for 99 years, at a rental of 40 per cent of gross earnings, minimum being fixed at $20,000 a year; lease transferred to Pennsylvania Co. July 1, 1869.	930	
Subsidiary road, contingent money rental. Leased July 1, 1865, for 99 years, at a rental of 40 per cent of gross earnings; lease assigned to Pennsylvania R. R. June 7, 1869, and by the latter to Pennsylvania Co. June 29, 1874, to take effect as of date April 1, 1871. Entire capital stock owned by Pennsylvania Co.	931	
Subsidiary road, other relation. Operated by the Pennsylvania Co. for cost of such service. Controlled through ownership of majority of capital stock.	932	
		5572
Subsidiary road, contingent money rental. Leased Aug. 1, 1887, for 1 year, and thereafter from year to year subject to termination on 12 months' written notice from either party; operated by lessee at cost. Majority of capital stock held by lessee since July 20, 1887.	933	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	934	
Subsidiary road, other relation. No contract; operated at cost under a provisional arrangement. Pennsylvania Co. controls the road through ownership of entire capital stock.	935	
.... do.....	936	
Subsidiary road, other relation. Operated by Pennsylvania Co. for Wm. Jackson, Trustee.	937	
Subsidiary road, contingent money rental. Leased Jan. 17, 1879, for 99 years; lessee agrees to operate and maintain road for cost of such service. Pennsylvania Co. controls road through ownership of capital stock.	938	
		5573
Subsidiary road, other relation. Controlled through ownership of capital stock.	939	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	940	
....do	941	
Operating road, subsidiary, other relation. The organization of this company is controlled by the Pennsylvania R. R. through stock ownership.	942	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
		PENNSYLVANIA COMPANY—Continued.		
5574	943	Cincinnati, Richmond and Fort Wayne Railroad Company.	85.60	.....
	944	Muskegon, Grand Rapids and Indiana Railroad Company.	36.85	.....
	945	Traverse City Railroad Company.....	26.00	.....
5575	[176]			
	946	Pittsburgh, Cincinnati, Chicago and Saint Louis Railway Company.	1,073.80	1,402.64
	947	Chartiers Railway Company.....	22.76	.....
	948	Chartiers Connecting Railroad Company.	.72	.....
	949	Englewood Connecting Railway Company..	2.35	.....
	950	Little Miami Railroad Company.....	101.50	.....
5576	951	Columbus and Xenia Railroad Company..	55.00	.....
	952	Dayton and Western Railroad Company..	37.99	.....
	953	Ohio Connecting Railway Company.....	3.27	.....
	954	Pittsburgh, Wheeling and Kentucky Railroad Company.	28.04	.....
5577	955	Steubenville Extension of Pennsylvania Railroad Company.	1.23	.....

DEFENDANTS' EXHIBIT 20-I. 1439

Remarks.	No.	
		5278
Subsidiary road, other relation. Operated under agreement with Gr. Rap. & Ind. Ry., which accounts for net earnings and applies same toward the interest on bonds; any deficiency being met by the Pennsylvania Co. and Pittsb., Cin., Chic. & St. L. R. R.	943	
Subsidiary road, other relation. Operated under agreement with Gr. Rap. & Ind. Ry., which accounts for net earnings and applies same toward interest on bonds.	944	
Subsidiary road, other relation. Operated under agreement with Gr. Rap. & Ind. Ry., which accounts for net earnings and applies same toward the interest on bonds.	945	
		5579
	[177]	
Operating road, subsidiary, other relation. Controlled through ownership of capital stock.	946	
Subsidiary road, contingent money rental. Leased Dec. 8, 1871, for 99 years from Jan. 1, 1872; rental, net earnings.	947	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	948	
Subsidiary road, other relation. Operated and maintained at cost, any surplus earnings paid to lessor; controlled through ownership of entire capital stock.	949	
Subsidiary road, fixed money rental. Leased Dec. 1, 1869, for 99 years, renewable forever; annual rental, 8 per cent on capital stock, interest on bonds, and organization expenses.	950	
		5580
Subsidiary road, fixed money rental. Leased Nov. 30, 1868, for 99 years, renewable forever; annual rental, 8 per cent on capital stock, interest on bonds; included in lease of Little Miami R. R. to Pennsylvania Co.	951	
Subsidiary road, fixed money rental. Leased Jan. 1, 1865, for 99 years, renewable forever; rental, interest on bonds; included in lease of Little Miami R. R. to Pennsylvania Co.	952	
Subsidiary road, contingent money rental. Operated at cost since Oct. 20, 1890; net earnings paid to lessor. The Pennsylvania Co. has controlled road through ownership of entire capital stock since organization, Nov. 22, 1886.	953	
Subsidiary road, contingent money rental. Leased Feb. 25, 1878, for 99 years; lessee operates the road at cost and pays net earnings to lessor. Majority capital stock owned by Pennsylvania Co.	954	
Subsidiary road, fixed money rental. There is no corporation known as the Steubenville Extension R. R. Co. The piece of road called the Steubenville Extension, virtually owned by the Pennsylvania Co., was built by the Pennsylvania R. R. Co., and upon the organization of the Pennsylvania Co., in 1871, the latter leased this piece of road for 999 years, paying for the lease a sum equivalent to cost of construction. In 1876 it was subleased for a term of 25 years to the Pittsb., Cin. & St. L. Ry., now the Pittsb., Cin., Chic. & St. L. Ry., at an annual interest rental based upon the original cost.	955	5581

5582

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	PENNSYLVANIA COMPANY—Continued.		
956	Newport and Cincinnati Bridge Company..	.73	.73
957	Pittsburgh, Chartiers and Youghiogheny Railway Company.	15.74	17.14

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1222	**ILLINOIS CENTRAL RAILROAD COMPANY..** [Line south of Cairo, Illinois.]	.....	894.41
1223	Canton, Aberdeen and Nashville Railroad Company.	87.89	.....
1224	Chicago, Saint Louis and New Orleans Railroad Company.	666.16	.....
1225	Chesapeake, Ohio and Southwestern Railroad Company.	351.12	398.48

DEFENDANTS' EXHIBIT 20-I. 1441

Remarks.	No.	5584
Operating road, subsidiary, other relation. The Pittsb., Cin., Chic. & St. L. Ry. operates the bridge for the Newpt. & Cin. Bridge Co. (used by Louisv. & Nashv. R. R. under trackage arrangement); Pennsylvania Co. own majority of capital stock.	956	
Operating road, subsidiary, other relation. Controlled jointly by the Pittsb., Cin., Chic. & St. L. Ry. and Pittsb. & L. Erie R. R. through joint ownership of entire capital stock, as per agreement dated Jan. 25, 1892.	957	
	[193]	5585
Operating road, independent. "Line operated" includes 140.36 miles leased from Yazoo & Miss. Vy. R. R.	1222	
Subsidiary road, contingent money rental. Leased March 31, 1888, until June 1, 1952; rental, net earnings of the road, which lessee guarantees to be $60,000 per annum.	1223	
Subsidiary road, fixed money rental. Leased July 1, 1882, for 400 years; annual rental, 4 per cent on capital stock, interest on bonds, taxes, assessments, etc.	1224	
Operating road, subsidiary, other relation. Sold July 25, 1896, on behalf of the reorganization committee to E. H. Harriman, and, pending the perfection of a plan of reorganization, placed in the hands of the Ill. Cent. R. R. for operation as agent for purchaser. The Ches., Ohio & S. Wn. R. R. formerly owned the stock and bonds of the Hodgenv. & Elizabetht. Ry. and that of the Troy & Tiptonv. R. R.; the stock of the Owensboro, Falls of Rough and Green Riv. R. R., and one-half of the stock of the Padu. Un. Depot Co. These roads were sold under foreclosure separately from the properties of the Ches., Ohio & S. Wn. R. R. The majority of the capital stock of the Hodgenv. & Elizabetht. Ry. and the Troy & Tiptonv. R. R. is held by the successor of the Ches., Ohio & S. Wn. R. R. E. H. Harriman purchased under foreclosure sale the properties of the Owensboro, Falls of Rough & Green Riv. R. R. and S. Route Ry. Tr. Co., which are operated by the Ill. Cent. R. R. pending reorganization. On July 25, 1896, E. H. Harriman purchased the holdings of the Ches., Ohio & S. Wn. R. R. in the Padu. Un. Depot Co. on behalf of the reorganization committee of the latter. The St. L., Alt. & T. Haute R. R. formerly owned the remaining half of the stock of the Padu. Un. Depot Co., which was acquired by the Ill. Cent. R. R. on Oct. 1, 1895, when it leased the former company's property for 99 years.	1225	5586 5587

5588

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	ILLINOIS CENTRAL RAILROAD COMPANY—Continued.		
	[Line south of Cairo, Illinois—Continued.]		
1226	Hodgenville and Elizabethtown Railway Company.	11.10	11.10
1227	Owensboro, Falls of Rough and Green River Railroad Company.	42.16	42.16
1228	Paducah Union Depot Company.....	.70	.70
1229	Short Route Railway Transfer Company...	1.52	1.52
1230	Troy and Tiptonville Railroad Company...	4.60	4.60
1231	Yazoo and Mississippi Valley Railroad Company.	947.63	807.27

5589

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1222	**ILLINOIS CENTRAL RAILROAD COMPANY..**	705.50	2,235.80
	[Line north of Cairo, Illinois.]		
1465	Blue Island Railroad Company.....	3.96	.....
5590 1466	Chicago and Springfield Railroad Company...	111.47	.....
1467	Chicago, Havana and Western Railroad Company.	131.62	.....
1468	Chicago, Madison and Northern Railroad Company.	231.30	.....
1469	Dubuque and Sioux City Railroad Company..	599.59	.....
5591 1470	Kankakee and Southwestern Railroad Company.	131.26	.....
1471	Rantoul Railroad Company.....	74.43	.....

DEFENDANTS' EXHIBIT 20-I. 1443

Remarks.	No.	
		5592
Operating road, subsidiary, other relation.....	1226	
....do	1227	
....do	1228	
....do	1229	
....do	1230	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock. "Line owned" includes 140.36 miles leased to and operated by Ill. Cent. R. R. Agreement dated March 31, 1888, and to run until June 1, 1952. Rental, net earnings. Any amount under $100,000 guaranteed by lessee.	1231	5593

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Operating road, independent.....	1222	
Subsidiary road, contingent money rental. Leased May 27, 1896, from July 1, 1893, to end of chartered existence. Lessee receives all earnings and out of same pays expenses of operation, taxes, betterments, and interest on bonds. Any surplus remaining appropriated by lessee.	1465	
Subsidiary road, fixed money rental. Leased Dec. 1, 1877, for 50 years from July 1, 1877; in lieu of annual rental, lessee issued currency bonds for $2,000,000, secured by lessor on demised property; $1,600,000 of these bonds were used by lessor to pay for the property, the remainder being reserved for improvements, etc.; lessee agrees to pay principal and interest of these bonds, taxes, assessments, etc.	1466	5594
Subsidiary road, contingent money rental. Leased April 1, 1888, in perpetuity; lessee receives all earnings, pays all expenses, and turns over to lessor any net earnings.	1467	
Subsidiary road, contingent money rental. Line, Chicago to Freeport, Ill., leased from April 1, 1888, the remainder from March 1, 1892, in perpetuity; lessor to receive net earnings; lessee owns the entire capital stock and bonds of lessor.	1468	
Subsidiary road, contingent money rental. Leased Jan. 1, 1895, for 56 years and 7 months; lessee receives all earnings, pays all expenses, and turns over to lessor any net earnings.	1469	
Subsidiary road, fixed money rental. Leased Aug. 1, 1881, in perpetuity; in lieu of annual rental lessee issued $968,000 registered bonds, secured by lessor on demised property; $200,000 of these bonds retired a like amount previously issued and secured by the same property; residue was for equipping and improving road, lessee agreeing to pay principal and interest and all taxes, assessments, etc.	1470	5595
Subsidiary road, contingent money rental. Leased Dec. 11, 1886, for 50 years; lessee receives all earnings, pays all expenses, and turns over to lessor any net earnings.	1471	

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No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	ILLINOIS CENTRAL RAILROAD COMPANY—Continued.		
	[Line north of Cairo, Illinois.]		
1472	Saint Louis, Alton and Terre Haute Railroad Company.	14.40	.....
1473	Belleville and Carondelet Railroad Company	17.30	.....
5597			
1474	Belleville and Eldorado Railroad Company.	50.20	.....
1475	Belleville and Southern Illinois Railroad Company.	56.40	.....
1476	Chicago, Saint Louis and Pudacah Railway Company.	53.50	.....
5598			
1477	Saint Louis Southern Railroad Company...	30.00	.....
1478	Carbondale and Shawneetown Railroad Company.	17.24	.....
1479	South Chicago Railroad Company.....	4.76	.....

DEFENDANTS' EXHIBIT 20-I. 1445

[209] 5599

Remarks.	No.
Subsidiary road, fixed money rental. Leased Oct. 1, 1895, for 99 years; rental, interest on bonds, 2¼ per cent dividends on capital stock, expenses of operation, maintenance, and taxes. The Ill. Cent. R. R. assumes all obligations of this company as lessee to the owners of the several railroads leased to and heretofore operated by it.	1472
Subsidiary road, fixed money rental. Leased June 1, 1883, for 983 years, at a rental including operation, maintenance, and $30,000, the interest on first-mortgage bonds. Entire capital stock owned by St. L., Alt. & T. Haute R. R.	1473 5600
Subsidiary road, contingent money rental. Leased July 1, 1880, for 985 years; annual rental, 30 per cent of the first $125,000 gross earnings and 15 per cent of earnings in excess thereof; minimum guaranteed to be 7 per cent on $220,000 first-mortgage bonds.	1474
Subsidiary road, fixed money rental. Leased Oct. 1, 1866, for 999 years, to St. L., Alt. & T. Haute R. R. Lease assumed by Ill. Cent. R. R. Oct. 1, 1895, for 99 years; rental, 4 8-10 per cent on preferred capital, interest on bonds and sinking-fund charges.	1475
Subsidiary road, contingent money rental. Leased March 1, 1888, for 978 years; annual rental, 30 per cent gross earnings; principal and interest of $1,000,000 5 per cent gold bonds guaranteed.	1476
Subsidiary road, contingent money rental. Leased Dec. 1, 1886, for 980 years; annual rental, 30 per cent of gross earnings, guarateed to be at least $32,000.	1477 5601
Subsidiary road, fixed money rental. Leased Dec. 1, 1886, for 980 years, at $10,000 per annum; included in lease of St. L. Sn. R. R. to St. L., Alt. & T. Haute R. R.	1478
Subsidiary road, contingent money rental. Agreement dated Oct. 20, 1896, for chartered existence; lessee agrees to receive all earnings and out of same pay operating expenses, interest on bonds, taxes, and maintenance.	1479

[Defendants' Exhibit 20-J.]

Extracts from

INTERSTATE COMMERCE COMMISSION REPORT, 1898.

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5602

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REPORT OF THE INTERSTATE COMMERCE COMMISSION.

TABLE I.—CLASSIFICATION OF RAILWAYS AND MILE

[The above running title con.

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
15	**BOSTON AND MAINE RAILROAD COMPANY.**	370.08	1,715.22
16	BOSTON AND LOWELL RAILROAD COMPANY.....	96.95	.....
5605			
17	Central Massachusetts Railroad Company...	98.77	.....
18	*Connecticut and Passumpsic Rivers Railroad Company.*	110.30	.....
19	*Nashua and Lowell Railroad Company*.....	14.50	.....
5606			
20	*Northern Railroad Company of New Hampshire.*	82.91	.....
21	Concord and Claremont Railroad Company	70.90	.....
22	Peterborough and Hillsborough Railroad Company.	18.51	.....
5607			
23	Peterborough Railroad Company.....	10.50	.....

DEFENDANTS' EXHIBIT 20-J. 1449

[129] 5608

STATISTICS OF RAILWAYS IN THE UNITED STATES.

AGE FOR THE YEAR ENDING JUNE 30, 1898.

tinues throughout the report.]

Remarks.	No.
Operating road, independent. "Line operated" includes 38.41 miles not in United States.	15
Subsidiary road, fixed money rental. Leased to Boston & Me. R. R., April 1, 1887, for 99 years; rental, 7 per cent on its capital stock for 10 years, and 8 per cent thereafter, operating expenses and all interest on debt.	16
	5609
Subsidiary road, contingent money rental. Leased to Boston & Lowell R. R., Oct. 1, 1886, for 99 years; rental, 20 per cent of gross earnings up to $1,000,000 and 25 per cent of any excess over that amount, deducting from said 20 per cent 5 per cent on $2,000,000 of bonds; lessee to pay $1,500 for organization expenses, taxes, insurance, and assessments.	17
Subsidiary road, fixed money rental. Leased Jan. 1, 1887, for 99 years, at 5 per cent for 10 years and 6 per cent thereafter on capital stock, interest on bonds, and $3,000 for organization expenses, annually; lease assumed by Boston & Me. R. R.	18
Subsidiary road, contingent money rental. Leased Oct. 1, 1880, for 99 years, to the Boston & Lowell R. R., for $60,000, $4,000 additional in case gross receipts equal or exceed those of 1880, and $1,000 for organization, annually; lease assumed July 12, 1887, by Boston & Me. R. R., which grants in addition to sums stated in lease 1 per cent annually on capital stock.	19
	5610
Subsidiary road, fixed money rental. Leased to Boston & Lowell R. R., Jan. 1, 1890, for 99 years; rental, 5 per cent on the Northern R. R. capital stock for the first 7½ years, and 6 per cent on the same thereafter. Also principal and interest on $500,000 first mortgage bonds of the Conc. & Claremont R. R., and $100,000 first mortgage bonds of the Peterb. & Hillsb. R. R. Lease assigned to Boston & Me. R. R.	20
Subsidiary road, other relation.....	21
....do	22
	5611
Subsidiary road, fixed money rental. Leased April 1, 1893, for 93 years; rental, 4 per cent on capital stock, $300 organization expenses, operating expenses, and taxes. Boston & Me. R. R. operates road by reason of being the lessee of Boston & Lowell R. R.	23

5612 [130]

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	BOSTON AND MAINE RAILROAD COMPANY --Continued.		
	Boston and Lowell Railroad Company—Cont'd.		
24	Stony Brook Railroad Company	13.16	.....
25	Wilton Railroad Company	15.50	.....
5613			
26	CONCORD AND MONTREAL RAILROAD COMPANY	208.83	.....
27	Concord and Portsmouth Railroad Company.	47.50	.....
28	Franklin and Tilton Railroad Company	5.00	.....
5614 29	Lake Shore Railroad Company	17.28	.....
30	Manchester and North Weare Railroad Company.	24.50	.....
31	Nashua, Acton and Boston Railroad Company.	20.83	.....
32	New Boston Railroad Company	5.19	.....
33	Pemigewasset Valley Railroad Company	22.93	.....
5615 34	Profile and Franconia Notch Railroad Company.	13.62	.....
35	Suncook Valley Railroad Company	17.37	.....
36	Suncook Valley Extension Railroad Company	4.46	.....
37	Tilton and Belmont Railroad Company	4.17	.....
38	Whitefield and Jefferson Railroad Company.	33.69	.....

DEFENDANTS' EXHIBIT 20-J. 1451

[131] 5616

Remarks.	No.
Subsidiary road, fixed money rental. Leased to Boston & Lowell R. R., Jan. 1, 1890, for 99 years; rental, 7 per cent on capital stock, taxes, and $500 per annum for organization expenses; lease assumed by Boston & Me. R. R.	24
Subsidiary road, fixed money rental. Leased to Boston & Lowell R. R. for 99 years from Oct., 1883; rental, $16,800, all public taxes, and $150 for organization annually; July 12, 1874, lease assigned to Boston & Me. R. R. without consent of lessor; Dec. 19, 1890, lessor assented to assignment of lease at a semi-annual rental of $10,200.	25
5617	
Subsidiary road, fixed money rental. Leased April 1, 1895, for 91 years; rental, 7 per cent on capital stock, interest on bonds, operating expenses, all taxes and expenses of organization; lessee assumes all traffic balances due from lessor to other railroads.	26
Subsidiary road, fixed money rental. Contract dated May 26, 1862, for 99 years, from Jan. 1, 1862; rental, 7 per cent on capital stock and $500 for organization, annually.	27
Subsidiary road, fixed money rental. Leased Oct. 8, 1895, for 91 years from April 1, 1895; rental, $1 annually, with such additional sums as may be necessary to keep up the organization of lessor. Lease assigned to Boston & Me. R. R.	28
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	29
5618	
Subsidiary road, other relation. Controlled through ownership of capital stock.	30
Subsidiary road, other relation. Controlled through ownership of majority of capital stock. Operated by Boston & Me. R. R. under its lease of Conc. & Montreal R. R.	31
Subsidiary road, fixed money rental. Leased June 19, 1893, for 99 years; rental, $2,800 per annum. Lease assigned to Boston & Me. R. R., June 29, 1895.	32
Subsidiary road, fixed money rental. Leased to Boston, Conc. & Montreal R. R., Feb. 1, 1882, for 100 years; rental, 6 per cent per annum on capital stock, and in addition, $300 annually for organization expenses, and all taxes. Lease assumed by Conc. & Montreal R. R. Lease assigned to Boston & Me. R. R. June 29, 1895.	33
Subsidiary road, other relation. Controlled through ownership of capital stock.	34
5619	
Subsidiary road, fixed money rental. Leased Jan. 1, 1870, for 42 years, to Manch. & Law. and Concord R. Rs. at an annual rental of $14,400 and $300 for organization expenses.	35
Subsidiary road, other relation. Controlled through ownership of capital stock.	36
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	37
Subsidiary road, other relation. Controlled through ownership of capital stock.	38

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
5620		**BOSTON AND MAINE RAILROAD COMPANY** —Continued.		
	39	Connecticut River Railroad Company.....	79.85	.....
	40	Danvers Railroad Company.....	2.26	.....
	41	Eastern Railroad in New Hampshire.....	16.08	.....
	42	Portsmouth and Dover Railroad Company...	10.88	.....
5621				
	43	Kennebunk and Kennebunkport Railroad Company.	4.50	.....
	44	Lowell and Andover Railroad Company.....	8.73	.....
	45	Manchester and Keene Railroad Company.....	29.59	.....
	46	Manchester and Lawrence Railroad Company.	22.39	.....
	47	Newburyport Railroad Company.....	26.98	.....
5622	48	Portland, Saco and Portsmouth Railroad Company.	50.76	.....
	49	Worcester, Nashua and Rochester Railroad Company.	94.48	.....
	50	MAINE CENTRAL RAILROAD COMPANY.....	345.23	814.68
	51	Belfast and Moosehead Lake Railroad Company.	33.13	.....
	52	Dexter and Newport Railroad Company.....	14.23	.....
5623				

Remarks.	No.	
		5624
Subsidiary road, fixed money rental. Leased Jan. 1, 1893, for 99 years; rental, 10 per cent on capital stock, 4 per cent interest on bonds, $2,000 for organization expenses.	39	
Subsidiary road, fixed money rental. Leased May 30, 1853, for 100 years, at $7,500 per annum.	40	
Subsidiary road, fixed money rental. Leased Oct. 1, 1878, for 60 years and 2 months, to En. R. R. of Mass., for $22,500 per annum.	41	
Subsidiary road, fixed money rental. Leased June 1, 1872, for 50 years from Feb., 1874, to En. R. R. in N. H., at a rental of $46,140 per annum, guaranteed by En. R. R. of Mass. Included in lease of En. R. R. in N. H. to Boston & Me. R. R.	42	5625
Subsidiary road, fixed money rental. Leased May 15, 1883, for 99 years, for 4½ per cent dividend per annum.	43	
Subsidiary road, fixed money rental. Leased Dec. 1, 1874, for 99 years, at $52,500 per annum, lessee to pay all public taxes.	44	
Subsidiary road, other relation. Sold under foreclosure; bonds purchased by Boston & Lowell and Conc. & Montreal R. Rs. Operated by Boston & Me. R. R. for account of these companies, each being credited with one-half of all earnings and charged with one-half of all expenses.	45	
Subsidiary road, fixed money rental. Leased Sept. 1, 1887, for 50 years, for 10 per cent per annum on capital stock and $2,000 per annum for organization expenses.	46	
Subsidiary road, fixed money rental. Leased Feb. 21, 1860, for 100 years, for $225,000 cash, and debt due Boston & Me. R. R. of $75,000.	47	5627
Subsidiary road, fixed money rental. Contract dated May 4, 1871, to continue in force until such time as En. R. R. of Mass., by default, shall cease to pay regular semi-annual dividend of 3 per cent; contract assigned to Boston & Me. R. R. on purchase of En. R. R. of Mass., May 8, 1890.	48	
Subsidiary road, fixed money rental. Leased Jan. 1, 1886, for 50 years, for $250,000 per annum and all taxes.	49	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock. "Line operated" includes 52.18 miles not in United States.	50	
Subsidiary road, fixed money rental. Leased May 10, 1871, for 50 years, at an annual rental of $36,000 and taxes.	51	
Subsidiary road, fixed money rental. Leased Dec. 13, 1888, for 999 years, at an annual rental of $18,000 until Nov. 24, 1898, and $6,100 per annum thereafter, and $250 per annum for organization expenses. Lessee also guarantees the principal and interest of bonds of lessor.	52	5628

5628 [132]

No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
	BOSTON AND MAINE RAILROAD COMPANY —Continued.		
	MAINE CENTRAL RAILROAD COMPANY—Continued.		
53	Dexter and Piscataquis Railroad Company...	16.54	.....
54	Eastern Maine Railway Company.....	18.80	.....
55	European and North American Railway Company.	120.34	.....
5629			
56	Knox and Lincoln Railway Company.....	48.39	.....
57	*Portland and Ogdensburg Railway Company.*	109.10	.....
58	Upper Coos Railroad Company.....	55.00	.....
59	Mount Washington Railway Company.....	3.33	3.33
5630			
60	Portland and Rochester Railroad Company....	54.98	53.86
61	*Saint Johnsbury and Lake Champlain Railroad Company.*	131.50	131.50
62	Vermont Valley Railroad Company of 1871....	24.00	24.00
63	Sullivan County Railroad Company.....	26.00	26.00
5631			
64	York Harbor and Beach Railroad Company...	11.17	11.17

DEFENDANTS' EXHIBIT 20-J. 1455

[133] 5632

Remarks.	No.
Subsidiary road, fixed money rental. Leased Dec. 13, 1888, for 999 years; rental, $13,100, and $250 per annum for organization expenses, and taxes.	53
Subsidiary road, fixed money rental. Leased May 1, 1883, for 999 years; annual rental, $9,000, all taxes, and $500 for organization expenses.	54
Subsidiary road, fixed money rental. Leased April 1, 1882, for 999 years; annual rental, $125,000, all taxes, and $500 for expenses of organization; lessee also assumes city of Bangor bonds, amounting to $1,000,000, issued to aid construction of road of lessor.	55
	5633
Subsidiary road, fixed money rental. Leased Aug. 1, 1891, for 999 years, lessee to pay all taxes, interest, and indebtedness of lessor, a dividend of 5 per cent to the stockholders, and $200 for organization expenses.	56
Subsidiary road, fixed money rental. Leased Aug. 20, 1888, for 999 years, lessee to pay all taxes, interest and indebtedness of lessor, and a dividend of 1 per cent per annum for 3 years, and 2 per cent thereafter.	57
Subsidiary road, fixed money rental. Leased May 1, 1890, for 999 years; rental, interest on bonds, 6 per cent on capital stock, and $500 for charter obligations.	58
Operating road, subsidiary, other relation. Cog-wheel road. Operated only during the summer months.	59
	5634
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock; 1.12 miles owned not in operation.	60
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	61
Operating road, subsidiary, contingent money rental. Operated by Boston & Me. R. R., as agent, under its lease of Conn. Riv. R. R., the Vt. Vy. R. R. of 1871 receiving gross earnings less operating expenses, taxes, and interest, with a minimum guarantee of a sufficient sum to pay 4 per cent on entire capital stock.	62
Operating road, subsidiary, contingent money rental. Gross earnings, less operating expenses, interest, and taxes, paid lessor, with a minimum guarantee of a sufficient amount to pay 8 per cent on entire capital stock. Operated by Boston & Me. R. R. as agent, under its lease of Conn. Riv. R. R. Entire capital stock owned by Vt. Vy. R. R. of 1871.	63
	5635
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	64

5636 [134]

No.	Name of Road.	Line Owned. Miles.	Line Operated Miles.
110	**NEW ENGLAND RAILROAD COMPANY**.....	361.39	527.76
111	Milford and Woonsocket Railroad Company...	15.33	.....
112	Milford, Franklin and Providence Railroad Company.	4.70	.....
113	*Norwich and Worcester Railroad Company*....	66.16	.....
5637 114	Providence and Springfield Railroad Company.	27.73	.....
115	Rhode Island and Massachusetts Railroad Company in Massachusetts.	6.62	.....
116	Rhode Island and Massachusetts Railroad Company of Rhode Island.	7.07	.....
117	Rockville Railroad Company.....	5.23	.....
118	Woonsocket and Pascoag Railroad Company..	9.45	.....
119	**NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY.**	415.93	1,464.21
5638 120	Berkshire Railroad Company.....	20.53	.....

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121	*Boston and New York Air Line Railroad Company.*	51.50	.....
122	Colchester Railway Company.....	3.59	.....
5639 123	Chatham Railroad Company.....	7.07	.....
124	Danbury and Norwalk Railroad Company.....	36.20	.....
125	Harlem River and Port Chester Railroad Company.	11.50	.....

DEFENDANTS' EXHIBIT 20-J. 1457

[135] 5640

Remarks.	No.
Operating road, independent.....	110
Subsidiary road, fixed money rental. Leased April 1, 1897, for 5 years; rental, $4,200 per annum and 12½ per cent of the gross earnings of this road and the Milf., Frank. & Prov. R. R. in excess of $40,000 per annum.	111
Subsidiary road, fixed money rental. Leased April 1, 1897, for 5 years; rental, $1,800 and all expenses; also, 12½ per cent of gross receipts in excess of $40,000.	112
Subsidiary road, fixed money rental. Leased Feb. 9, 1869, for 99 years; annual rental, interest on bonds and dividend on preferred stock.	113
	5641
Subsidiary road, fixed money rental. Leased July 1, 1896, for 93 years; rental, 6 per cent on capital stock, interest on bonds, taxes, and assessments.	114
Subsidiary road, fixed money rental. Leased Nov. 21, 1887, for 99 years; annual rental, $10,000 and all taxes, assessments, etc.	115
Subsidiary road, fixed money rental. Leased Oct. 1, 1887, for 99 years; rental, $10,000, all taxes, and assessments.	116
Subsidiary road, fixed money rental. Agreement entered into March 31, 1896; rental, $10 per day. Lease terminable on 30 days' notice by either party.	117
Subsidiary road, other relation. Operated under temporary arrangement. Entire capital stock owned by New England R. R.	118
Operating road, independent. On June 30, 1895, the Nantasket Beach R. R., 6.95 miles, was equipped with electric power.	119
Subsidiary road, contingent money rental. Leased April 1, 1893, for 99 years; rental, 6 per cent on capital stock, all expenses, taxes, and $200 for maintenance of organization.	120 5642

[137]

Subsidiary road, fixed money rental. Leased Oct. 1, 1882, for 99 years; rental, $120,000 per annum, and interest on its bonds and the bonds on Colchester R. R.	121
Subsidiary road, fixed money rental. Leased Oct. 1, 1882, for 999 years. Interest on bonds guaranteed by Boston & N. Y. Air Line R. R.	122
Subsidiary road, contingent money rental. Contract in effect Nov. 22, 1894. Terminable after 30 days' notice by either party. Lessee equips, maintains, and operates railroad, collects all revenue and pays to the lessor 30 per cent of gross receipts.	123 5643
Subsidiary road, fixed money rental. Leased July 1, 1892, for 99 years; rental, 5 per cent dividend on capital stock, interest on bonds, all taxes, and assessments. Of "line owned," 5.95 miles operated by Shepaug, Litchf. & Nn. R. R.	124
Subsidiary road, fixed money rental. Leased Sept. 30, 1873, for 99 years, to N. Y., New Hav. & Hartf. R. R., for interest on bonds. The lessee owns entire capital stock of lessor road.	125

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
		NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY—Continued.		
5644	126	Naugatuck Railroad Company.....	60.99	.....
	127	New Haven and Derby Railroad Company.....	16.69	.....
	128	*New Haven and Northampton Company*.....	126.31	.....
5645	129	Holyoke and Westfield Railroad Company...	10.32	.....
	130	OLD COLONY RAILROAD COMPANY.....	507.45	.....
	131	*Boston and Providence Railroad Company*..	61.19	.....
5646	132	Attleboro Branch Railroad Company.....	4.00	.....
	133	Nantasket Beach Railroad Company.....	6.95	.....
	134	Plymouth and Middleborough Railroad Company.	15.03	.....
	135	Providence, Warren and Bristol Railroad Company.	14.35	.....
5647	136	Pawtuxet Valley Railroad Company.....	5.67	.....
	137	*Providence and Worcester Railroad Company*.	50.41	.....
	138	Stockbridge and Pittsfield Railroad Company..	22.02	.....

DEFENDANTS' EXHIBIT 20-J. 1459

Remarks.	No.	
		5648
Subsidiary road, fixed money rental. Leased April 1, 1887, for 99 years; rental, interest on bonds and 10 per cent per annum on capital stock.	126	
Subsidiary road, fixed money rental. Leased July 1, 1892, for 99 years; rental, 3 per cent dividend on capital stock until June 30, 1895, and 4 per cent thereafter during term of lease, interest on bonds, all taxes, and assessments.	127	
Subsidiary road, fixed money rental. Leased April 1, 1887, for 99 years; rental, 1 per cent on capital stock for 3 years, 2 per cent for the second 3 years, 3 per cent for the third 3 years, and 4 per cent thereafter; interest on bonds and taxes.	128	
		5649
Subsidiary road, contingent money rental. Leased Dec. 3, 1870, in perpetuity; rental, 50 per cent of gross receipts, subject to interest on bonds of $260,000, guaranteed by New Hav. & Northamp. Co. Lease assumed by N. Y., New Hav. & Hartf. R. R., with lease of New Hav. & Northamp. Co	129	
Subsidiary road, fixed money rental. Leased Mar. 1, 1893, for 99 years; rental, 7 per cent on capital stock, interest on funded debt, taxes, and organization expenses. Lease includes its interest as lessee.	130	
Subsidiary road, fixed money rental. Leased April 1, 1888, for 99 years; annual rental, 10 per cent on capital stock, interest on bonds, taxes and assessments, etc. Excludes one-half of 5 miles owned jointly by Prov. & Worc. and Boston & Prov. R. Rs.	131	
Subsidiary road, fixed money rental. Leased Dec. 31, 1870, for 30 years; annual rental, 7 per cent on capital stock. Included in lease to Old Colony R. R.	132	5650
Subsidiary road, fixed money rental. Leased April 1, 1888, for 99 years; lessee guarantees interest on bonds up to $6,250, pays taxes, and has option of purchasing property after 20 years of lease for $150,000. Road equipped with electric power June 30, 1895.	133	
Subsidiary road, contingent money rental. Leased Dec. 4, 1891, for 99 years. No returns to be made to the road for 25 years; thereafter 30 per cent of gross receipts for remainder of lease.	134	
Subsidiary road, fixed money rental. Leased July, 1891, for 95 years and 9 months; rental, 5 per cent on capital stock for the first 10 years and 5 per cent on common and preferred stock for remainder of lease; also pay interest and taxes, and not exceeding $500 per annum for salaries.	135	
Subsidiary road, fixed money rental. Leased July 1, 1884, for 99 years; annual rental, 7 per cent on capital stock, interest on bonds, taxes, assessments, etc. Lease assumed by N. Y., New Hav. & Hartf. R. R. April 1, 1892.	136	5651
Subsidiary road, fixed money rental. Leased July 1, 1892, for 99 years; rental, 10 per cent on capital stock, interest on bonds, and taxes. Excludes one-half of 5 miles owned jointly by Prov. & Worc. and Boston & Prov. R. Rs.	137	
Subsidiary road, fixed money rental. Leased April 1, 1893, for 99 years; rental, 6 per cent on capital stock, all expenses, taxes, and $250 towards organization expenses.	138	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
5652		**NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY—Continued.**		
	139	**West Stockbridge Railroad Company**.....	2.64	.....
	140	**Shepaug, Litchfield and Northern Railroad Company.**	32.28	38.23
	[158]			
5653	495	**NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY.**	819.45	2,409.88
	496	Amsterdam, Chuctanunda and Northern Railroad Company.	1.50	.....
	497	Carthage and Adirondack Railway Company...	46.10	.....
	498	Gouverneur and Oswegatchie Railroad Company.	13.05	.....
	499	Mohawk and Malone Railway Company.....	181.50	.....
5654	500	New Jersey Junction Railroad Company.....	4.85	.....
	501	*New York and Harlem Railroad Company*....	135.90	.....
	502	New York and Putnam Railroad Company.....	57.16	.....
	503	Mahopac Falls Railroad Company.....	4.05	.....
	504	New York Central Niagara River Railroad Company.	2.81	.....
5655	505	*Rome, Watertown and Ogdensburg Railroad Company.*	412.55	.....
	506	Buffalo, Thousand Islands and Portland Railroad Company.	.03	.....
	507	Niagara Falls Branch Railroad Company....	8.57	.....

DEFENDANTS' EXHIBIT 20-J. 1461

Remarks.	No.	
		5656
Subsidiary road, fixed money rental. Leased April 1, 1893, for 99 years; rental, $1,800 per annum and all taxes.	139	
Operating road, subsidiary, other relation. Controlled through ownership of entire capital stock. Of "line operated," 5.95 miles owned by Danb. & Norwalk R. R.	140	
	[159]	
Operating road, independent.....	495	5657
Subsidiary road, other relation. Operated under verbal agreement, Sept. 23, 1879, to deliver and receive freight to and from Kellogg & Miller's Linseed Oil Works. "Line operated" included as sidings in N. Y. Cent. & Hud. Riv. R. R.	496	
Subsidiary road, fixed money rental. Leased Jan. 9, 1893, from May 1, 1893, for term of corporate existence. Lessee guarantees principal and interest on bonds not exceeding $1,600,000.	497	
Subsidiary road, fixed money rental. Leased July 8, 1892, in perpetuity. Lessee guarantees principal and interest on bonds not exceeding $300,000.	498	
Subsidiary road, fixed money rental. Leased May 1, 1893, in perpetuity; rental, 4 per cent interest, and principal guaranteed, on not exceeding $2,500,000 first-mortgage bonds.	499	
Subsidiary road, fixed money rental. Leased July 1, 1886, for 100 years, with privilege of further term of 100 years, at an annual rental of interest at 4 per cent on its outstanding bonds.	500	5658
Subsidiary road, fixed money rental. Leased April 1, 1873 *for* 401 *years; annual rental, interest on funded debt, and* 8 *per cent on capital stock.*	501	
Subsidiary road, fixed money rental. Leased Jan. 30, 1894, in perpetuity; rental, 4 per cent interest on first-mortgage bonds and 5 per cent on $1,200,000 first consolidated mortgage forty-year bonds of N. Y. & Nn. Ry. pending retirement.	502	
Subsidiary road, other relation. Operated since Jan. 1, 1894, as a branch of N. Y. & Putnam R. R. by N. Y. Cent. & Hud. Riv. R. R., lessee. N. Y. & Putnam R. R. owns entire capital stock.	503	
Subsidiary road, other relation.....	504	
Subsidiary road, fixed money rental. Leased Mar. 14, 1891, *in perpetuity. Lessee guarantees principal and interest on bonds,* 5 *per cent on capital stock, and a rental of* $15,000 *per annum until April* 1, 1901, *and thereafter* $7,000 *per annum.*	505	5659
Subsidiary road, other relation. "Line owned" not in operation.	506	
Subsidiary road, fixed money rental. Leased Sept. 21, 1881, in perpetuity, at 7 per cent per annum on capital stock; included in lease to N. Y. Cent. & Hud. Riv. R. R., dated March 14, 1891.	507	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
5660		**NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY—Continued.**		
		Rome, Watertown & Ogdensburg Railroad Company—Continued.		
	508	Oswego and Rome Railroad Company.....	28.49	.....
	509	Utica and Black River Railroad Company...	149.81	.....
5661				
	510	Carthage, Watertown and Sackets Harbor Railroad Company.	28.81	.....
	511	Spuyten Duyvil and Port Morris Railroad Company.	6.04	.....
	512	Tivoli Hollow Railroad Company.....	1.23	.....
	513	Troy and Greenbush Railroad Company.....	6.00	.....
5662	[160]			
	514	Troy Union Railroad Company.....	5.00	.....
	515	West Shore Railroad Company.....	495.20	.....
	516	Beech Creek Railroad Company.....	157.38	202.67
5663				
	517	Buffalo Erie Basin Railroad Company.....	.25	.25
	518	Saint Lawrence and Adirondack Railway Company.	10.20	65.10

DEFENDANTS' EXHIBIT 20-J. 1468

Remarks.	No.
Subsidiary road, fixed money rental. Leased Dec. 2, 1869, in perpetuity; annual rental, interest on first-mortgage bonds and $24,000 cash. Lease amended March 2, 1891; rental, 7 per cent on $350,000 first-mortgage bonds and 5 per cent on $400,000 second-mortgage bonds per annum; included in lease to N. Y. Cent. & Hud. Riv. R. R., dated March 14, 1891.	508
Subsidiary road, fixed money rental. Leased April 14, 1886, for the term of corporate existence; annual rental, 7 per cent on capital stock, interest on bonds, and $4,500 for organization expenses; included in lease to N. Y. Cent. & Hud. Riv. R. R., dated Mar. 14, 1891.	509
Subsidiary road, contingent money rental. Leased for the term of corporate existence for 37½ per cent of gross earnings; included in the lease of Utica & Black Riv. R. R. to Rome, Watert. & Ogdensb. R. R., and to N. Y. Cent. & Hud. Riv. R. R., dated Mar. 14, 1891.	510
Subsidiary road, fixed money rental Leased Nov. 1, 1871, to Dec. 31, 1970; annual rental, 8 per cent on $989,000 capital stock.	511
Subsidiary road, other relation. Operated under contract dated April 3, 1894, with the Van Rensselaer Land Co.	512
Subsidiary road, fixed money rental. Leased Feb. 3, 1851, in perpetuity, at an annual rental of $19,250.	513

5664

5665

[161] 5666

Subsidiary road, other relation. One-half of stock owned by N. Y. Cent. & Hud. Riv. R. R., and one-fourth each by Del. & Hud. Canal Co. and Fitchburg R. R. These companies pay this proportion of maintenance and operation.	514
Subsidiary road, fixed money rental. Leased Jan. 1, 1886, for 475 years, with privilege of further term of 500 years; annual rental, interest at 4 per cent on bonds.	515
Operating road, subsidiary, fixed money rental. Leased Dec. 15, 1890, for 999 years from Oct. 1, 1890. Lessee guarantees principal and interest of $5,000,000 first-mortgage 4 per cent bonds and 4 per cent on $5,000,000, capital stock. Under a subsequent agreement the lessee also guarantees the principal and interest of $1,000,000 second-mortgage bonds bearing 5 per cent interest and 4 per cent on $1,000,000 of additional capital stock.	516
Operating road, subsidiary, other relation. Used as a switching road to facilitate delivery of property at the docks.	517
Operating road, subsidiary, other relation. Operated by N. Y. Cent. & Hud. Riv. R. R., under agreement dated June 1, 1898, by which the operating company acts as agent only of the St. Law. & Adirondack Ry., and does not participate in the profits or share the losses of the line thus operated. "Line operated" includes 54.90 miles in Canada, 13.20 miles of which are leased from Grand Trunk Ry.	518

5667

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
5668		NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY—Continued.		
	519	Wallkill Valley Railroad Company.....	32.88	37.69
	539	PENNSYLVANIA RAILROAD COMPANY.....	535.81	2,839.76
	540	Bald Eagle Valley Railroad Company.....	90.43	.....
	541	Bedford and Bridgeport Railway Company....	49.17	.....
5669				
	542	Bustleton Railroad Company.....	4.16	.....
	[162]			
	543	Cambria and Clearfield Railroad Company....	97.68	.....
5670	544	Columbia and Port Deposit Railway Company.	43.21	.....
	545	Columbus, Kinkora and Springfield Railroad Company.	14.16	.....
	546	Cresson and Irvona Railroad Company.....	29.54	.....
	547	Delaware River Railroad and Bridge Company	10.27	.....
5671				
	548	Downingtown and Lancaster Railroad Company	37.58	.....
	549	Ebensburg and Black Lick Railroad Company.	14.75	.....
	550	Engelside Railroad Company.....	.17	.....

DEFENDANTS' EXHIBIT 20-J. 1465

Remarks.	No.	
		5672
Operating road, subsidiary, other relation. Controlled through ownership of capital stock and bonds held in the interest of W. Shore R. R.	519	
Operating road, independent.....	539	
Subsidiary road, contingent money rental. Leased July 1, 1864 for 99 years; rental, 40 per cent of gross receipts. Lease does not apply to Nittany Brh., which is operated for cost. Net earnings paid to Bald Eagle Vy. R. R.	540	
Subsidiary road, contingent money rental. Operated under resolutions of the directors of both companies, adopted April 29 and May 27, 1891, and this arrangement is terminable at the option of either party on 30 days' notice; net earnings payable to this company.	541	5673
Subsidiary road, contingent money rental. Operated under resolutions of the directors of both companies, which took effect Jan. 1, 1891, and this arrangement is terminable at the option of either party on 30 days' notice; net earnings payable to this company.	542	
		[163]
Subsidiary road, contingent money rental. Operated under resolutions of boards of directors of both companies, in effect Sept. 24, 1888, this arrangement terminable at any time on 30 days' notice; net earnings payable to this company.	543	
Subsidiary road, contingent money rental. Agreement dated July 1, 1890, terminable at any time on 30 days' notice; rental, net earnings.	544	5674
Subsidiary road, contingent money rental. Lease dated Sept. 23, 1889; runs from year to year unless terminated by 6 months' notice. Lessee collects all earnings, pays all expenses for operating the road and maintenance of way, and taxes; balance, if any, is paid to lessor.	545	
Subsidiary road, contingent money rental. Operated under resolutions of boards of directors of both companies, in effect June 28 and July 6, 1894, respectively; this arrangement terminable at any time by either party on 30 days' notice; rental, net earnings.	546	
Subsidiary road, contingent money rental. Operated under resolutions of the directors of both companies, adopted by Del. Riv. R. R. & Brg. Co., April 17, 1896, and by Pennsylvania R. R., April 22, 1896. Rental, net earnings. Terminable on 30 days' notice from either party.	547	5675
Subsidiary road, contingent money rental. Operated under resolutions of board of directors of each company, in effect Aug. 1, 1888; this arrangement terminable at any time on 30 days' notice; net earnings paid to this company.	548	
Subsidiary road, contingent money rental. Operated under resolutions of boards of directors of both companies, in effect Nov. 27 and Dec. 12, 1894, respectively; this arrangement terminable on 30 days' notice from either party; rental, net earnings.	549	
Subsidiary road. "Operated by Pennsylvania R. R. as a siding," pending execution of a formal contract.	550	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
		PENNSYLVANIA RAILROAD COMPANY—Continued.		
5676	551	Fair Hill Railroad Company	.78	.....
	552	Freehold and Jamesburg Agricultural Railroad Company.	27.54	.....
	553	Harrisburg, Portsmouth, Mount Joy and Lancaster Railroad Company.	52.99	.....
	554	Johnsonburg Railroad Company	25.70	.....
5677	555	Kensington and Tacony Railroad Company	6.89	.....
	556	Lewisburg and Tyrone Railroad Company	85.12	.....
	557	Millstone and New Brunswick Railroad Company.	6.64	.....
	558	Nescopec Railroad Company	11.96	.....
5678	559	New York Bay Railroad Company	9.20	.....
	560	North and West Branch Railway Company	47.82	.....
	561	Pennsylvania Schuylkill Valley Railroad Company.	130.22	.....
	562	Perth Amboy and Woodbridge Railroad Company.	6.40	.....
	563	Philadelphia and Beach Haven Railroad Company.	12.09	.....
5679	564	**Philadelphia and Erie Railroad Company**	301.62	.....
	565	Philadelphia and Long Branch Railroad Company.	49.07	.....
	566	Philadelphia, Bustleton and Trenton Railroad Company.	3.55	.....

Remarks.	No.	
		5680
Subsidiary road, fixed money rental. Leased Feb. 1, 1896, for 20 years; rental, 4 per cent on capital stock, 4 per cent on outstanding debenture certificate, and taxes.	551	
Subsidiary road, contingent money rental. Contract dated July 16, 1879, terminable on 30 days' notice; rental, net earnings.	552	
Subsidiary road, fixed money rental. Leased Jan. 1, 1861, for 999 years; annual rental, 7 per cent on capital stock, 4 per cent interest on bonds, all taxes levied on stock and bonds, and organization expenses up to $2,000.	553	
Subsidiary road, contingent money rental. Leased July 8, 1889, for 50 years; rental, net earnings. Lessee reserves the right to cancel lease, under certain conditions, at the expiration of 5 years from date of lease.	554	
		5681
Subsidiary road, fixed money rental. Leased May 1, 1895, for 20 years; rental, 4 per cent on capital stock, and all taxes.	555	
Subsidiary road, contingent money rental. Leased Jan. 1, 1880, for 99 years; rental, net earnings. "Line owned" includes .24 mile over the Lewisburg Bridge.	556	
Subsidiary road, contingent money rental. Operated by Pennsylvania R. R. since Jan. 1, 1897, by virtue of certain resolutions adopted by board of directors of each company; rental, net earnings; terminable at option of either party on 30 days' notice.	557	
Subsidiary road, contingent money rental. Operated under resolutions of board of directors of each company, in effect April 25, 1887, this arrangement terminable at any time on 30 days' notice; net earnings payable to this company.	558	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	559	5682
Subsidiary road, contingent money rental. Agreement dated Nov. 23, 1881, to continue until Sept. 1, 1901; net earnings to be paid this company.	560	
Subsidiary road, contingent money rental. Leased Dec. 1, 1885, for 50 years; rental, net earnings.	561	
Subsidiary road, contingent money rental. Operated as of date Jan. 1, 1889, by virtue of resolutions adopted May 6, 1889, by stockholders of this company, and June 26, 1889, by directors of Pennsylvania R. R.; net earnings paid to this company. This arrangement terminable at option of either party on 30 days' notice.	562	
Subsidiary road, contingent money rental. Operated by Pennsylvania R. R., as agent, under resolution adopted Jan. 1, 1894; rental, net earnings. Terminable at option of either party on 30 days' notice.	563	
Subsidiary road, contingent money rental. Lease executed Jan. 6, 1862; modified Jan. 1, 1870, for 999 years from Jan. 1, 1862; surplus of gross receipts, after paying operating expenses, etc., to be applied to organization expenses and interest on bonds; any balance to be paid lessor.	564	5683
Subsidiary road, contingent money rental. Leased Jan. 1, 1884, for 50 years; any surplus of earnings after paying operating and other expenses to be paid lessor.	565	
Subsidiary road, other relation. Used by Pennsylvania R. R. as a siding. Formal lease not executed.	566	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
5684		**PENNSYLVANIA RAILROAD COMPANY—Continued.**		
	567	Philadelphia, Germantown and Chestnut Hill Railroad Company.	13.87	.....
	568	Pittsburgh, Virginia and Charleston Railway Company.	77.33	.....
	569	Pomeroy and Newark Railroad Company.....	26.70	.....
	[164]			
5685	570	Ridgway and Clearfield Railroad Company....	27.23	.....
	571	Riverfront Railroad Company.....	4.62	.....
	572	Scalp Level Railroad Company.....	12.75	.....
	573	South Fork Railroad Company.....	12.17	.....
	574	Southwest Pennsylvania Railway Company....	112.12	.....
5686	575	Sunbury and Lewistown Railway Company....	55.88	.....
	576	Sunbury, Hazleton and Wilkesbarre Railway Company.	43.44	.....
	577	Susquehanna and Clearfield Railroad Company	24.89	.....
	578	Tipton Railroad Company.....	4.44	.....
	579	Trenton Delaware Bridge Company.....	.19	.....
5687	580	Tyrone and Clearfield Railway Company.....	134.43	.....
	581	United New Jersey Railroad and Canal Company.	144.81	.....
	582	Belvidere Delaware Railroad Company.....	80.83	.....

DEFENDANTS' EXHIBIT 20-J. 1469

Remarks.	No.
Subsidiary road, contingent money rental. Leased May 1, 1883, for 30 years; rental, net earnings.	567
Subsidiary road, contingent money rental. Leased April 1, 1895, for 30 years; rental, net earnings.	568
Subsidiary road, contingent money rental. Leased Mar. 1, 1880, for 99 years; rental, net earnings.	569

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Subsidiary road, contingent money rental. Lease dated Nov. 1, 1894, for 50 years; rental, 5 per cent on bonded debt, and taxes, and 6 per cent on capital stock, if earned.	570
Subsidiary road, fixed money rental. Leased May 1, 1882, for 50 years; rental, $28,000 per annum and taxes.	571
Subsidiary road, contingent money rental. Operated by Pennsylvania R. R., as agent, under resolution of board of directors, in effect Aug. 27, 1897, this arrangement terminable by either company on 30 days' notice; net earnings paid to this company.	572
Subsidiary road, contingent money rental. Agreement dated Aug. 15, 1891, terminable at the option of either party on 30 days' notice, in writing; net earnings paid to this company.	573
Subsidiary road, contingent money rental. Leased April 1, 1873, for 5 years; extended by agreement March 9, 1878, for one year, and from year to year thereafter, terminable at the end of any year after 6 months' notice by either party; net earnings paid to this company.	574
Subsidiary road, contingent money rental. Leased Oct. 1, 1896, for 79 years; operated for cost and one-half of net earnings after payment of interest on outstanding bonds.	575
Subsidiary road, contingent money rental. Leased May 1, 1878, for 50 years; net earnings paid to this company.	576
Subsidiary road, contingent money rental. Operated under resolutions of board of directors of each company, in effect Sept. 10, 1884, this arrangement terminable at the option of either party on 30 days' notice; net earnings paid to this company.	577
Subsidiary road, contingent money rental. Agreement dated May 1, 1886, terminable at the option of either party on 30 days' notice; net earnings paid to this company.	578
Subsidiary road, fixed money rental. Trackage contract dated June 30, 1877, for 993 years, 5 months, and 10 days; annual rental, $32,000 and taxes.	579
Subsidiary road, fixed money rental. Leased Jan. 1, 1882, for 50 years; lessee to pay annually all taxes, interest on bonds, sinking fund, and 5 per cent on capital stock.	580
Subsidiary road, fixed money rental. Leased June 30, 1871, for 999 years; annual rental, 10 per cent on capital stock, taxes, interest on funded and other debts, damages, losses, etc.	581
Subsidiary road, contingent money rental. Leased Jan. 1, 1876, to June 30, 2870; assigned to Pennsylvania R. R., March 7, 1876; revenue to be applied, first, to operations; second, to interest on bonds; any balance to be paid lessor.	582

5688

5689

5690

5691

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
5692		**PENNSYLVANIA RAILROAD COMPANY—Continued.**		
	583	Camden and Burlington County Railroad Company.	29.61	.....
	584	Mount Holly, Lumberton and Medford Railroad Company.	5.95	.....
5693	585	Philadelphia and Trenton Railroad Company	26.50	.....
	586	Connecting Railway Company.....	6.75	.....
	587	Rocky Hill Railroad and Transportation Company.	2.38	.....
5694	588	Vincentown Branch Railroad Company.....	2.84	.....
	589	West Chester Railroad Company.....	5.22	.....
	590	Western Pennsylvania Railroad Company.....	137.44	.....
	591	York, Hanover and Frederick Railroad Company.	55.65	.....
5695	592	Allegheny Valley Railway Company.....	260.30	260.30
	593	Cumberland Valley Railroad Company.....	82.18	162.82
	594	Cumberland Valley and Martinsburg Railroad Company.	33.65	.....
	595	Dillsburg and Mechanicsburg Railroad Company.	7.70	.....

DEFENDANTS' EXHIBIT 20-J. 1471

Remarks.	No.	
		5696
Subsidiary road, fixed money rental. Leased April 24, 1868, for the term of corporate existence, to Camden & Amb. R. R., one of the constituent companies of United N. J. R. R. & Canal Co.; annual rental, 6 per cent on capital stock and bonds and $500 for organization expenses; lease assigned to Pennsylvania R. R., June 30, 1871.	583	
Subsidiary road, fixed money rental. Leased May 14, 1869, during corporate existence; rental, 6 per cent on capital stock, interest on bonds, and taxes; lease assigned to Pennsylvania R. R. June 15, 1871.	584	
		5697
Subsidiary road, fixed money rental. Leased June 30, 1871, from United N. J. R. R. & Canal Co. for 999 years; annual rental, 10 per cent on capital stock (excluding 7,650 shares owned by United N. J. R. R. & Canal Co.), taxes, assessments, etc.	585	
Subsidiary road, fixed money rental. Leased Feb. 18, 1863, for 999 years; annual rental, 6 per cent on capital stock, 6 per cent on bonds, and taxes; included in lease to Pennsylvania R. R.	586	
Subsidiary road, fixed money rental. Leased Nov. 22, 1869, for the term of charter, to Camden & Amb. R. R., one of the constituent companies of United N. J. R. R. & Canal Co., at 6 per cent per annum on capital stock; lease assigned to Pennsylvania R. R. Nov. 30, 1871.	587	
Subsidiary road, fixed money rental. Leased April 7, 1868, during corporate existence; annual rental, 6 per cent on capital stock owned by individuals, and bonds, which is $15,000 each; of capital stock, $10,000 is owned by lessee and nothing is paid on it. Lease assigned to Pennsylvania R. R. June 30, 1871.	588	5698
Subsidiary road, fixed money rental. Leased Aug. 6, 1879, for 99 years; annual rental, 5 per cent on capital stock, interest on bonds, and taxes.	589	
Subsidiary road, fixed money rental. Leased Jan. 1, 1897, for 50 years; rental, interest on bonds, taxes on capital stock and bonds, organization expenses not exceeding $1,000 per annum, and 6 per cent dividend on capital stock, if earned.	590	
Subsidiary road, contingent money rental. Operated under resolutions of boards of directors of both companies, adopted March 2 and 10, 1897, this arrangement terminable at option of either party on 30 days' notice; rental, net earnings.	591	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	592	5699
....do	593	
Subsidiary road, contingent money rental. Leased March 17, 1888, for 99 years; receipts from operations to be applied to maintain the road, pay operating expenses, taxes, insurance, etc.; balance to be paid lessor.	594	
Subsidiary road, contingent money rental. Leased Jan. 1, 1873, for 99 years; terms of lease same as those of Cumb. Vy. & Martinsb. R. R.	595	

5700 [166]

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	PENNSYLVANIA RAILROAD COMPANY—Continued.		
	Cumberland Valley Railroad Company—Cont'd.		
596	Mont Alto Railroad Company.....	17.89	.....
597	Southern Pennsylvania Railway and Mining Company.	21.40	.....
598	Junction Railroad Company (of Philadelphia).	3.62	3.62
5701			
599	**Northern Central Railway Company**.....	148.24	379.51
600	Elmira and Lake Ontario Railroad Company	99.61	.....
601	Elmira and Williamsport Railroad Company	75.50	.....
5702 602	Lykens Valley Railroad and Coal Company.	19.70	.....
603	Shamokin Valley and Pottsville Railroad Company.	36.87	.....
604	Baltimore and Sparrows Point Railroad Company.	5.43	5.43
605	Union Railroad Company (of Baltimore)....	9.65	9.65
606	*Philadelphia, Wilmington and Baltimore Railroad Company.*	117.38	683.89
607	*Baltimore and Potomac Railroad Company.*	93.20	.....
5703 608	Catonsville Short Line Railroad Company.	3.80	.....
609	Cambridge and Seaford Railroad Company..	27.24	.....
610	Delaware Railroad Company.....	116.94	.....

DEFENDANTS' EXHIBIT 20-J.

[167] 5704

Remarks.	No.	
Subsidiary road, contingent money rental. Leased Jan. 1, 1897, for 25 years; terms of lease same as those of Cumb. Vy. & Martinsb. R. R.	596	
Subsidiary road, contingent money rental. Leased March 1, 1870, for 199 years; terms of lease same as those of Cumb. Vy. & Martinsb. R. R.	597	
Operating road, subsidiary, other relation. The Pennsylvania and Phila., Wilm. & Balt. R. Rs. and the Phila. & Read. Ry. use the company's tracks, paying a certain rate per car per mile, the Junction R. R. paying the company moving the traffic for the use of the motive power.	598	5705
Operating road, subsidiary, other relation. Controlling interest in capital stock owned by Pennsylvania R. R.	599	
Subsidiary road, contingent money rental. Contract terminable at the option of either party on 30 days' notice; net receipts after paying charges for use of equipment paid to this company. Contract took effect Jan. 1, 1887. Controlled through ownership of entire capital stock by Nn. Cent. Ry.	600	
Subsidiary road, fixed money rental. Leased May 1, 1863, for 999 years; annual rental, 7 per cent on preferred and 5 per cent on common stock, interest on bonds, and $3,000 for organization expenses.	601	
Subsidiary road, fixed money rental. Leased April 20, 1896; rental, $35,000 per annum. Terminable on 60 days' written notice by either party.	602	5706
Subsidiary road, fixed money rental. Leased Feb. 27, 1863, for 999 years; annual rental, 7 per cent interest on bonds, 6 per cent on capital stock, and taxes.	603	
Operating road, subsidiary, other relation.....	604	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	605	
....*do*.....	606	
Subsidiary road, contingent money rental. Contract took effect Nov. 1, 1891, and is terminable at the option of either company upon giving 30 days' notice in writing; net earnings paid to this company.	607	
Subsidiary road, contingent money rental. Leased to Phila., Wilm. & Balt. R. R., with Balt. & Pot. R. R., Dec. 6, 1893, for 99 years; lease terminated Oct. 31, 1897, and line is now being operated for net earnings pending the execution of an agreement relative to future operation.	608	5707
Subsidiary road, contingent money rental. Agreement dated May 16, 1883; took effect June 1, 1883; terminable on 30 days' notice; net earnings paid to this company.	609	
Subsidiary road, contingent money rental. Leased May 1, 1897; terminable by six months' written notice from either party; rental, net earnings.	610	

	No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
5708		**PENNSYLVANIA RAILROAD COMPANY**—Continued.		
		Philadelphia, Wilmington and Baltimore Railroad Company—Continued.		
	611	Delaware and Chesapeake Railway Company	54.30	.....
	612	Delaware, Maryland and Virginia Railroad Company.	97.53	.....
	613	Philadelphia and Baltimore Central Railroad Company.	73.68	.....
5709	614	Chester Creek Railroad Company.....	6.69	.....
	615	Philadelphia and Delaware County Railroad Company.	9.93	.....
	616	Queen Anne's and Kent Railroad Company..	25.90	.....
	617	South Chester Railroad Company.....	4.48	.....
	618	Washington Southern Railway Company....	37.85	.....
5710	619	West Jersey and Seashore Railroad Company.	309.65	310.55
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	495	**NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY.**	.....	.....
	896	Dunkirk, Allegheny Valley and Pittsburgh Railroad Company.	90.60	90.60
	897	Titusville, Cambridge and Lake Erie Railroad Company.	1.00	1.00
5711	898	LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY.	862.15	1,415.63
	899	Detroit and Chicago Railroad Company.....	25.56	.....
	900	Detroit, Hillsdale and Southwestern Railroad Company.	64.76	.....

DEFENDANTS' EXHIBIT 20-J. 1475

Remarks.	No.	
		5712
Subsidiary road, contingent money rental. Agreement took effect July 1, 1882; terminable on 30 days' written notice by either party; net earnings paid to this company.	611	
Subsidiary road, contingent money rental. Agreement dated Aug. 1, 1885; took effect July 1, 1885; terminable on 30 days' notice; net earnings paid to this company.	612	
Subsidiary road, contingent money rental. Agreement dated Aug. 1, 1881; took effect Sept. 1, 1881; terminable on 6 months' notice; net earnings paid to this company.	613	
Subsidiary road, fixed money rental. Leased Jan. 13, 1868, for 999 years; rental, 6 per cent on $185,000 capital stock, interest on bonds, and taxes.	614	5713
Subsidiary road, contingent money rental. Operated under resolutions of boards of directors of both companies, adopted, respectively, June 26 and 29, 1894, this arrangement terminable on 30 days' notice from either party; rental, net earnings.	615	
Subsidiary road, contingent money rental. Operated under resolutions adopted by both companies, convened April 29, 1896, in effect May 1, 1896, this arrangement terminable on 30 days' notice from either party; rental, net earnings.	616	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	617	
Subsidiary road, contingent money rental. Agreement went into effect Nov. 1, 1891; terminable at option of either party on 30 days' notice; rental, net earnings.	618	
Operating road, subsidiary, other relation.....	619	5714

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Operating road, independent.....	495	
Operating road, subsidiary, fixed money rental. Leased Dec. 1, 1872, for 501 years; annual rental, 7 per cent interest on bonds, 1½ per cent dividends on capital stock.	896	
Operating road, subsidiary. Used as a siding by Dunk., Allegh. Vy. & Pittsb. R. R.	897	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock. "Line owned" excludes 7.84 miles leased to N. Y., Chic. & St. L. R. R. for 99 years, at a rental of $5,000, which, with .87 mile not used for traffic purposes, once formed a part of main line between Silver Creek and Dunkirk, N. Y. "Line operated" includes 7.20 miles leased from Battle Ck. & Sturgis Ry.	898	5715
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	899	
Subsidiary road, fixed money rental. Leased Sept. 5, 1881, in perpetuity; annual rental, $54,000, and $500 for organization expenses.	900	

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY—Continued.		
	LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY—Continued.		
901	Detroit, Monroe and Toledo Railroad Company.	54.75	.....
902	Elkhart and Western Railroad Company....	11.72	.....
903	Erie and Kalamazoo Railroad Company.....	.....	.....
904	Fort Wayne and Jackson Railroad Company	97.83	.....
905	Jamestown and Franklin Railroad Company	50.91	.....
906	Kalamazoo and White Pigeon Railroad Company.	36.54	.....
907	Kalamazoo, Allegan and Grand Rapids Railroad Company.	58.45	.....
908	Mahoning Coal Railroad Company.....	50.20	.....
909	Northern Central Michigan Railroad Company.	61.36	.....
910	Oberlin and La Grange Railway Company...	4.00	.....
911	Sturgis, Goshen and Saint Louis Railroad Company...	28.28	.....

5716 5717 5718 5719

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DEFENDANTS' EXHIBIT 20-J. 1477

Remarks.	No.	
		5720
Subsidiary road, contingent money rental. Leased July 1, 1856, in perpetuity. Lessee pays operating expenses and all fixed charges, and receives gross surplus from operation. Capital stock, except one share, owned by L. Shore & Mich. Sn. Ry.	901	
Subsidiary road, other relation. Controlled through ownership of entire capital stock and bonds.	902	
Subsidiary road, other relation. Included in branches of L. Shore & Mich. Sn. Ry.	903	
Subsidiary road, contingent money rental. Leased Aug. 24, 1882, in perpetuity; annual rental, 5½ per cent on preferred stock, $1,500 for organization expenses, taxes, assessments, etc. Should net earnings in any year, after Aug. 24, 1887, exceed 8 per cent on preferred stock, lessee will pay amount of such excess up to 2 per cent on common stock.	904	5721
Subsidiary road, contingent money rental. Leased Jan. 1, 1895, for 5 years; annual rental, 30 per cent of gross earnings, and all taxes except those imposed by United States or State of Pennsylvania upon tonnage, dividends, or interest on bonds.	905	
Subsidiary road, contingent money rental. Leased May 1, 1897, in perpetuity. Lessee pays operating expenses and all fixed charges, and receives gross surplus from operation. Capital stock owned by lessee.	906	
Subsidiary road, fixed money rental. Leased Sept. 21, 1869, for 999 years; annual rental, 6 per cent on capital stock, interest on bonds.	907	
Subsidiary road, contingent money rental. Leased July 1, 1884, in perpetuity; annual rental, 40 per cent of gross earnings; if that is insufficient to pay interest on bonds, 5 per cent on preferred stock, and $1,000 for corporate expenses, lessee will advance necessary amount and charge same against future rental.	908	5722
Subsidiary road, contingent money rental. Leased May 1, 1897, in perpetuity. Lessee pays operating expenses and all fixed charges, and receives gross surplus from operation. Capital stock owned by lessee.	909	

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Subsidiary road, contingent money rental. Contract dated March 29, 1894, provides that the lessee furnish rails and fastenings used in constructing road, for which it shall receive a mortgage for the amount payable in 10 years. For train service the lessee shall receive pay at the rate of $5 for each round trip of a train, and collects $1 per car for Oberlin & La Grange Ry. on each car of freight received. From any surplus over $5 per round trip is deducted the interest on mortgage at rate of 6 per cent and balance paid to Oberlin & La Grange Ry.	910	5723
Subsidiary road, other relation. Controlled through ownership of capital stock and bonds.	911	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
5724		**NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY—Continued.**		
		LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY—Continued.		
	912	Swan Creek Railway Company	1.31	.....
	913	Toledo and Ohio Northern Railway Company	4.20	.....
	914	New York, Chicago and Saint Louis Railroad Company.	504.67	532.97
	915	Chicago and State Line Railroad Company	9.96	.....
5725				
	916	Pittsburgh and Lake Erie Railroad Company	71.31	177.19
	917	Beaver and Ellwood Railroad Company	5.01	.....
	918	Mahoning State Line Railroad Company	3.16	.....
	919	Pittsburgh, McKeesport and Youghiogheny Railroad Company.	97.89	.....
	920	Youghiogheny Northern Railroad Company.	1.92	.....
5726	921	Thompson Run Coal and Railroad Company	5.00	.....
	922	Ellwood Connecting Railroad Company	.68	.68
	923	MICHIGAN CENTRAL RAILROAD COMPANY	270.07	1,657.59
	924	Battle Creek and Sturgis Railway Company.	41.09	.....
	925	Bay City and Battle Creek Railway Company	18.00	.....
	926	Buchanan and Saint Joseph River Railroad Company.	1.87	.....
5727	927	Canada Southern Bridge Company	3.66	.....

DEFENDANTS' EXHIBIT 20-J. 1479

Remarks.	No.	
		5728
Subsidiary road, other relation. Mileage included in sidings of L. Shore & Mich Sn. Ry., and is used exclusively for switching purposes; entire capital stock owned by that company.	912	
Subsidiary road. "Line owned" not in operation.....	913	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock. "Line operated" includes 7.84 miles owned by L. Shore & Mich. Sn. Ry.	914	
Subsidiary road, fixed money rental. Leased in perpetuity to Ft. Way. & Ill. R. R annual rental, $100, organization expenses up to $500, all taxes, assessments, etc. Ft. Way. & Ill. R. R. merged into N. Y., Chic. & St. L. R. R., Aug. 16, 1887.	915	5729
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	916	
Subsidiary road, contingent money rental. Leased Aug. 1, 1895, for one year, with option of continuation at the end of each year indefinitely; rental, 1-3 of first $900 of monthly gross earnings and ¼ of all monthly gross earnings in excess thereof.	917	
Subsidiary road, other relation. Leased Nov. 26, 1895, for 99 years; rental, annual taxes, maintenance, and assessments; entire capital stock owned by lessee company.	918	
Subsidiary road, fixed money rental. Leased Jan. 1, 1894, for 999 years; Pittsb. & L. Erie R. R. and L. Shore & Mich. Sn. Ry. guarantee 6 per cent on capital stock and interest on bonds.	919	
Subsidiary road, other relation. Leased for 50 years from April 1, 1883; rental depends upon a provisional agreement.	920	5730
Subsidiary road, other relation.....	921	
Operating road, subsidiary, other relation. Controlled through ownership of entire capital stock.	922	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock. Of "line operated" 380.04 miles not in United States.	923	
Subsidiary road, fixed money rental. Rental, interest on bonds, operating expenses, and taxes. The Mich. Cent. R. R. also owns a majority of capital stock. Of "line owned," 7.20 miles operated by L. Shore & Mich Sn. Ry. with Sturgis, Goshen & St. L. Ry.	924	
Subsidiary road, fixed money rental. Agreement dated Feb. 1, 1890, in perpetuity; rental, interest on bonds, and taxes.	925	
Subsidiary road, other relation. Used as a spur track by Mich. Cent. R. R., leading to manufacturing institution.	926	
Subsidiary road, contingent money rental. Operated under agreement dated Dec. 12, 1882, for 21 years, with Can. Sn. Ry., which owns substantially all its capital stock and bonds, the Bridge Company being credited with its earnings and charged with its expenses.	927	5731

	No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
5732		**NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY—Continued.**		
		Michigan Central Railroad Company—Cont'd.		
	928	Detroit and Bay City Railroad Company.....	155.00	.....
5733	929	Detroit, Delray and Dearborn Railroad Company.	4.84	.....
	930	East Chicago Belt Railroad Company.....	5.44	.....
	931	Grand River Valley Railroad Company.....	83.79	.....
	932	Grayling, Twin Lakes and Northeastern Railroad Company.	27.80	.....
	933	Jackson, Lansing and Saginaw Railroad Company.	295.10	.....
5734	[188]			
	934	Joliet and Northern Indiana Railroad Company.	45.00	.....
	935	Kalamazoo and South Haven Railroad Company.	39.50	.....
	936	Lansing Transit Railway Company.....	.77	.....
	937	Michigan Air Line Railroad Company.....	115.16	.....
5735	938	Michigan Midland and Canada Railroad Company.	14.68	.....
	939	Saginaw Bay and Northwestern Railroad Company.	82.63	.....
	940	Terminal Railroad Company.....	10.16	.....

DEFENDANTS' EXHIBIT 20-J. 1481

Remarks.	No.	
Subsidiary road, other relation. Under a contract dated March 10, 1881, the Det. & Bay Cy. R. R. gave entire possession and control of its railroad and property to the Mich. Cent. R. R., which agreed to operate the same during its corporate existence. By this contract the lessee was authorized to issue and did issue its bonds to the amount of $4,000,000, bearing interest at 5 per cent, and maturing 50 years from March 1, 1881. To secure the payment of said bonds both said companies joined in the execution of a mortgage upon all the railroad property and franchises of the Det. & Bay Cy. R. R.	928	5736
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	929	5737
Subsidiary road, other relation. Controlled through ownership of capital stock.	930	
Subsidiary road, fixed money rental. Leased Jan. 20, 1870, to continue during corporate existence of lessor; lessee guarantees all obligations and 5 per cent per annum on stock.	931	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	932	
Subsidiary road, fixed money rental. Leased Sept. 1, 1871, during corporate existence of the two companies; lessee pays principal of and interest on bonds of lessor and a dividend of 3½ per cent per annum, also $750 per annum for organization purposes.	933	
[189]		5738
Subsidiary road, fixed money rental. Operated under contracts executed Sept. 7 and 26, 1854; on completion, turned over to Mich. Cent. R. R. to operate forever at an annual rental of $89,000.	934	
Subsidiary road, fixed money rental. Leased July 1, 1870, in perpetuity; lessee to pay taxes and interest on bonds.	935	
Subsidiary road, fixed money rental. Leased Feb. 18, 1888, for 99 years from Sept. 15, 1887; rental, $1 per annum. Used for switching purposes by Mich. Cent. R. R.	936	
Subsidiary road, fixed money rental. Leased Jan. 1, 1870, for 999 years, lessee guaranteeing principal of and interest on bonds.	937	
Subsidiary road, other relation. Operated under agreement dated Dec. 12, 1882, for 21 years, with Can. Sn. Ry., which owns a majority of its capital stock and all its bonds, Mich. Midl. & Can. R. R. being credited with its earnings and charged with its expenses.	938	5739
Subsidiary road, other relation. Controlled through ownership of majority of capital stock.	939	
Subsidiary road, other relation. Controlled through ownership of capital stock.	940	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
5740		**NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY—Continued.**		
		Michigan Central Railroad Company—Continued.		
	941	Toledo, Canada Southern and Detroit Railway Company.	58.92	.....
	949	**PENNSYLVANIA COMPANY**.....	.....	1,225.17
	950	Calumet River Railway Company.....	4.43	.....
5741	951	Cleveland and Pittsburgh Railroad Company..	198.34	.....
	952	Erie and Pittsburgh Railroad Company.....	84.47	.....
	953	Indianapolis and Vincennes Railroad Company	133.11	.....
5742	954	Marginal Railroad Company.....	2.96	.....
	955	Pittsburgh, Fort Wayne and Chicago Railway Company.	469.89	.....
	956	Massillon and Cleveland Railroad Company.	12.23	.....
	957	New Castle and Beaver Valley Railroad Company.	14.98	.....
5743				
	958	Pittsburgh, Ohio Valley and Cincinnati Railroad Company.	15.27	.....
	959	Pittsburgh, Youngstown and Ashtabula Railroad Company.	125.09	.....

Remarks.	No.	
		5744
Subsidiary road, other relation. Operated under agreement dated Dec. 12, 1882, for 21 years, with the Can. Sn. Ry., which owns substantially all its capital stock and bonds, Tol., Can. Sn. & Det. Ry. being credited with its earnings and charged with its expenses.	941	
Operating road, independent.....	949	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	950	
Subsidiary road, fixed money rental. Leased to Pennsylvania R. R., Dec. 1, 1871, for 999 years; lessee guarantees principal, interest, and sinking-fund charges on bonds, 7 per cent on capital stock, $10,000 for organization annually, taxes, assessments, etc.; lease transferred to Pennsylvania Co., April 14, 1873.	951	5745
Subsidiary road, fixed money rental. Leased to Pennsylvania R. R., Mar. 1, 1870, for 999 years; annual rental, 7 per cent on capital stock and bonds, $2,500 for organization expenses, and taxes; lease transferred to Pennsylvania Co., April 1, 1871.	952	
Subsidiary road, contingent money rental. Leased Jan. 1, 1879, for 99 years; lessee agrees to operate and maintain road for cost of such service; net earnings paid to lessor to be applied to payment of interest on bonds. Majority of capital stock owned by lessee.	953	
Subsidiary road, other relation. Branch line connecting certain industries in Beaver Falls, Pa., with main line of Pittsb., Ft. Way. & Chic. Ry., and is operated by Pennsylvania Co. in connection with that road. It is not an organized company.	954	5746
Subsidiary road, fixed money rental. Leased July 1, 1869, for 999 years, to Pennsylvania R. R.; annual rental, interest on bonds, sinking fund, 7 per cent on capital stock, organization expenses, and taxes. Pennsylvania Co. acts as agent or operator for lessee company.	955	
Subsidiary road, contingent money rental. Leased May 22, 1869, for 99 years, at a rental of 40 per cent of gross earnings, minimum being fixed at $20,000 a year; lease transferred to Pennsylvania Co., July 1, 1869.	956	
Subsidiary road, contingent money rental. Leased July 1, 1865, for 99 years, at a rental of 40 per cent of gross earnings; lease assigned to Pennsylvania R. R., June 7, 1869, and by the latter to Pennsylvania Co., June 29, 1874, to take effect as of date April 1, 1871. Entire capital stock owned by Pennsylvania Co.	957	5747
Subsidiary road, other relation. Operated by Pennsylvania Co. for cost of such service. Controlled through ownership of majority of capital stock.	958	
Subsidiary road, contingent money rental. Leased Aug. 1, 1887, for 1 year, and thereafter from year to year subject to termination on 12 months' written notice from either party; operated by lessee at cost. Majority of capital stock held by lessee since July 20, 1887.	959	

5748

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	PENNSYLVANIA COMPANY—Continued.		
960	Rochester, Beaver Falls and Western Railway Company.	.55	.....
961	Salineville Railroad Company.....	3.07	.....
962	South Chicago and Southern Railroad Company	10.25	.....

5749 [190]

963	State Line and Indiana City Railway Company	7.56	.....
964	Toledo, Walhonding Valley and Ohio Railroad Company.	125.40	.....
965	Rolling Mill Railroad Company.....	.71	.....
966	Cincinnati and Muskingum Valley Railway Company.	148.45	148.45
967	Cincinnati, Lebanon and Northern Railway Company.	37.81	31.76
968	Cleveland and Marietta Railway Company....	103.13	110.95
5750 969	Grand Rapids and Indiana Railway Company..	430.49	586.40
970	Cincinnati, Richmond and Fort Wayne Railroad Company.	85.60	.....
971	Muskegon, Grand Rapids and Indiana Railroad Company.	36.85	.....
972	Traverse City Railroad Company.....	26.00	.....
973	**Pittsburgh, Cincinnati, Chicago and Saint Louis Railway Company.**	1,073.80	1,402.64
974	Chartiers Railway Company.....	22.76	.....
5751 975	Chartiers Connecting Railroad Company..	.72	.....
976	Englewood Connecting Railway Company...	2.35	.....
977	Little Miami Railroad Company.....	101.80	.....
978	Columbus and Xenia Railroad Company...	55.00	.....

DEFENDANTS' EXHIBIT 20-J. 1485

Remarks.	No.	
		5752
Subsidiary road, other relation. Controlled through ownership of entire capital stock. No contract; road operated and maintained for cost of such service.	960	
Subsidiary road, other relation. Operated by Pennsylvania Co. for Wm. Jackson, Trustee.	961	
Subsidiary road, other relation. No contract; operated at cost under a provisional arrangement. Controlled through ownership of entire capital stock.	962	
	[191]	
		5753
Subsidiary road, other relation. Controlled through ownership of entire capital stock. No contract; road operated and maintained for cost of such service.	963	
Subsidiary road, contingent money rental. Leased Jan. 17, 1879, for 99 years; lessee agrees to operate and maintain road for cost of such service.	964	
Subsidiary road, other relation. Controlled through ownership of capital stock.	965	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	966	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock. Of "line owned," 6.05 miles leased to Day., Leb. & Cin. R. R.	967	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	968	
Operating road, subsidiary, other relation. The organization of this company is controlled by the Pennsylvania R. R. through stock ownership.	969	5754
Subsidiary road, other relation. Operated under agreement with Gr. Rap. & Ind. Ry., which accounts for net earnings and applies same toward the interest on bonds, any deficiency being met by Pennsylvania Co. and Pittsb., Cin., Chic. & St. L. R. R.	970	
Subsidiary road, other relation. Operated under agreement with Gr. Rap. & Ind. Ry., which accounts for net earnings and applies same toward interest on bonds.	971	
....do.....	972	
Operating road, subsidiary, other relation. Controlled through ownership of capital stock.	973	
Subsidiary road, contingent money rental. Leased Dec. 8, 1871, for 99 years from Jan. 1, 1872; rental, net earnings.	974	
Subsidiary road, other relation. Controlled through ownership of entire capital stock, since Dec. 17, 1885.	975	5755
Subsidiary road, other relation. Operated and maintained at cost, any surplus earnings paid to lessor; controlled through ownership of entire capital stock, since July, 1872.	976	
Subsidiary road, fixed money rental. Leased Dec. 1, 1869, for 99 years, renewable forever; annual rental, 8 per cent on capital stock, interest on bonds, and organization expenses.	977	
Subsidiary road, fixed money rental. Leased Nov. 30, 1868, for 99 years, renewable forever; annual rental, 8 per cent on capital stock, interest on bonds; included in lease of Little Miami R. R. to Pennsylvania Co.	978	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
5756		**PENNSYLVANIA COMPANY—Continued.**		
		Pittsburgh, Cincinnati, Chicago and Saint Louis Railway Company—Continued.		
		Little Miami Railroad Company—Continued.		
	979	Dayton and Western Railroad Company...	37.99	.....
	980	Ohio Connecting Railway Company.....	3.27	.....
	981	Pittsburgh, Wheeling and Kentucky Railroad Company.	28.04	.....
5757				
	982	Steubenville Extension of Pennsylvania Railroad Company.	1.23	.....
	983	Newport and Cincinnati Bridge Company...	.73	.73
5758	984	Pittsburgh, Chartiers and Youghiogheny Railway Company.	15.74	17.14
	[178]			
	816	**CLEVELAND, CINCINNATI, CHICAGO AND SAINT LOUIS RAILWAY COMPANY.**	1,205.60	1,411.83
		[Line east of Terre Haute, Indiana.]		
	817	Cincinnati and Southern Ohio River Railroad Company.	3.90	.....
5759				
	[180]			
	818	Columbus, Hope and Greensburg Railroad Company.	26.21	.....

DEFENDANTS' EXHIBIT 20-J. 1487

Remarks.	No.	
		5760
Subsidiary road, fixed money rental. Leased Jan. 1, 1865, for 99 years, renewable forever; rental, interest on bonds; included in lease of Little Miami R. R. to Pennsylvania Co.	979	
Subsidiary road, contingent money rental. Operated at cost since Oct. 20, 1890; net earnings paid to lessor. The Pennsylvania Co. has controlled road through ownership of entire capital stock since organization, Nov. 22, 1886.	980	
Subsidiary road, contingent money rental. Leased Feb. 25, 1878, for 99 years; lessee operates the road at cost and pays net earnings to lessor. Majority of capital stock owned by Pennsylvania Co.	981	5761
Subsidiary road, fixed money rental. There is no corporation known as the Steubenville Extension R. R. Co. The piece of road called the Steubenville Extension, virtually owned by the Pennsylvania Co., was built by the Pennsylvania R. R. Co., and upon the organization of the Pennsylvania Co., in 1871, the latter leased this piece of road for 999 years, paying for the lease a sum equivalent to cost of construction. In 1876 it was subleased for a term of 25 years to the Pittsb., Cin. & St. L. Ry., now the Pittsb., Cin., Chic. & St. L. Ry., at an annual interest rental based upon the original cost.	982	
Operating road, subsidiary, other relation. The Pittsb., Cin., Chic. & St. L. Ry. operates the bridge for the Newpt. & Cin. Bridge Co. (used by Louisv. & Nashv. R. R. under trackage arrangement); Pennsylvania Co. owns majority of capital stock.	983	
Operating road, subsidiary, other relation. Controlled jointly by Pittsb., Cin., Chic. & St. L. Ry. and Pittsb. & L. Erie R. R. through joint ownership of entire capital stock, as per agreement dated Jan. 25, 1892.	984	5762
		[179]
Operating road, independent	816	
Subsidiary road, other relation. The Cin., Indpls., St. L. & Chic. Ry. furnished all money to construct this road. The Clev., Cin., Chic. & St. L. Ry. now owns all of the securties, operating it as a branch of its own line.	817	5763
		[181]
Subsidiary road, contingent money rental. The Cin., Indpls., St. L. & Chic. Ry. owned all the bonds and a majority of capital stock, and operated the road from May, 1884, applying the net earnings toward payment of interest on bonds. By virtue of the consolidation of Cin., Indpls., St. L. & Chic. Ry. with others, on July 1, 1889, into Clev., Cin., Chic. & St. L. Ry., the rights and obligations were vested in the latter company, which owns the entire capital stock.	818	

	No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
5764		**CLEVELAND, CINCINNATI, CHICAGO AND SAINT LOUIS RAILWAY COMPANY—Continued.** [Line east of Terre Haute, Indiana.]		
	819	Fairland, Franklin and Martinsville Railroad Company.	37.84	.....
	820	Harrison Branch Railroad Company.....	7.70	.....
	821	Louisville and Jeffersonville Bridge Company.	2.60	.....
5765	822	Vernon, Greensburg and Rushville Railroad Company.	45.10	.....
	823	Dayton and Union Railroad Company.....	31.69	46.95
	824	Mount Gilead Short Line Railway Company...	2.00	2.00
	825	Peoria and Eastern Railway Company..... [Line east of Danville, Illinois.]	218.55	218.55
	[206]			
5766	1264	**ILLINOIS CENTRAL RAILROAD COMPANY..** [Line south of Cairo, Illinois.]	.....	1,489.31
	1265	*Canton, Aberdeen and Nashville Railroad Company.*	87.89	.....
	1266	*Chicago, Saint Louis and New Orleans Railroad Company.*	1,245.36	.....
	1267	Hodgenville and Elizabethtown Railway Company.	11.10	.....
	1268	Troy and Tiptonville Railroad Company.....	4.60	.....
	1269	Paducah Union Depot Company.....	.70	.70
5767	1270	*Yazoo and Mississippi Valley Railroad Company.*	947.63	807.27

DEFENDANTS' EXHIBIT 20-J. 1489

Remarks.	No.	
		5768
Subsidiary road, other-relation. Controlled through ownership of entire capital stock.	819	
....do	820	
Subsidiary road, fixed money rental. Stock owned by Clev., Cin., Chic. & St. L. and Ches. & Ohio Rys., two-thirds and one-third, respectively. The principal of and interest on bonds are guaranteed by the railroad companies in the same proportion.	821	
Subsidiary road, other relation. Controlled through ownership of capital stock and bonds.	822	5769
Operating road, subsidiary, other relation. Controlled through ownership of capital stock.	823	
Operating road, subsidiary, contingent money rental. Leased April 15, 1880, for 99 years; annual rental, one-third net earnings. Road owned by trustees of Mt. Gilead Township.	824	
Operating road, subsidiary, other relation. Controlled through ownership of one-half capital stock. Operated by Clev., Cin., Chic. & St. L. Ry. under guarantee of payment of interest on bonds and all current expenses; also the advancement of any deficit. Agreement effective April 1, 1890.	825	
		[207]
Operating road, independent. "Line operated' includes 140.36 miles leased from Yazoo & Miss. Vy. R. R.	1264	5770
Subsidiary road, contingent money rental. Leased Mar. 31, 1888, until June 1, 1952; rental, net earnings of the road, which lessee guarantees to be $60,000 per annum.	1265	
Subsidiary road, fixed money rental. Leased July 1, 1882, for 400 years; annual rental, 4 per cent on capital stock, interest on bonds, taxes, assessments, etc. "Line operated" includes 66.04 miles leased from Louisv. & Nashv. R. R.	1266	
Subsidiary road, contingent money rental. Contract dated Sept. 30, 1896; rental, net earnings.	1267	
....do	1268	
Operating road, subsidiary, contingent money rental. Ill. Cent. R. R. acts as agent, paying operating expenses, maintenance, and taxes; net receipts paid to Padu. Un. Depot Co.	1269	5771
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock. "Line owned" includes 140.36 miles leased to and operated by Ill. Cent. R. R. Agreement dated Mar. 31, 1888, and to run until June 1, 1952. Rental, net earnings. Any amount under $100,000 guaranteed by lessee.	1270	

5772 [220]

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
1264	**ILLINOIS CENTRAL RAILROAD COMPANY..** [Line north of Cairo, Illinois.]	705.50	2,318.43
1509	Blue Island Railroad Company.....	3.96	.....
1510	Chicago and Springfield Railroad Company....	111.47	.....

5773

1511	Chicago and Texas Railroad Company.....	74.70	.....
1512	Chicago, Havana and Western Railroad Company.	131.62	.....
1513	Chicago, Madison and Northern Railroad Company.	231.30	.....
1514	Dubuque and Sioux City Railroad Company...	599.59	.....

5774

[222]

1515	Kankakee and Southwestern Railroad Company.	131.26	.....
1516	Rantoul Railroad Company.....	74.43	.....

5775

1517	Saint Louis, Alton and Terre Haute Railroad Company.	239.04	.....

DEFENDANTS' EXHIBIT 20-J. 1491

[221] 5776

Remarks.	No.
Operating road, independent.....	1264
Subsidiary road, contingent money rental. Leased May 27, 1896, from July 1, 1893, to end of chartered existence. Lessee receives all earnings and out of same pays expenses of operation, taxes, betterments, and interest on bonds. Any surplus remaining appropriated by lessee.	1509
Subsidiary road, fixed money rental. Leased Dec. 1, 1877, for 50 years from July 1, 1877; in lieu of annual rental, lessee issued currency bonds for $2,000,000 secured by lessor on demised property; $1,600,000 of these bonds were used by lessor to pay for the property, the remainder being reserved for improvements, etc.; lessee agrees to pay principal and interest of these bonds, taxes, assessments, etc.	1510
Subsidiary road, contingent money rental. Leased Oct. 1, 1897, for 25 years; terminable on 15 days' written notice by either party. Rental, net earnings.	1511
Subsidiary road, contingent money rental. Leased April 1, 1888, in perpetuity; lessee receives all earnings, pays all expenses, and turns over to lessor any net earnings.	1512
Subsidiary road, contingent money rental. Line, Chicago to Freeport, Ill., leased from April 1, 1888, the remainder from March 1, 1892, in perpetuity; lessor to receive net earnings; lessee owns the entire capital stock and bonds of lessor.	1513
Subsidiary road, contingent money rental. Line from Cedar Falls Junction to Minnesota State line, 75.58 miles, leased from Jan. 1, 1895, for 12 years, the remainder for 56 years and 7 months; lessee receives all earnings, pays all expenses, and turns over to lessor any net earnings.	1514

5777

5778

[223]

Subsidiary road, fixed money rental. Leased Aug. 1, 1881, in perpetuity; in lieu of annual rental lessee issued $968,000 registered bonds, secured by lessor on demised property; $200,000 of these bonds retired a like amount previously issued and secured by the same property; residue was for equipping and improving road, lessee agreeing to pay principal and interest and all taxes, assessments, etc.	1515
Subsidiary road, contingent money rental. Leased Dec. 11, 1886, for 50 years; lessee receives all earnings, pays all expenses, and turns over to lessor any net earnings.	1516
Subsidiary road, fixed money rental. Leased Oct. 1, 1895, for 99 years; rental, interest on bonds, 2 1-4 per cent dividend on capital stock, expenses of operation, maintenance, and taxes. The Ill. Cent. R. R. assumes all obligations of this company as lessee to the owners of the several railroads leased to and heretofore operated by it. Supplemental lease made Sept. 15, 1897, confirming lease to Ill. Cent. R. R. of Oct. 1, 1895.	1517

5779

5780

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	ILLINOIS CENTRAL RAILROAD COMPANY—Continued.		
	[Line north of Cairo, Illinois.]		
1518	South Chicago Railroad Company.....	4.76	.....
1519	Stacyville Railroad Company.....	7.93	.....

DEFENDANTS' EXHIBIT 20-J. 1493

Remarks.	No.
Subsidiary road, contingent money rental. Agreement dated Oct. 20, 1896, for chartered existence; lessee agrees to receive all earnings and out of same pay operating expenses, interest on bonds, taxes, and maintenance.	1518
Subsidiary road, contingent money rental. Leased June 24, 1898, from Nov., 1897, to Dec. 31, 1906. Lessee receives all earnings and out of same pays expenses of operation, taxes, repairs, etc.; balance, if any, turned over to lessor, after deducting a reasonable charge for use of equipment.	1519

[Defendants' Exhibit 20-K.]

Extracts from

5782

INTERSTATE COMMERCE COMMISSION REPORT, 1899.

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5783

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REPORT OF THE INTERSTATE COMMERCE COMMISSION.

TABLE I.—CLASSIFICATION OF RAILWAYS AND MILE

[The above running title con

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
14	**BOSTON AND MAINE RAILROAD COMPANY.**	386.41	1,715.59
15	BOSTON AND LOWELL RAILROAD COMPANY.....	96.95	.....
5785			
16	Central Massachusetts Railroad Company...	98.77	.....
17	*Connecticut and Passumpsic Rivers Railroad Company.*	110.30	.....
18	*Nashua and Lowell Railroad Company*.....	14.50	.....
5786			
19	*Northern Railroad Company of New Hampshire.*	82.91	.....
20	Concord and Claremont Railroad Company	70.90	.....
21	Peterborough and Hillsborough Railroad Company.	18.51	.....
5787 22	Peterborough Railroad Company.....	10.50	.....
23	Stony Brook Railroad Company.....	13.16	.....

DEFENDANTS' EXHIBIT 20-K. 1497

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STATISTICS OF RAILWAYS IN THE UNITED STATES.

AGE FOR THE YEAR ENDING JUNE 30, 1890.

tinues throughout the report.]

Remarks.	No.	
Operating road, independent. "Line operated" includes 38.41 miles not in United States.	14	
Subsidiary road, fixed money rental. Leased to Boston & Me. R. R., April 1, 1887, for 99 years; rental, 7 per cent on its capital stock for 10 years and 8 per cent thereafter, operating expenses, and all interest on debt.	15	5789
Subsidiary road, contingent money rental. Leased to Boston & Lowell R. R., Oct. 1, 1886, for 99 years; rental, 20 per cent of gross earnings up to $1,000,000 and 25 per cent of any excess over that amount, deducting from said 20 per cent 5 per cent on $2,000,000 of bonds; lessee to pay $1,500 for organization expenses, and taxes, insurance, and assessments.	16	
Subsidiary road, fixed money rental. Leased Jan. 1, 1887, for 99 years, at 5 per cent for 10 years, and 6 per cent thereafter on capital stock, interest on bonds, and $3,000 for organization expenses, annually; lease assumed by Boston & Me. R. R.	17	
Subsidiary road, contingent money rental. Leased Oct. 1, 1880, for 99 years, to Boston & Lowell R. R., for $60,000, $4,000 additional in case gross receipts equal or exceed those of 1880, and $1,000 for organization, annually; lease assumed July 12, 1887, by Boston & Me. R. R., which grants in addition to sums stated in lease 1 per cent annually on capital stock.	18	5790
Subsidiary road, fixed money rental. Leased to Boston & Lowell R. R., Jan. 1, 1890, for 99 years; rental, 5 per cent on Northern R. R. capital stock for the first 7½ years, and 6 per cent on the same thereafter. Also principal of and interest on $500,000 first mortgage bonds of Conc. & Claremont R. R. and $100,000 first mortgage bonds of Peterb. & Hillsb. R. R.; lease assigned to Boston & Me. R. R.	19	
Subsidiary road, other relation	20	
....do	21	
Subsidiary road, fixed money rental. Leased April 1, 1893, for 93 years; rental, 4 per cent on capital stock, $300 organization expenses, operating expenses, and taxes. Boston & Me. R. R. operates road by reason of being the lessee of Boston & Lowell R. R.	22	5791
Subsidiary road, fixed money rental. Leased to Boston & Lowell R. R., Jan. 1, 1890, for 99 years; rental, 7 per cent on capital stock, taxes, and $500 per annum for organization expenses; lease assumed by Boston & Me. R. R.	23	

5792 [130]

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	BOSTON AND MAINE RAILROAD COMPANY —Continued.		
	BOSTON AND LOWELL RAILROAD COMPANY—Continued.		
24	Wilton Railroad Company.....	15.50	.....
5793 25	CONCORD AND MONTREAL RAILROAD COMPANY....	233.33	.....
26	Concord and Portsmouth Railroad Company	47.50	.....
27	Franklin and Tilton Railroad Company.....	5.00	.....
28	Lake Shore Railroad Company.....	17.28	.....
29	Nashua, Acton and Boston Railroad Company.	20.83	.....
5794 30	New Boston Railroad Company.....	5.19	.....
31	Pemigewasset Valley Railroad Company....	22.93	.....
32	Profile and Franconia Notch Railroad Company.	12.84	.....
33	Suncook Valley Railroad Company.....	17.37	.....
5795 34	Suncook Valley Extension Railroad Company.	4.46	.....
35	Tilton and Belmont Railroad Company.....	4.17	.....
36	Whitefield and Jefferson Railroad Company.	33.69	.....
37	*Connecticut River Railroad Company*.....	79.85	.....

DEFENDANTS' EXHIBIT 20-K. 1499

[131] 5796

Remarks.	No.	
Subsidiary road, fixed money rental. Leased to Boston & Lowell R. R. for 99 years from Oct., 1883; rental, $16,800, all public taxes, and $150 for organization, annually; July 12, 1874, lease assigned to Boston & Me. R. R. without consent of lessor; Dec. 19, 1890, lessor assented to assignment of lease at a semi-annual rental of $10,200.	24	
Subsidiary road, fixed money rental. Leased June 29, 1895, for 91 years; rental, 7 per cent on capital stock, interest on bonds, operating expenses, all taxes, and expenses of organization; lessee assumes all traffic balances due from lessor to other railroads.	25	5797
Subsidiary road, fixed money rental. Contract dated May 26, 1862, for 99 years from Jan. 1, 1862; rental, 7 per cent on capital stock and $500 for organization, annually.	26	
Subsidiary road, fixed money rental. Leased Oct. 8, 1895, for 91 years from April 1, 1895; rental, $1 annually, with such additional sums as may be necessary to keep up the organization of lessor. Lease assigned to Boston & Me. R. R.	27	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	28	
Subsidiary road, other relation. Controlled through ownership of majority of capital stock. Operated by Boston & Me. R. R. under its lease of Conc. & Montreal R. R. Boston & Me. R. R. is entitled to all receipts, and is to pay all expenses, including taxes.	29	5798
Subsidiary road, fixed money rental. Leased June 19, 1893, for 99 years; rental, $2,800 per annum. Lease assigned to Boston & Me. R. R., June 29, 1895.	30	
Subsidiary road, fixed money rental. Leased to Boston, Conc. & Montreal R. R., Feb. 1, 1882, for 100 years; rental, 6 per cent per annum on capital stock, and, in addition, $300 annually for organization expenses, and all taxes; lease assumed by Conc. & Montreal R. R.; lease assigned to Boston & Me. R. R., June 29, 1895.	31	
Subsidiary road, other relation. Controlled through ownership of capital stock.	32	
Subsidiary road, fixed money rental. Leased Jan. 1, 1870, for 42 years, to Manch. & Law. and Concord R. Rs. at an annual rental of $14,400 and $300 for organization expenses.	33	5799
Subsidiary road, other relation. Controlled through ownership of capital stock.	34	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	35	
Subsidiary road, other relation. Controlled through ownership of capital stock	36	
Subsidiary road, fixed money rental. Leased Jan. 1, 1893, for 99 years; rental, 10 per cent on capital stock, 4 per cent interest on bonds, and $2,000 for organization expenses.	37	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
5800		**BOSTON AND MAINE RAILROAD COMPANY —Continued.**		
	38	Danvers Railroad Company.....	9.26	.....
	39	Kennebunk and Kennebunkport Railroad Company.	4.50	.....
	40	Lowell and Andover Railroad Company.....	8.73	.....
	41	Manchester and Keene Railroad Company....	29.59	.....
5801	42	Manchester and Lawrence Railroad Company..	22.39	.....
	43	Newburyport Railroad Company.....	26.98	.....
	44	Portland, Saco and Portsmouth Railroad Company.	50.76	.....
	45	Portsmouth and Dover Railroad Company....	10.88	.....
5802	46	Worcester, Nashua and Rochester Railroad Company.	94.48	.....
	47	MAINE CENTRAL RAILROAD COMPANY.....	345.23	814.68
	48	Belfast and Moosehead Lake Railroad Company.	33.13	.....
	49	Dexter and Newport Railroad Company.....	14.23	.....
	50	Dexter and Piscataquis Railroad Company..	16.54	.....
5803	51	Eastern Maine Railway Company.....	18.80	.....
	52	European and North American Railway Company.	120.34	.....

DEFENDANTS' EXHIBIT 20-K. 1501

Remarks.	No.	
		5804
Subsidiary road, fixed money rental. Leased May 30, 1853, for 100 years, at $7,500 per annum.	38	
Subsidiary road, fixed money rental. Leased May 15, 1883, for 99 years, for 4½ per cent dividend per annum.	39	
Subsidiary road, fixed money rental. Leased Dec. 1, 1874, for 99 years, at $52,500 per annum, lessee to pay all public taxes.	40	
Subsidiary road, other relation. Sold under foreclosure; bonds purchased by Boston & Lowell and Conc. & Montreal R. Rs. Operated by Boston & Me. R. R. for account of these companies, each being credited with one-half of all earnings and charged with one-half of all expenses.	41	
Subsidiary road, fixed money rental. Leased Sept. 1, 1887, for 50 years, for 10 per cent per annum on capital stock and $2,000 per annum for organization expenses.	42	5805
Subsidiary road, fixed money rental. Leased Feb. 21, 1860, for 100 years, for $225,000 cash and debt due Boston & Me. R. R. of $75,000.	43	
Subsidiary road, fixed money rental. Contract dated May 4, 1871, to continue in force until such time as En. R. R. of Mass., by default, shall cease to pay regular semi-annual dividend of 3 per cent; contract assigned to Boston & Me. R. R. on purchase of En. R. R. of Mass., May 8, 1890.	44	
Subsidiary road, fixed money rental. Leased June 1, 1872, for 50 years from Feb., 1874, to En. R. R. in N. H., at a rental of $46,140 per annum, guaranteed by En. R. R. of Mass. En. R. R. in N. H. merged in Boston & Me. R. R., June 16, 1899.	45	
Subsidiary road, fixed money rental. Leased Jan. 1, 1886, for 50 years, for $250,000 per annum and all taxes.	46	5806
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock. "Line operated" includes 52.18 miles not in United States.	47	
Subsidiary road, fixed money rental. Leased May 10, 1871, for 50 years, at an annual rental of $36,000 and taxes.	48	
Subsidiary road, fixed money rental. Leased Dec. 13, 1888, for 999 years, at an annual rental of $18,000, until Nov. 24, 1898, and $6,100 per annum thereafter, and $250 per annum for organization expenses; lessee also guarantees the principal and interest of bonds of lessor.	49	
Subsidiary road, fixed money rental. Leased Dec. 13, 1888, for 999 years; rental, $13,100, and $250 per annum for organization expenses, and taxes.	50	
Subsidiary road, fixed money rental. Leased May 1, 1883, for 999 years; annual rental, $9,000, all taxes, and $500 for organization expenses.	51	5807
Subsidiary road, fixed money rental. Leased April 1, 1882, for 999 years; annual rental, $125,000, all taxes, and $500 for expenses of organization; lessee also assumes city of Bangor bonds, amounting to $1,000,000, issued to aid construction of road of lessor.	52	

5808 [132]

No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
	BOSTON AND MAINE RAILROAD COMPANY —Continued.		
	MAINE CENTRAL RAILROAD COMPANY—Continued.		
53	Knox and Lincoln Railway Company.....	48.39	.....
54	*Portland and Ogdensburg Railway Company.*	109.10	.....

5809

55	Upper Coos Railroad Company.....	55.00	.....
56	Mount Washington Railway Company.....	3.33	3.33
57	Portland and Rochester Railroad Company...	54.98	53.86
58	*Saint Johnsbury and Lake Champlain Railroad Company.*	131.50	131.50
59	Vermont Valley Railroad Company of 1871....	24.00	24.00

5810

60	Sullivan County Railroad Company.....	26.00	26.00
61	York Harbor and Beach Railroad Company...	11.17	11.17

5811 [134]

99	**NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY.**	448.20	2,047.19
100	Berkshire Railroad Company.....	20.53	.....
101	*Boston and New York Air Line Railroad Company.*	51.50	.....

DEFENDANTS' EXHIBIT 20-K. 1503

[133] 5812

Remarks.	No.
Subsidiary road, fixed money rental. Leased Aug. 1, 1891, for 999 years, lessee to pay all taxes, interest, and indebtedness of lessor, a dividend of 5 per cent to the stockholders, and $200 for organization expenses.	53
Subsidiary road, fixed money rental. Leased Aug. 20, 1888, for 999 years, lessee to pay all taxes, interest, and indebtedness of lessor, and a dividend of 1 per cent per annum for 3 years, and 2 per cent thereafter.	54
	5813
Subsidiary road, fixed money rental. Leased May 1, 1890, for 999 years; rental, interest on bonds, 6 per cent on capital stock, and $500 for charter obligations.	55
Operating road, subsidiary, other relation. Cog-wheel road. Operated only during the summer months.	56
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock; 1.12 miles owned not in operation.	57
Operating road, subsidiary, other relation. Boston & Lowell R. R., a leased line of Boston & Me. R. R., owns majority of capital stock.	58
Operating road, subsidiary, contingent money rental. Operated by Boston & Me. R. R., as agent, under its lease of Con Riv. R. R., the Vt. Vy. R. R. of 1871 receiving gross earnings less operating expenses, taxes and interest, with a minimum guarantee of a sufficient sum to pay 4 per cent on entire capital stock.	59
	5814
Operating road, subsidiary, contingent money rental. Gross earnings, less operating expenses, interest, and taxes, paid lessor, with a minimum guarantee of a sufficient amount to pay 8 per cent on entire capital stock. Operated by Boston & Me. R. R., as agent, under its lease of Conn. Riv. R. R. Entire capital stock owned by Vt. Vy. R. R. of 1871.	60
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	61

[135] 5815

Operating road, independent.....	99
Subsidiary road, contingent money rental. Leased April 1, 1893, for 99 years; rental, 6 per cent on capital stock, all expenses, taxes, and $250 for maintenance of organization.	100
Subsidiary road, fixed money rental. Leased Oct. 1, 1882, for 99 years; rental, $120,000 per annum, and interest on its bonds and the bonds of Colchester R. R.	101

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
		NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY—Continued.		
5816	102	Colchester Railway Company	3.59	.....
	103	Chatham Railroad Company	7.07	.....
	104	Danbury and Norwalk Railroad Company	36.20	.....
5817	105	Harlem River and Port Chester Railroad Company.	11.50	.....
	106	Middleton, Meriden and Waterbury Railroad Company.	30.34	.....
	107	Milford and Woonsocket Railroad Company	15.33	.....
	108	Milford, Franklin and Providence Railroad Company.	4.65	.....
5818	109	Naugatuck Railroad Company	60.99	.....
	110	New England Railroad Company	359.16	.....
	111	New Haven and Derby Railroad Company	16.69	.....
	112	*New Haven and Northampton Company*	126.31	.....
5819	113	Holyoke and Westfield Railroad Company	10.32	.....

DEFENDANTS' EXHIBIT 20-K. 1505

Remarks.	No.	
		5820
Subsidiary road, fixed money rental. Leased Oct. 1, 1882, for 999 years. Interest on bonds guaranteed by Boston & N. Y. Air Line R. R.	102	
Subsidiary road, contingent money rental. Contract in effect Nov. 22, 1894. Terminable by either party after 30 days' notice in writing. Lessee equips, maintains, and operates railroad, collects all revenue, and pays to the lessor 30 per cent of gross receipts.	103	
Subsidiary road, fixed money rental. Leased July 1, 1892, for 99 years; rental, 5 per cent dividend on capital stock, interest on bonds, all taxes, and assessments.	104	
Subsidiary road, fixed money rental. Leased Sept. 30, 1873, for 99 years, to N. Y., New Hav. & Hartf. R. R., for interest on bonds. The lessee owns entire capital stock of lessor road.	105	5821
Subsidiary road, fixed money rental. Leased Nov. 1, 1898, for 1 year; rental, $1,000 per annum.	106	
Subsidiary road, fixed money rental. Leased to New England R. R., April 1, 1897, for 5 years; rental, $4,200 per annum and 12½ per cent of the gross earnings of this road and Milf., Frank. & Prov. R. R. in excess of $40,000 per annum. Lease assumed by N. Y., New Hav. & Hartf. R. R., July 1, 1898.	107	
Subsidiary road, fixed money rental. Leased to New England R. R., April 1, 1897, for 5 years; rental, $1,800 and all expenses; also, 12½ per cent of gross receipts in excess of $40,000. Lease assumed by N. Y., New Hav. & Hartf. R. R., July 1, 1898.	108	
Subsidiary road, fixed money rental. Leased April 1, 1887, for 99 years; rental, interest on bonds and 10 per cent per annum on capital stock.	109	5822
Subsidiary road, fixed money rental. Leased July 1, 1898, for 99 years; rental, 3 per cent on preferred stock, lessee to further pay interest on bonds, all taxes, rates, charges, and assessments. Lease subject to legal authorization and due approval.	110	
Subsidiary road, fixed money rental. Leased July 1, 1892, for 99 years; rental, 3 per cent dividend on capital stock until June 30, 1895, and 4 per cent thereafter during term of lease, interest on bonds, all taxes, and assessments.	111	
Subsidiary road, fixed money rental. Leased April 1, 1887, for 99 years; rental, 1 per cent on capital stock for 3 years, 2 per cent for the second 3 years, 3 per cent for the third 3 years, and 4 per cent thereafter; interest on bonds and taxes.	112	
Subsidiary road, contingent money rental. Leased Dec. 3, 1870, in perpetuity; rental, 50 per cent of gross receipts, subject to interest on bonds of $260,000, guaranteed by New Hav. & Northamp. Co. Lease assumed by N. Y., New Hav. & Hartf. R. R., with lease of New Hav. & Northamp. Co.	113	5823

5824 [136]

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY—Continued.		
114	*Norwich and Worcester Railroad Company*...	71.69	.....
115	OLD COLONY RAILROAD COMPANY.....	507.49	.....
5825 116	*Boston and Providence Railroad Company*..	62.64	.....
117	Attleboro Branch Railroad Company.....	4.00	.....
118	Nantasket Beach Railroad Company.....	6.96	.....
119	Plymouth and Middleborough Railroad Company.	15.03	.....
5826 120	Providence, Warren and Bristol Railroad Company.	14.35	.....
121	Pawtuxet Valley Railroad Company.....	5.67	.....
122	Providence and Springfield Railroad Company.	27.73	.....
123	*Providence and Worcester Railroad Company*.	50.41	.....
5827 124	Rhode Island and Massachusetts Railroad Company in Massachusetts.	6.62	.....
125	Rhode Island and Massachusetts Railroad Company of Rhode Island.	7.97	.....
126	Rockville Railroad Company.....	4.48	.....

DEFENDANTS' EXHIBIT 20-K. 1507

[137] 5828

Remarks.	No.
Subsidiary road, fixed money rental. Leased to New England R. R., Feb. 9, 1869, for 100 years; annual rental, interest on bonds and dividend on preferred stock. Lease assumed by N. Y., New Hav. & Hartf. R. R., July 1, 1898.	114
Subsidiary road, fixed money rental. Leased Mar. 1, 1893, for 99 years; rental, 7 per cent on capital stock, interest on funded debt, taxes, and organization expenses.	115
Subsidiary road, fixed money rental. Leased April 1, 1888, for 99 years; annual rental, 10 per cent on capital stock, interest on bonds, taxes and assessments, etc. Excludes one-half of 5 miles owned jointly by Prov. & Worc. and Boston & Prov. R. Rs.	116
5829	
Subsidiary road, fixed money rental. Leased Dec. 31, 1870, for 30 years; annual rental, 7 per cent on capital stock and taxes. Included in lease to Old Colony R. R.	117
Subsidiary road, fixed money rental. Leased April 1, 1888, for 99 years; lessee guarantees interest on bonds up to $6,250, pays taxes, and has option of purchasing property after 20 years of lease for $150,000. Road equipped with electric power June 30, 1895.	118
Subsidiary road, contingent money rental. Leased Dec. 4, 1891, for 99 years. No returns to be made to the road for 25 years; thereafter 30 per cent of gross receipts for remainder of lease.	119
Subsidiary road, fixed money rental. Leased July, 1891, for 95 years and 9 months; rental, 5 per cent on capital stock for the first 10 years and 5 per cent on common and preferred stock for remainder of lease; also interest and taxes, and not exceeding $500 per annum for salaries.	120
5830	
Subsidiary road, fixed money rental. Leased July 1, 1884, for 99 years; annual rental, 7 per cent on capital stock, interest on bonds, taxes, assessments, etc. Lease assumed by N. Y., New Hav. & Hartf. R. R., April 1, 1892.	121
Subsidiary road, fixed money rental. Leased to New England R. R., July 1, 1896, for 93 years; rental, 4 per cent on capital stock, interest on bonds, taxes, and assessments. Lease assumed by N. Y., New Hav. & Hartf. R. R., July 1, 1898.	122
Subsidiary road, fixed money rental. Leased July 1, 1892, for 99 years; rental, 10 per cent on capital stock, interest on bonds, and taxes. Excludes one-half of 5 miles owned jointly by Prov. & Worc. and Boston & Prov. R. Rs.	123
5831	
Subsidiary road, fixed money rental. Leased to New England R. R., Nov. 21, 1887, for 99 years; annual rental, $10,000 and all taxes, assessments, etc. Lease assumed by N. Y., New Hav. & Hartf. R. R., July 1, 1898.	124
Subsidiary road, fixed money rental. Leased to New England R. R., Oct. 1, 1887, for 99 years; rental, $10,000, all taxes, and assessments. Operated by N. Y., New Hav. & Hartf. R. R. since July 1, 1898, on same terms without contract.	125
Subsidiary road, fixed money rental. Agreement entered into March 31, 1896; rental, $10 per day. Lease terminable on 30 days' notice by either party.	126

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
5832		**NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY—Continued.**		
	127	Stockbridge and Pittsfield Railroad Company..	22.02	.....
	128	West Stockbridge Railroad Company.....	2.64	.....
	129	Woonsocket and Pascoag Railroad Company..	9.45	.....
5833	[156]			
	486	**NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY.**	819.45	2,409.88
	487	Amsterdam, Chuctanunda and Northern Railroad Company.	1.50	.....
	488	Carthage and Adirondack Railway Company..	46.10	.....
	489	Fall Brook Railway Company.....	101.34	.....
	489	Fall Brook Railway Company.....	.....	271.02
5834	490	Gouverneur and Oswegatchie Railroad Company.	13.05	.....
	491	Mohawk and Malone Railway Company.....	181.50	.....
	492	New Jersey Junction Railroad Company.....	4.85	.....
	493	*New York and Harlem Railroad Company*....	135.90	.....
	494	New York and Putnam Railroad Company.....	57.16	.....
5835	495	Mahopac Falls Railroad Company.....	4.05	.....
	496	New York Central Niagara River Railroad Company.	2.81	.....
	497	Pine Creek Railway Company.....	74.80	.....

DEFENDANTS' EXHIBIT 20-K. 1509

Remarks.	No.	
		5836
Subsidiary road, fixed money rental. Leased April 1, 1893, for 99 years; rental, 6 per cent on capital stock, all expenses, taxes, and $250 toward organization expenses.	127	
Subsidiary road, fixed money rental. Leased April 1, 1893, for 99 years; rental, $1,800 per annum and all taxes.	128	
Subsidiary road, other relation. Operated under continued temporary arrangement made with New England R. R. Lessee owns entire capital stock.	129	
	[157]	5837
Operating road, independent	486	
Subsidiary road, other relation. Operated under verbal agreement, Sept. 23, 1879, to deliver and receive freight to and from Kellogg & Miller's Linseed Oil Works. "Line operated" included as sidings in N. Y. Cent. & Hud. Riv. R. R.	487	
Subsidiary road, fixed money rental. Leased Jan. 9, 1893, from May 1, 1893, for term of corporate existence. Lessee guarantees principal of and interest on bonds not exceeding $1,600,000.	488	
Subsidiary road, fixed money rental. Leased May 1, 1899, for 999 years, for a guaranteed rental of $175,000. "Line operated" includes mileage of Pine Ck. Ry., 74.80 miles, and mileage of Syr., Geneva & Corng. Ry., 64.82 miles, the three roads being operated together by the lessee.	489	
Subsidiary road, fixed money rental. Leased July 8, 1892, in perpetuity. Lessee guarantees principal of and interest on bonds not exceeding $300,000.	490	5838
Subsidiary road, fixed money rental. Leased May 1, 1893, in perpetuity; rental, 4 per cent interest, and principal guaranteed on not exceeding $2,500,000 first-mortgage bonds.	491	
Subsidiary road, fixed money rental. Leased July 1, 1886, for 100 years, with privilege of further term of 100 years, at an annual rental of interest at 4 per cent on its outstanding bonds.	492	
Subsidiary road, fixed money rental. Leased April 1, 1873, for 401 years; annual rental, interest on funded debt, and 8 per cent on capital stock.	493	
Subsidiary road, fixed money rental. Leased Jan. 30, 1894, in perpetuity; rental, 4 per cent interest on first-mortgage bonds and 5 per cent on $1,200,000 first consolidated mortgage forty-year bonds of N. Y. & Nn. Ry. pending retirement.	494	5839
Subsidiary road, other relation. Operated since Jan. 1, 1894, as a branch of N. Y. & Putnam R. R. by N. Y. Cent. & Hud. Riv. R. R., lessee. N. Y. & Putnam R. R. owns entire capital stock.	495	
Subsidiary road, other relation	496	
Subsidiary road, fixed money rental. Leased May 1, 1899, for 999 years, for a guaranteed rental of $35,000.	497	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
5840		**NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY—Continued.**		
	498	*Rome, Watertown and Ogdensburg Railroad Company.*	412.55	.....
	499	Buffalo, Thousand Islands and Portland Railroad Company.	.03	.....
	500	Niagara Falls Branch Railroad Company....	8.57	.....
5841				
	[158]			
	501	Oswego and Rome Railroad Company.....	28.49	.....
	502	Utica and Black River Railroad Company...	149.81	.....
5842	503	Carthage, Watertown and Sackets Harbor Railroad Company.	28.81	.....
	504	Spuyten Duyvil and Port Morris Railroad Company.	6.04	.....
	505	Syracuse, Geneva and Corning Railway Company.	64.82	.....
	506	Tivoli Hollow Railroad Company.....	1.23	.....
	507	Troy and Greenbush Railroad Company.....	6.00	.....
5843	508	Troy Union Railroad Company.....	5.00	.....
	509	West Shore Railroad Company.....	495.20	.....

Remarks.	No.
Subsidiary road, fixed money rental. Leased Mar. 14, 1891, in perpetuity. Lessee guarantees principal of and interest on bonds, 5 per cent on capital stock, and a rental of $15,000 per annum until April 1, 1901, and thereafter $7,000 per annum.	498
Subsidiary road, other relation. "Line owned" not in operation.	499
Subsidiary road, fixed money rental. Leased Sept. 21, 1881, in perpetuity, at 7 per cent per annum on capital stock; included in lease to N. Y. Cent. & Hud. Riv. R. R., dated March 14, 1891.	500
	5845
	[159]
Subsidiary road, fixed money rental. Leased Dec. 2, 1869, in perpetuity; annual rental, interest on first-mortgage bonds and $24,000 cash. Lease amended March 2, 1891; rental, 7 per cent on $350,000 first-mortgage bonds and 5 per cent on $400,000 second-mortgage bonds per annum; included in lease to N. Y. Cent. & Hud. Riv. R. R., dated March 14, 1891.	501
Subsidiary road, fixed money rental. Leased April 14, 1886, for the term of corporate existence; annual rental, 7 per cent on capital stock, interest on bonds, and $4,500 for organization expenses; included in lease to N. Y. Cent. & Hud. Riv. R. R., dated March 14, 1891.	502
	5846
Subsidiary road, contingent money rental. Leased for the term of corporate existence for 37½ per cent of gross earnings; included in the lease of Utica & Black Riv. R. R. to Rome, Watert. & Ogdensb. R. R., and to N. Y. Cent. & Hud. Riv. R. R., dated March 14, 1891.	503
Subsidiary road, fixed money rental. Leased Nov. 1, 1871, to Dec. 31, 1970; annual rental, 8 per cent on $989,000 capital stock.	504
Subsidiary road, fixed money rental. Leased May 1, 1899, for the term of corporate existence; rental, 6 per cent on capital stock, interest on bonds, taxes, and a cash rental of $11,594.	505
Subsidiary road, other relation. Operated under contract dated April 3, 1894, with Van Rensselaer Land Co.	506
Subsidiary road, fixed money rental. Leased Feb. 3, 1851, in perpetuity, at an annual rental of $19,250.	507
Subsidiary road, other relation. One-half of stock owned by N. Y. Cent. & Hud. Riv. R. R., and one-fourth each by Del. & Hud. Co. and Fitchburg R. R. These companies pay these proportions of maintenance and operation.	508
	5847
Subsidiary road, fixed money rental. Leased Jan. 1, 1886, for 475 years, with privilege of further term of 500 years; annual rental, interest at 4 per cent on bonds.	509

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY—Continued.		
510	Beech Creek Railroad Company.....	159.96	205.25
511	Buffalo Erie Basin Railroad Company.....	.25	.25
512	Saint Lawrence and Adirondack Railway Company.	10.20	65.10
513	Terminal Railway Company of Buffalo.....	11.00	11.00
514	Wallkill Valley Railroad Company.....	32.88	37.69
	[160]		
531	**PENNSYLVANIA RAILROAD COMPANY**.....	535.30	2,846.72
532	Bald Eagle Valley Railroad Company.....	90.43	.....
533	Bedford and Bridgeport Railway Company....	49.17	.....
534	Busleton Railroad Company.....	4.16	.....
535	Cambria and Clearfield Railroad Company....	98.49	.....

DEFENDANTS' EXHIBIT 20-K. 1513

Remarks.	No.	
		5852
Operating road, subsidiary, fixed money rental. Leased Dec. 15, 1890, for 999 years from Oct. 1, 1890. Lessee guarantees principal and interest of $5,000,000 first-mortgage 4 per cent bonds and 4 per cent on $5,000,000 capital stock; also the interest, not to exceed 6 per cent, upon such additional bonds as may be issued by Beech Ck. R. R. under terms of the lease; and agrees to pay the expenses of maintaining corporate organization, not to exceed $6,000 per annum, and all taxes.	510	
Operating road, subsidiary, other relation. Used as a switching road to facilitate delivery of property at the docks.	511	
Operating road, subsidiary, other relation. Operated by N. Y. Cent. & Hud. Riv. R. R. under agreement dated June 1, 1898, by which the operating company acts as agent only of St. Law. & Adirondack Ry., and does not participate in the profits or share the losses of the line thus operated. "Line operated" includes 54.90 miles in Canada, 13.20 miles of which are leased from Grand Trunk Ry.	512	5853
Operating road, subsidiary, other relation. Road used exclusively by N. Y. Cent. & Hud. Riv. R. R. and L. Shore & Mich. Sn. Ry., under terms of an agreement entered into by the companies concerned, dated Jan. 1, 1899. N. Y. Cent. & Hud. Riv. R. R. furnishes cars and equipment and operates the road, providing train crews without expense to Term. Ry. of Buff. The two companies using the Term. Ry. of Buff. pay certain rates per car moved over the road, and divide operating expenses. Term. Ry. of Buff. bears the expense of maintaining the property.	513	
Operating road, subsidiary, fixed money rental. Leased May 1, 1899; rental, 3½ per cent on capital stock and interest on bonds.	514	5854

[161]

Operating road, independent.....	531	
Subsidiary road, contingent money rental. Leased July 1, 1864, for 99 years; rental, 40 per cent of gross earnings. Lease does not apply to Nittany Brh., which is operated for cost. Net earnings paid to Bald Eagle Vy. R. R.	532	
Subsidiary road, contingent money rental. Operated under resolutions of the directors of both companies, adopted April 29 and May 27, 1891, this arrangement being terminable at the option of either party on 30 days' notice; net earnings payable to this company.	533	5855
Subsidiary road, contingent money rental. Operated under resolutions of the directors of both companies, which took effect Jan. 1, 1891, this arrangement being terminable at the option of either party on 30 days' notice; net earnings payable to this company.	534	
Subsidiary road, contingent money rental. Operated under resolutions of boards of directors of both companies, in effect Sept. 24, 1888, this arrangement being terminable at any time on 30 days' notice; net earnings payable to this company.	535	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
		PENNSYLVANIA RAILROAD COMPANY—Continued.		
5856	536	Columbia and Port Deposit Railway Company.	43.21	.....
	537	Columbus, Kinkora and Springfield Railroad Company.	14.16	.....
	538	Cresson and Irvona Railroad Company.....	29.54	.....
5857	539	Delaware River Railroad and Bridge Company	10.27	.....
	540	Downingtown and Lancaster Railroad Company.	37.58	.....
	541	Ebensburg and Black Lick Railroad Company.	14.75	.....
5858	542	Engelside Railroad Company.....	.17	.....
	543	Fair Hill Railroad Company.....	.78	.....
	544	Freehold and Jamesburg Agricultural Railroad Company.	27.54	.....
	545	Harrisburg, Portsmouth, Mount Joy and Lancaster Railroad Company.	52.99	.....
	546	Johnsonburg Railroad Company.....	23.52	.....
	547	Kensington and Tacony Railroad Company....	6.89	.....
	548	Lewisburg and Tyrone Railroad Company.....	85.12	.....
5859	549	Millstone and New Brunswick Railroad Company.	6.64	.....
	550	Nescopec Railroad Company.....	11.96	.....

Remarks.	No.	
		5860
Subsidiary road, contingent money rental. Agreement dated July 1, 1890, terminable at any time on 30 days' notice; rental, net earnings.	536	
Subsidiary road, contingent money rental. Lease dated July 1, 1889, runs from year to year, unless terminated by 6 months' notice. Lessee collects all earnings, pays all expenses for operating the road and maintenance of way, and taxes; balance, if any, is paid to lessor.	537	
Subsidiary road, contingent money rental. Operated under resolutions of boards of directors of both companies, in effect June 28 and July 6, 1894, respectively; this arrangement terminable at any time by either party on 30 days' notice; rental, net earnings.	538	5861
Subsidiary road, contingent money rental. Operated under resolutions of the directors of both companies, adopted by Del. Riv. R. R. & Brg. Co., April 17, 1896, and by Pennsylvania R. R., April 22, 1896. Rental, net earnings. Terminable on 30 days' notice from either party.	539	
Subsidiary road, contingent money rental. Operated under resolutions of board of directors of each company, in effect Aug. 1, 1888; this arrangement terminable at any time on 30 days' notice; net earnings paid to this company.	540	
Subsidiary road, contingent money rental. Operated under resolutions of board of directors of both companies, in effect Nov. 27 and Dec. 12, 1894, respectively; this arrangement terminable on 30 days' notice from either party; rental, net earnings.	541	
Subsidiary road. "Operated by Pennsylvania R. R. as a siding," pending execution of a formal contract.	542	5862
Subsidiary road, fixed money rental. Leased Feb. 1, 1896, for 20 years; rental, 4 per cent on capital stock, 4 per cent on outstanding debenture certificate, and taxes.	543	
Subsidiary road, contingent money rental. Contract dated July 16, 1879, terminable on 30 days' notice; rental, net earnings.	544	
Subsidiary road, fixed money rental. Leased Jan. 1, 1861, for 999 years; annual rental 7 per cent on capital stock, 4 per cent interest on bonds, all taxes levied on stock and bonds, and organization expenses up to $2,000.	545	
Subsidiary road, contingent money rental. Leased July 8, 1889, for 50 years; rental, net earnings.	546	
Subsidiary road, fixed money rental. Leased May 1, 1895, for 20 years; rental, 4 per cent on capital stock, and all taxes.	547	
Subsidiary road, contingent money rental. Leased Jan. 1, 1880, for 99 years; rental, net earnings. "Line owned" includes .24 mile over the Lewisburg Bridge.	548	5863
Subsidiary road, contingent money rental. Operated by Pennsylvania R. R. since Jan. 1, 1897, by virtue of certain resolutions adopted by board of directors of each company; rental, net earnings; terminable at option of either party on 30 days' notice.	549	
Subsidiary road, contingent money rental. Operated under resolutions of board of directors of each company, in effect April 25, 1887; this arrangement terminable at any time on 30 days' notice; net earnings payable to this company.	550	

5864

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	PENNSYLVANIA RAILROAD COMPANY—Continued.		
551	New York Bay Railroad Company.....	9.20	.....
552	North and West Branch Railway Company....	47.82	.....

5865 [162]

553	Pennsylvania Schuylkill Valley Railroad Company.	130.22	.....
554	Perth Amboy and Woodbridge Railroad Company.	6.40	.....
555	Philadelphia and Beach Haven Railroad Company.	12.09	.....
556	**Philadelphia and Erie Railroad Company**.....	301.62	.....

5866

557	Philadelphia and Long Branch Railroad Company.	49.07	.....
558	Philadelphia, Bustleton and Trenton Railroad Company.	3.55	.....
559	Philadelphia, Germantown and Chestnut Hill Railroad Company.	13.87	.....
560	Pittsburgh, Virginia and Charleston Railway Company.	77.33	.....
561	Pomeroy and Newark Railroad Company.....	26.70	.....
562	Ridgway and Clearfield Railroad Company....	27.23	.....

5867

563	Riverfront Railroad Company.....	4.62	.....
564	Scalp Level Railroad Company.....	20.84	.....
565	South Fork Railroad Company.....	12.17	.....

Remarks.	No.	
		5868
Subsidiary road, other relation. Controlled through ownership of entire capital stock. No contract has been made. During the year ending Dec. 31, 1898, Pennsylvania R. R. paid to this company for use of road the sum of $38,683, and taxes amounting to $3,905.	551	
Subsidiary road, contingent money rental. Agreement dated Nov. 23, 1881, to continue until Sept. 1, 1901; net earnings to be paid to this company.	552	
		[163] 5869
Subsidiary road, contingent money rental. Leased Dec. 1, 1885, for 50 years; rental, net earnings.	553	
Subsidiary road, contingent money rental. Operated by virtue of resolutions adopted May 6, 1899, by stockholders of this company, and June 26, 1889, by directors of Pennsylvania R. R.; net earnings paid to this company. This arrangement terminable at option of either party on 30 days' notice.	554	
Subsidiary road, contingent money rental. Operated by Pennsylvania R. R. as agent, under resolution adopted Jan. 1, 1894; rental, net earnings. Terminable at option of either party on 30 days' notice in writing.	555	
Subsidiary road, contingent money rental. Lease executed Jan. 16, 1862, modified Jan. 1, 1870, for 999 years from Jan. 1, 1862; surplus of gross receipts, after paying operating expenses, etc., to be applied to organization expenses and interest on bonds; any balance to be paid lessor.	556	5870
Subsidiary road, contingent money rental. Leased Jan. 1, 1884, for 50 years; any surplus of earnings after paying operating and other expenses to be paid lessor.	557	
Subsidiary road, other relation. Used by Pennsylvania R. R. as a siding. Formal lease not executed.	558	
Subsidiary road, contingent money rental. Leased May 1, 1883, for 30 years; rental, net earnings.	559	
Subsidiary road, contingent money rental. Leased April 1, 1895, for 30 years; rental, net earnings.	560	
Subsidiary road, contingent money rental. Leased March 1, 1880, for 99 years; rental, net earnings.	561	
Subsidiary road, contingent money rental. Lease dated Nov. 1, 1894, for 50 years; rental, 5 per cent on bonded debt, taxes, and 6 per cent on capital stock, if earned.	562	5871
Subsidiary road, fixed money rental. Leased May 1, 1882, for 50 years; rental, $28,000 per annum and taxes.	563	
Subsidiary road, contingent money rental. Operated by Pennsylvania R. R., as agent, under resolution of board of directors, in effect Aug. 27, 1897, this arrangement being terminable by either company on 30 days' notice; net earnings paid to this company.	564	
Subsidiary road, contingent money rental. Agreement dated Aug. 15, 1891, terminable at the option of either party on 30 days' notice; net earnings paid to this company.	565	

	No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
5872		**PENNSYLVANIA RAILROAD COMPANY**—Continued.		
	566	Southwest Pennsylvania Railway Company...	113.94	.....
	567	Sunbury and Lewistown Railway Company...	55.88	.....
	568	Sunbury, Hazleton and Wilkesbarre Railway Company.	43.44	.....
	569	Susquehanna and Clearfield Railroad Company	24.89	.....
5873				
	570	Tipton Railroad Company.....	4.44	.....
	571	Trenton Delaware Bridge Company.....	.19	.....
	572	Tyrone and Clearfield Railway Company.....	134.43	.....
	573	United New Jersey Railroad and Canal Company.	144.84	.....
5874	574	Belvidere Delaware Railroad Company.....	80.83	.....
	575	Camden and Burlington County Railroad Company.	29.61	.....
	576	Mount Holly, Lumberton and Medford Railroad Company.	5.95	.....
	577	Philadelphia and Trenton Railroad Company	26.50	.....
5875				
	578	Connecting Railway Company.....	6.75	.....

DEFENDANTS' EXHIBIT 20-K. 1519

Remarks.	No.	
		5876
Subsidiary road, contingent money rental. Leased April 1, 1873, for 5 years; extended by agreement March 9, 1878, for one year, and from year to year thereafter; terminable at the end of any year after 6 months' notice by either party; net earnings paid to this company.	566	
Subsidiary road, contingent money rental. Leased Oct. 1, 1896, for 79 years; operated for cost and one-half of net earnings after payment of interest on outstanding bonds.	567	
Subsidiary road, contingent money rental. Leased May 1, 1878, for 50 years; net earnings paid to this company.	568	
Subsidiary road, contingent money rental. Operated under resolutions of board of directors of each company, in effect Sept. 10, 1884, this arrangement terminable at the option of either party on 30 days' notice; net earnings paid to this company.	569	5877
Subsidiary road, contingent money rental. Agreement dated May 1, 1886, terminable at the option of either party on 30 days' notice; net earnings paid to this company.	570	
Subsidiary road, fixed money rental. Trackage contract dated June 20, 1877, for 993 years, 5 months, and 10 days; annual rental, $32,000 and taxes.	571	
Subsidiary road, fixed money rental. Leased Jan. 1, 1882, for 50 years; lessee to pay annually all taxes, interest on bonds, sinking fund, and 5 per cent on capital stock.	572	
Subsidiary road, fixed money rental. Leased June 30, 1871, for 999 years; annual rental, 10 per cent on capital stock, taxes, interest on funded and other debts, damages, losses, etc.	573	
Subsidiary road, contingent money rental. Leased Jan. 1, 1876, to June 30, 2870; assigned to Pennsylvania R. R. March 7, 1876; revenue to be applied first to operations; second, to interest on bonds; any balance to be paid lessor.	574	5878
Subsidiary road, fixed money rental. Leased April 24, 1868, for the term of corporate existence, to Camden & Amb. R. R., one of the constituent companies of United N. J. R. R. & Canal Co.; annual rental, 6 per cent on capital stock and bonds and $500 for organization expenses; lease assigned to Pennsylvania R. R., June 30, 1871.	575	
Subsidiary road, fixed money rental. Leased May 14, 1869, during corporate existence; rental, 6 per cent on capital stock, interest on bonds, taxes, and $200 for maintenance of organization; lease assigned to Pennsylvania R. R., June 1[illegible], 1871.	576	
Subsidiary road, fixed money rental. Leased June 30, 1871, from United N. J. R. R. & Canal Co. for 999 years; annual rental, 10 per cent on capital stock (excluding 7,650 shares owned by United N. J. R. R. & Canal Co.), taxes, assessments, etc.	577	5879
Subsidiary road, fixed money rental. Leased Feb. 18, 1863, for 999 years; annual rental, 6 per cent on capital stock, 6 per cent on bonds, and taxes; included in lease to Pennsylvania R. R.	578	

5880

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	PENNSYLVANIA RAILROAD COMPANY—Continued.		
579	Rocky Hill Railroad and Transportation Company.	2.38	.....
580	Vincentown Branch Railroad Company.....	2.84	.....

5881

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581	West Chester Railroad Company.....	5.22	.....
582	Western Pennsylvania Railroad Company.....	139.90	.....
583	York, Hanover and Frederick Railroad Company.	55.65	.....

5882

584	Allegheny Valley Railway Company.....	260.30	260.30
585	Cumberland Valley Railroad Company.....	82.20	162.85
586	Cumberland Valley and Martinsburg Railroad Company.	33.65	.....
587	Dillsburg and Mechanicsburg Railroad Company.	7.70	.....
588	Mont Alto Railroad Company.....	17.90	.....
589	Southern Pennsylvania Railway and Mining Company.	21.40	.....

5883

590	Lancaster and Reading Narrow Gauge Railroad Company.	15.21	15.21
591	Northern Central Railway Company.....	148.24	379.51
592	Elmira and Lake Ontario Railroad Company	99.61	.....

Remarks.	No.
	5884
Subsidiary road, fixed money rental. Leased Nov. 22, 1869, for the term of charter to Camden & Amb. R. R., one of the constituent companies of United N. J. R. R. & Canal Co., at 6 per cent per annum on capital stock; lease assigned to Pennsylvania R. R., Nov. 30, 1871.	579
Subsidiary road, fixed money rental. Leased April 7, 1868, during corporate existence; annual rental, 6 per cent on capital stock owned by individuals, and bonds, which is $15,000 each; of capital stock, $10,000 is owned by lessee and nothing is paid on it; lessee pays all taxes. Lease assigned to Pennsylvania R. R. June 30, 1871.	580
	5885
	[165]
Subsidiary road, fixed money rental. Leased Aug. 6, 1879, for 99 years; annual rental, 5 per cent on capital stock, interest on bonds, and taxes.	581
Subsidiary road, fixed money rental. Leased Jan. 1, 1897, for 50 years; rental, interest on bonds, taxes on capital stock and bonds, organization expenses not exceeding $1,000 per annum, and 6 per cent dividend on capital stock, if earned.	582
Subsidiary road, contingent money rental. Operated under resolutions of boards of directors of both companies, adopted March 2 and 10, 1897, this arrangement being terminable at option of either party on 30 days' notice; rental, net earnings.	583
	5886
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	584
....do	585
Subsidiary road, contingent money rental. Leased March 17, 1888, for 99 years; receipts from operation to be applied to maintain the road, pay operating expenses, taxes, insurance, etc.; balance to be paid lessor.	586
Subsidiary road, contingent money rental. Leased Jan. 1, 1873, for 99 years; terms of lease same as those of Cumb. Vy. & Martinsb. R. R.	587
Subsidiary road, contingent money rental. Leased Jan. 1, 1897, for 25 years; terms of lease same as those of Cumb. Vy. & Martinsb. R. R.	588
Subsidiary road, contingent money rental. Leased March 1, 1870, for 199 years; terms of lease same as those of Cumb. Vy. & Martinsb. R. R.	589
	5987
Operating road, subsidiary, other relation. Controlled through ownership of entire capital stock.	590
Operating road, subsidiary, other relation. Controlling interest in capital stock owned by Pennsylvania R. R.	591
Subsidiary road, contingent money rental. Contract terminable at the option of either party on 30 days' notice in writing; net receipts, after paying charges for use of equipment, paid to this company. Contract took effect Jan. 1, 1887. Controlled through ownership of entire capital stock by Nn. Cent. Ry.	592

	No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
5888		**PENNSYLVANIA RAILROAD COMPANY—Continued.**		
		Northern Central Railway Company—Continued.		
	593	Elmira and Williamsport Railroad Company	75.50	.....
	594	Lykens Valley Railroad and Coal Company.	19.70	.....
	595	Shamokin Valley and Pottsville Railroad Company.	36.87	.....
5889	596	Baltimore and Sparrows Point Railroad Company.	5.43	5.43
	597	Union Railroad Company (of Baltimore)....	9.65	9.65
	598	*Philadelphia, Wilmington and Baltimore Railroad Company.*	117.86	685.60
	599	*Baltimore and Potomac Railroad Company*..	93.20	.....
	600	Catonsville Short Line Railroad Company...	3.80	.....
5890	601	Delaware Railroad Company.....	224.38	.....
	602	Delaware, Maryland and Virginia Railroad Company.	97.53	.....
	603	Junction Railroad Company (of Philadelphia)	3.62	.....
	604	Philadelphia and Baltimore Central Railroad Company.	73.68	.....
	605	Chester Creek Railroad Company.....	6.69	.....
5891	606	Philadelphia and Delaware County Railroad Company.	9.93	.....
	[166]			
	607	South Chester Railroad Company.....	3.76	.....

DEFENDANTS' EXHIBIT 20-K. 1523

Remarks.	No.	
		5892
Subsidiary road, fixed money rental. Leased May 1, 1863, for 999 years; annual rental, 7 per cent on preferred and 5 per cent on common stock, interest on bonds, and $3,000 for organization expenses.	593	
Subsidiary road, fixed money rental. Leased April 20, 1896; rental, $35,000 per annum. Terminable on 60 days' written notice by either party.	594	
Subsidiary road, fixed money rental. Leased Feb. 27, 1863, for 999 years; annual rental, 7 per cent interest on bonds, 6 per cent on capital stock, and taxes.	595	
		5893
Operating road, subsidiary, other relation.....	596	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	597	
....*do*.....	598	
Subsidiary road, contingent money rental. Contract took effect Nov. 1, 1891, and is terminable at the option of either company upon giving 30 days' notice in writing; net earnings paid to this company.	599	
Subsidiary road, contingent money rental. Operated by Phila., Wilm. & Balt. R. R., which provides cars and motive power and pays a stipulated amount per ton for the privilege of using tracks.	600	
		5894
Subsidiary road, contingent money rental. Leased May 1, 1897, for 30 years; terminable thereafter by six months' written notice from either party; rental, net earnings.	601	
Subsidiary road, contingent money rental. Agreement dated Aug. 1, 1885; took effect July 1, 1885; terminable on 30 days' notice; net earnings paid to this company.	602	
Subsidiary road, contingent money rental. Under agreement dated March 1, 1899, Phila., Wilm. & Balt. R. R. operates Junction R. R. for cost, paying to Junction R. R. net earnings until March 1, 1949.	603	
Subsidiary road, contingent money rental. Agreement dated Aug. 1, 1881; took effect Sept. 1, 1881; net earnings paid to this company.	604	
Subsidiary road, fixed money rental. Leased Jan. 13, 1868, for 999 years; rental, 6 per cent on $185,000 capital stock, interest on bonds, and taxes.	605	
Subsidiary road, contingent money rental. Operated under resolutions of boards of directors of both companies, adopted, respectively, June 26 and 29, 1894, this arrangement terminable on 30 days' notice from either party; rental, net earnings.	606	5895

[167]

Subsidiary road, other relation. Controlled through ownership of entire capital stock; used as a siding.	607	

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	PENNSYLVANIA RAILROAD COMPANY—Continued.		
608	Washington Southern Railway Company....	37.85	.....
609	West Jersey and Seashore Railroad Company.	309.65	310.55
	[182]		
863	**LAKE ERIE AND WESTERN RAILROAD COMPANY.**	710.61	718.38
864	Northern Ohio Railway Company.....	162.84	162.84
486	**NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY.**	.....	.....
884	Dunkirk, Allegheny Valley and Pittsburgh Railroad Company.	90.60	90.60
885	Titusville, Cambridge and Lake Erie Railroad Company.	1.00	1.00
886	LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY.	862.15	1,413.44
887	Central Trunk Railroad Company.....	5.26	.....
888	Detroit and Chicago Railroad Company.....	25.56	.....
889	Detroit, Hillsdale and Southwestern Railroad Company.	64.76	.....
890	Detroit, Monroe and Toledo Railroad Company.	54.76	.....
891	Elkhart and Western Railroad Company....	11.72	.....
892	Erie and Kalamazoo Railroad Company.....	.....	.....
893	Fort Wayne and Jackson Railroad Company	97.83	.....

DEFENDANTS' EXHIBIT 20-K. 1525

Remarks.	No.	
		5900
Subsidiary road, contingent money rental. Agreement went into effect Nov. 1, 1891; terminable at option of either party on 30 days' notice; rental, entire net earnings.	608	
Operating road, subsidiary, other relation.....	609	
	[183]	
Operating road, independent.....	863	
		5901
Operating road, subsidiary, contingent money rental. Leased Oct. 1, 1895, for 999 years; rental, interest on bonds, taxes, and insurance; any net earnings remaining after such payment shall be paid to lessor.	864	
Operating road, independent.....	486	
Operating road, subsidiary, fixed money rental. Leased Dec. 1, 1872, for 501 years; annual rental, 7 per cent interest on bonds, 1½ per cent dividends on capital stock.	884	
Operating road, subsidiary. Used as a siding by Dunk., Allegh. Vy. & Pittsb. R. R.	885	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock. "Line owned" excludes 7.84 miles leased to N. Y., Chic. & St. L. R. R. for 99 years, at a rental of $5,000, *which, with .87 mile not used for traffic purposes, once formed a part of main line between Silver Creek and Dunkirk, N. Y. "Line operated" includes 7.20 miles leased from Battle Ck. & Sturgis Ry.*	886	
		5902
Subsidiary road, other relation. Controlled through ownership of capital stock.	887	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	888	
Subsidiary road, fixed money rental. Leased Sept. 5, 1881, in perpetuity; annual rental, $54,000, and $500 for organization expenses.	889	
Subsidiary road, contingent money rental. Leased July 1, 1856, in perpetuity. Lessee pays operating expenses and all fixed charges, and receives gross surplus from operation. Capital stock, except one share, owned by L. Shore & Mich. Sn. Ry.	890	
		5904
Subsidiary road, other relation. Controlled through ownership of entire capital stock and bonds.	891	
Subsidiary road, other relation. Included in branches of L. Shore & Mich. Sn. Ry.	892	
Subsidiary road, contingent money rental. Leased Aug. 24, 1882, in perpetuity; annual rental, 5½ per cent on preferred stock, $1,500 for organization expenses, taxes, assessments, etc. Should net earnings in any year after Aug. 24, 1887, exceed 8 per cent on preferred stock, lessee will pay amount of such excess up to 2 per cent on common stock.	893	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
5904		**NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY—Continued.**		
		LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY—Continued.		
	894	Jamestown and Franklin Railroad Company	50.91	.....
	[184]			
	895	Kalamazoo and White Pigeon Railroad Company.	36.54	.....
5905				
	896	Kalamazoo, Allegan and Grand Rapids Railroad Company.	58.45	.....
	897	Mahoning Coal Railroad Company.....	48.01	.....
	898	Northern Central Michigan Railroad Company.	61.36	.....
	899	Oberlin and La Grange Railway Company..	4.00	.....
5906				
	900	Sturgis, Goshen and Saint Louis Railroad Company.	28.28	.....
	901	Swan Creek Railway Company.....	1.31	.....
	902	New York, Chicago and Saint Louis Railroad Company.	504.68	532.98
5907				
	903	Chicago and State Line Railroad Company	9.96	.....
	904	Pittsburgh and Lake Erie Railroad Company	71.31	179.82
	905	Beaver and Ellwood Railroad Company...	5.01	.....

DEFENDANTS' EXHIBIT 20-K. 1527

Remarks.	No.	
		5908
Subsidiary road, contingent money rental. Leased Jan. 1, 1895, for 5 years; annual rental, 30 per cent of gross earnings, and all taxes except those imposed by United States or State of Pennsylvania upon tonnage, dividends, or interest on bonds.	894	
	[185]	
Subsidiary road, contingent money rental. Leased May 1, 1897, in perpetuity. Lessee pays operating expenses and all fixed charges, and receives gross surplus from operation. Capital stock owned by lessee.	895	
		5909
Subsidiary road, fixed money rental. Leased Sept. 21, 1869, for 999 years; annual rental, 6 per cent on capital stock interest on bonds.	896	
Subsidiary road, contingent money rental. Leased July 1, 1884, in perpetuity; annual rental, 40 per cent of gross earnings; if that is insufficient to pay interest on bonds, 5 per cent on preferred stock, and $1,000 for corporate expenses, lessee will advance necessary amount and charge same against future rental.	897	
Subsidiary road, contingent money rental. Leased May 1, 1897, in perpetuity. Lessee pays operating expenses and all fixed charges and receives gross surplus from operation. Capital stock owned by lessee.	898	
Subsidiary road, contingent money rental. Contract dated Mar. 29, 1894, provides that the lessee furnish rails and fastenings used in constructing road, for which it shall receive a mortgage for the amount payable in 10 years. For train service the lessee shall receive pay at the rate of $5 for each round trip of a train, and collects $1 per car for Oberlin & La Grange Ry. on each car of freight received. From any surplus over $5 per round trip is deducted the interest on mortgage at rate of 6 per cent and balance paid to Oberlin & La Grange Ry.	899	
		5910
Subsidiary road, other relation. Controlled through ownership of entire capital stock and bonds.	900	
Subsidiary road, other relation. Mileage included in sidings of L. Shore & Mich. Sn. Ry., and is used exclusively for switching purposes; entire capital stock owned by that company.	901	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock. "Line operated" includes 7.84 miles owned by L. Shore & Mich. Sn. Ry.	902	5911
Subsidiary road, fixed money rental. Leased in perpetuity to Ft. Way. & Ill. R. R.; annual rental, $100, organization expenses up to $500, all taxes, assessments, etc. Ft. Way. & Ill. R. R. merged into N. Y., Chic. & St. L. R R, Aug. 18, 1887.	903	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	904	
Subsidiary road, contingent money rental. Leased Aug. 1, 1895, for one year, with option of continuation at the end of each year indefinitely; rental, ⅓ of first $900 of monthly gross earnings and ¼ of all monthly gross earnings in excess thereof.	905	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
5912		**NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY—Continued.**		
		New York, Chicago and St. Louis Railroad Company—Continued.		
	906	Mahoning State Line Railroad Company..	3.16	.....
	907	Pittsburgh, McKeesport and Youghiogheny Railroad Company.	100.52	.....
	908	Youghiogheny Northern Railway Company.	1.92	.....
5913				
	909	Thompson Run Railroad Company.....	4.00	.....
	910	Ellwood Connecting Railroad Company...	.68	.68
	911	MICHIGAN CENTRAL RAILROAD COMPANY.....	270.07	1,657.53
	912	Battle Creek and Sturgis Railway Company.	41.00	.....
	913	Bay City and Battle Creek Railway Company	18.00	.....
5914	914	Buchanan and Saint Joseph River Railroad Company.	1.88	.....
	915	Canada Southern Bridge Company.....	3.66	.....
	916	Detroit and Bay City Railroad Company....	155.00	.....
5915				
	[186]			
	917	Detroit, Delray and Dearborn Railroad Company.	4.84	.....
	918	East Chicago Belt Railroad Company.....	5.44	.....

DEFENDANTS' EXHIBIT 20-K. 1529

Remarks.	No.	
		5916
Subsidiary road, other relation. Leased Nov. 26, 1895, for 99 years; rental, annual taxes, maintenance, and assessments; entire capital stock owned by lessee company.	906	
Subsidiary road, fixed money rental. Leased Jan. 1, 1884, for 999 years; Pittsb. & L. Erie R. R. and L. Shore & Mich. Sn. Ry. guarantee 6 per cent on capital stock and interest on bonds.	907	
Subsidiary road, contingent money rental. Leased for 50 years from April 1, 1883; lessee agrees to pay $1 per carload for each freight car loaded with coal or coke transported over any portion of road.	908	5917
Subsidiary road, other relation.....	909	
Operating road, subsidiary, other relation. Controlled through ownership of entire capital stock.	910	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock. Of "line operated," 380.04 miles not in United States.	911	
Subsidiary road, fixed money rental. Rental, interest on bonds, operating expenses, and taxes. Mich. Cent. R. R. also owns a majority of capital stock. Of "line owned," 7.20 miles operated by L. Shore & Mich. Sn. Ry. with Sturgis, Goshen & St. L. Ry.	912	
Subsidiary road, fixed money rental. Agreement dated Feb. 1, 1890, in perpetuity; rental, interest on bonds, and taxes.	913	
Subsidiary road, other relation. Used as a spur track by Mich. Cent. R. R., leading to manufacturing industries.	914	5918
Subsidiary road, contingent money rental. Operated under agreement dated Dec. 12, 1882, for 21 years, with Can. Sn. Ry., which owns substantially all its capital stock and bonds, the Bridge Company being credited with its earnings and charged with its expenses.	915	
Subsidiary road, other relation. Under a contract dated March 10, 1881, Det. & Bay Cy. R. R. gave entire possesion and control of its railroad and property to Mich Cent. R. R., which agreed to operate the same during its corporate existence. By this contract the lessee was authorized to issue and did issue its bonds to the amount of $4,000,000, bearing interest at 5 per cent, and maturing 50 years from March 1, 1881. To secure the payment of said bonds both said companies joined in the execution of a mortgage upon all the railroad property and franchises of Det. & Bay Cy. R. R.	916	5919

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Subsidiary road, other relation. Controlled through ownership of entire capital stock.	917	
Subsidiary road, other relation. Controlled through ownership of capital stock.	918	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
		NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY—Continued.		
		MICHIGAN CENTRAL RAILROAD COMPANY—Continued.		
	919	Grand River Valley Railroad Company.....	83.79	.....
	920	Grayling, Twin Lakes and Northeastern Railroad Company.	27.80	.....
	921	Jackson, Lansing and Saginaw Railroad Company.	295.10	.....
5921				
	922	Joliet and Northern Indiana Railroad Company.	45.00	.....
	923	Kalamazoo and South Haven Railroad Company.	39.50	.....
	924	Lansing Transit Railway Company.....	.77	.....
	925	Michigan Air Line Railroad Company.....	115.16	.....
5922	926	Michigan Midland and Canada Railroad Company.	14.68	.....
	927	Saginaw Bay and Northwestern Railroad Company.	82.57	.....
	928	Terminal Railroad Company..	10.16	.....
	929	Toledo, Canada Southern and Detroit Railway Company.	58.92	.....
	936	**PENNSYLVANIA COMPANY**.....	.....	1,225.17
	937	Calumet River Railway Company.....	4.43	.....
5923	938	Cleveland and Pittsburgh Railroad Company..	198.34	.....

Remarks.	No.	
		5924
Subsidiary road, fixed money rental. Leased Jan. 20, 1870, to continue during the corporate existence of lessor. Under new articles of asociation of April 25, 1894, period was extended to 999 years from that date. Lessee guarantees all obligations and 5 per cent per annum on stock.	919	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	920	
Subsidiary road, fixed money rental. Leased Sept. 1, 1871, during corporate existence of the two companies; lessee pays principal of and interest on bonds of lessor and a dividend of 3½ per cent per annum, also $750 per annum for organization purpose.	921	5925
Subsidiary road, fixed money rental. Operated under contracts executed Sept. 7 and 26, 1854; on completion, turned over to Mich. Cent. R. R. to operate forever at an annual rental of $89,000.	922	
Subsidiary road, fixed money rental. Leased July 1, 1870, in perpetuity; lessee to pay taxes and interest on bonds.	923	
Subsidiary road, fixed money rental. Leased Feb. 18, 1888, for 99 years from Sept. 15, 1887; rental, $1 per annum. Used for switching purposes by Mich. Cent. R. R.	924	
Subsidiary road, fixed money rental. Leased Jan. 1, 1870, for 999 years, lessee guaranteeing principal of and interest on bonds.	925	
Subsidiary road, other relation. Operated under agreement dated Dec. 12, 1882, for 21 years, with Can. Sn. Ry., which owns a majority of its capital stock and all its bonds, Mich. Midl. & Can. R. R. being credited with its earnings and charged with its expenses.	926	5926
Subsidiary road, other relation. Controlled through ownership of majority of capital stock.	927	
Subsidiary road, other relation. Controlled through ownership of capital stock.	928	
Subsidiary road, other relation. Operated under agreement dated Dec. 12, 1882, for 21 years, with Can. Sn. Ry., which owns substantially all its capital stock and bonds, Tol., Can. Sn. & Det. Ry. being credited with its earnings and charged with its expenses.	929	
Operating road, independent.....	936	
Subsidiary road, other relation. Controlled through ownership of entire capital stock since March 3, 1883.	937	
Subsidiary road, fixed money rental. Leased to Pennsylvania R. R., Dec. 1, 1871, for 999 years; lessee agrees to pay a rental of $786,795 per annum, interest on bonds, $10,000 for organization expenses, all payments for account of sinking fund, and all other obligations of lessor company. Lease transferred to Pennsylvania Co., April 14, 1873.	938	5927

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
5928		**PENNSYLVANIA COMPANY—Continued.**		
	939	**Erie and Pittsburgh Railroad Company**.....	84.47	.....
	940	Indianapolis and Vincennes Railroad Company	133.11	.....
	941	Marginal Railroad Company.....	2.96	.....
5929	942	**Pittsburgh, Fort Wayne and Chicago Railway Company.**	469.89	.....
	943	Massillon and Cleveland Railroad Company.	12.23	.....
	944	New Castle and Beaver Valley Railroad Company.	14.98	.....
5930				
	[188]			
	945	Pittsburgh, Ohio Valley and Cincinnati Railroad Company.	15.27	.....
	946	Pittsburgh, Youngstown and Ashtabula Railroad Company.	125.09	.....
5931	947	Rochester, Beaver Falls and Western Railway Company.	.55	.....
	948	Salineville Railroad Company.....	3.07	.....
	949	South Chicago and Southern Railroad Company	10.25	.....

DEFENDANTS' EXHIBIT 20-K. 1533

Remarks.	No	
		5932
Subsidiary road, fixed money rental. Leased to Pennsylvania R. R., Mar. 1, 1870, for 999 years; annual rental, 7 per cent on capital stock and bonds, $2,500 for organization expenses, and taxes; lease transferred to Pennsylvania Co., April 1, 1871.	939	
Subsidiary road, contingent money rental. Leased Jan. 1, 1879, for 99 years; lessee agrees to operate and maintain road for cost of such service; net earnings paid to lessor to be applied to payment of interest on bonds. Majority of capital stock owned by lessee.	940	
Subsidiary road, other relation. Branch line connecting certain industries in Beaver Falls, Pa., with main line of Pittsb., Ft. Way. & Chic. Ry., and is operated by Pennsylvania Co. in connection with that road. It is not an organized company.	941	5933
Subsidiary road, fixed money rental. Leased July 1, 1869, for 999 years, to Pennsylvania R. R.; annual rental, interest on bonds, sinking fund, 7 per cent on capital stock, organization expenses, and taxes. Pennsylvania Co. acts as agent or operator for lessee company.	942	
Subsidiary road, contingent money rental. Leased May 22, 1869, for 99 years, at a rental of 40 per cent of gross earnings, minimum being fixed at $20,000 a year; lease transferred to Pennsylvania R. R., July 1, 1869. Pennsylvania Co. acts as agent or operator for lessee company.	943	
Subsidiary road, contingent money rental. Leased July 1, 1865, for 99 years, at a rental of 40 per cent of gross earnings; lease assigned to Pennsylvania R. R., June 7, 1869, and by the latter to Pennsylvania Co., June 29, 1874, to take effect as of date April 1, 1871. Entire capital stock owned by Pennsylvania Co.	944	5934

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Subsidiary road, other relation. Operated by Pennsylvania Co. for cost of such service. Controlled through ownership of majority of capital stock since May, 1871.	945	
Subsidiary road, contingent money rental. Leased Aug. 1, 1887, for 1 year, and thereafter from year to year, subject to termination on 12 months' written notice from either party; operated by lessee at cost. Majority of capital stock held by lessee since July 20, 1887.	946	
Subsidiary road, other relation. Controlled through ownership of entire capital stock since Jan., 1891. No contract; road operated and maintained for cost of such service.	947	5935
Subsidiary road, other relation. Operated by Pennsylvania Co. for Wm. Jackson, Trustee.	948	
Subsidiary road, other relation. No contract; operated at cost under a provisional arrangement. Controlled through ownership of entire capital stock since Dec., 1888.	949	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
5936		**PENNSYLVANIA COMPANY**—Continued.		
	950	State Line and Indiana City Railway Company	7.56	.....
	951	Toledo, Walhonding Valley and Ohio Railroad Company.	125.40	.....
	952	Rolling Mill Railroad Company.....	.71	.....
	953	Cincinnati, Lebanon and Northern Railway Company.	37.81	31.76
	954	Cleveland and Marietta Railway Company....	103.13	110.95
5937	955	Cleveland, Akron and Columbus Railway Company.	188.42	205.02
	956	Grand Rapids and Indiana Railway Company.	428.07	583.98
	957	Cincinnati, Richmond and Fort Wayne Railroad Company.	85.60	.....
	958	Muskegon, Grand Rapids and Indiana Railroad Company.	36.85	.....
	959	Traverse City Railroad Company.....	26.00	.....
	960	Pittsburgh, Cincinnati, Chicago and Saint Louis Railway Company.	1,090.31	1,402.64
5938				
	961	Chartiers Railway Company.....	22.76	.....
	962	Chartiers Connecting Railroad Company..	.72	.....
	963	Englewood Connecting Railway Company...	2.35	.....
	964	Little Miami Railroad Company.....	101.80	.....
	965	Columbus and Xenia Railroad Company..	55.00	.....
5939				
	966	Dayton and Western Railroad Company...	37.99	.....
	967	Ohio Connecting Railway Company.....	3.27	.....

DEFENDANTS' EXHIBIT 20-K. 1535

Remarks.	No.	
		5940
Subsidiary road, other relation. Controlled through ownership of entire capital stock since July, 1887. No contract; road operated and maintained for cost of such service.	950	
Subsidiary road, contingent money rental. Leased Jan. 17, 1879, for 99 years; lessee agrees to operate and maintain road for cost of such service.	951	
Subsidiary road, other relation. Controlled through ownership of capital stock since May 12, 1892.	952	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock. Of "line owned," 6.05 miles leased to Day., Leb. & Cin. R. R.	953	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	954	
....do	955	5941
Operating road, subsidiary, other relation. The organization of this company is controlled by Pennsylvania R. R. through stock ownership.	956	
Subsidiary road, other relation. Operated under agreement with Gr. Rap. & Ind. Ry., which accounts for net earnings and applies same toward the interest on bonds, any deficiency being met by Pennsylvania Co. and Pittsb., Cin., Chic. & St. L. R. R.	957	
Subsidiary road, other relation. Operated under agreement with Gr. Rap. & Ind. Ry., which accounts for net earnings and applies same toward interest on bonds.	958	
....do	959	
Operating road, subsidiary, other relation. Controlled through ownership of capital stock. Road owns jointly with Cent. Ohio R. R. 33.03 miles of double track between Newark, Ohio, and Columbus, Ohio, neither company being restricted to the separate use of one track.	960	5942
Subsidiary road, contingent money rental. Leased Dec. 8, 1871, for 99 years from Jan. 1, 1872; rental, net earnings.	961	
Subsidiary road, other relation. Controlled through ownership of entire capital stock since Dec. 17, 1885.	962	
Subsidiary road, other relation. Operated and maintained at cost, any surplus earnings paid to lessor. Pennsylvania Co. owns entire capital stock since July, 1872.	963	
Subsidiary road, fixed money rental. Leased Dec. 1, 1869, for 99 years, renewable forever; annual rental, 8 per cent on capital stock, interest on bonds, and organization expenses.	964	
Subsidiary road, fixed money rental. Leased Nov. 30, 1868, for 99 years, renewable forever; annual rental, 8 per cent on capital stock, interest on bonds; included in lease of Little Miami R. R. to Pennsylvania Co.	965	5943
Subsidiary road, fixed money rental. Leased Jan. 1, 1865, for 99 years, renewable forever; rental, interest on bonds; included in lease of Little Miami R. R. to Pennsylvania Co.	966	
Subsidiary road, contingent money rental. Operated at cost since Oct. 20, 1890; net earnings paid to lessor. Pennsylvania Co. has controlled road through ownership of entire capital stock since organization, Nov. 22, 1886.	967	

	No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
5944		**PENNSYLVANIA COMPANY**—Continued.		
		Pittsburgh, Cincinnati, Chicago and Saint Louis Railway Company—Continued.		
	968	Pittsburgh, Wheeling and Kentucky Railroad Company.	28.04	.....
	969	Steubenville Extension of Pennsylvania Railroad Company.	1.23	.....
5945				
	970	Cincinnati and Muskingum Valley Railroad Company.	148.45	148.45
	[190]			
	971	Newport and Cincinnati Bridge Company...	.73	.73
5946	972	Pittsburgh, Chartiers and Youghiogheny Railway Company.	15.74	17.12
	[176]			
	798	**CLEVELAND, CINCINNATI, CHICAGO AND SAINT LOUIS RAILWAY COMPANY.** [Line east of Terre Haute, Indiana.]	1,205.60	1,411.83
	799	Cincinnati and Southern Ohio River Railroad Company.	3.90	.....
5947				
	[178]			
	800	Columbus, Hope and Greensburg Railroad Company.	26.21	.....

DEFENDANTS' EXHIBIT 20-K. 1537

Remarks.	No.	
		5948
Subsidiary road, contingent money rental. Leased Feb. 25, 1878, for 99 years; lessee operates the road at cost and pays net earnings to lessor. Majority of capital stock owned by Pennsylvania Co.	968	
Subsidiary road, fixed money rental. There is no corporation known as Steubenville Extension R. R. Co. The piece of road called Steubenville Extension, virtually owned by Pennsylvania Co., was built by Pennsylvania R. R. Co., and upon the organization of Pennsylvania Co., in 1871, the latter leased this piece of road for 999 years, paying for the lease a sum equivalent to cost of construction. In 1876 it was subleased for a term of 25 years to Pittsb., Cin. & St. L. Ry., now Pittsb., Cin., Chic. & St. L. Ry., at an annual interest rental based upon the original cost.	969	5949
Operating road, subsidiary, other relation. Controlled through ownership of entire capital stock.	970	
		[191]
Operating road, subsidiary, other relation. Pittsb., Cin., Chic. & St. L. Ry. operates the bridge for Newpt. & Cin. Bridge Co. (used by Louisv. & Nashv. R. R. under trackage arrangement). Pennsylvania Co. owns majority of capital stock.	971	
Operating road, subsidiary, other relation. Controlled jointly by Pittsb., Cin., Chic. and St. L. Ry. and Pittsb. & L. Erie R. R. through joint ownership of entire capital stock, as per agreement dated Jan. 25, 1892.	972	5950
		[177]
Operating road, independent.....	798	
Subsidiary road, other relation. Cin., Indpls., St. L. & Chic. Ry. furnished all money to construct this road. Clev., Cin., Chic. & St. L. Ry. now owns all of the securities, operating it as a branch of its own line.	799	
		5951
		[179]
Subsidiary road, contingent money rental. Cin., Indpls., St. L. & Chic. Ry. owned all the bonds and a majority of capital stock, and operated the road from May, 1884, applying the net earnings toward payment of interest on bonds. By virtue of the consolidation of Cin., Indpls., St. L. & Chic. Ry. with others, on July 1, 1889, into Clev., Cin., Chic. & St. L. Ry., the rights and obligations were vested in the latter company, which owns the entire capital stock.	800	

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	CLEVELAND, CINCINNATI, CHICAGO AND SAINT LOUIS RAILWAY COMPANY—Continued.		
	[Line east of Terre Haute, Indiana.]		
801	Fairland, Franklin and Martinsville Railroad Company.	37.84	.....
802	Harrison Branch Railroad Company.....	7.70	.....
803	Louisville and Jeffersonville Bridge Company.	2.60	.....
804	Vernon, Greensburg and Rushville Railroad Company.	45.10	.....
805	Dayton and Union Railroad Company.....	31.69	46.95
806	Mount Gilead Short Line Railway Company...	2.00	2.00
807	Peoria and Eastern Railway Company..... [Line east of Danville, Illinois.]	218.55	218.55
	[206]		
1253	**ILLINOIS CENTRAL RAILROAD COMPANY..** [Line south of Cairo, Illinois.]	.....	1,356.31
1254	Canton, Aberdeen and Nashville Railroad Company.	87.89	.....
1255	Chicago, St. Louis and New Orleans Railroad Company.	1,178.84	.....
1256	Hodgenville and Elizabethtown Railway Company.	11.10	.....
1257	Paducah Union Depot Company.....	.70	.....
1258	Troy and Tiptonville Railroad Company.....	4.60	.....
1259	Yazoo and Mississippi Valley Railroad Company.	969.13	969.13

DEFENDANTS' EXHIBIT 20-K. 1539

Remarks.	No.	
		5956
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	801	
....do	802	
Subsidiary road, fixed money rental. Stock owned by Clev., Cin., Chic. & St. L. and Ches. & Ohio Rys., two-thirds and one-third, respectively. The principal of and interest on bonds are guaranteed by the railway companies in the same proportion.	803	5957
Subsidiary road, other relation. Controlled through ownership of capital stock and bonds.	804	
Operating road, subsidiary, other relation. Controlled through ownership of capital stock.	805	
Operating road, subsidiary, contingent money rental. Leased April 15, 1880, for 99 years; annual rental, one-third net earnings. Road owned by trustees of Mount Gilead Township.	806	
Operating road, subsidiary, other relation. Controlled through ownership of one-half capital stock. Operated by Clev., Cin., Chic. & St. L. Ry. under guarantee of payment of interest on bonds and all current expenses; also the advancement of any deficit. Agreement effective April 1, 1890.	807	
		5958
	[207]	
Operating road, independent.....	1253	
Subsidiary road, contingent money rental. Leased Mar. 31, 1888, until June 1, 1952; rental, net earnings of the road, which lessee guarantees to be $60,000 per annum.	1254	
Subsidiary road, fixed money rental. Leased July 1, 1882, for 400 years; annual rental, 4 per cent on capital stock, interest on bonds, taxes, assessments, etc.	1255	
Subsidiary road, contingent money rental. Contract dated Sept. 30, 1896; rental, net earnings.	1256	5959
Subsidiary road, fixed money rental. Leased July 1, 1898, for 98 years; rental, $2,500 per annum.	1257	
Subsidiary road, contingent money rental. Contract dated Sept. 30, 1896; rental, net earnings.	1258	
Operating road, subsidiary, other relation.....	1259	

5960 [222]

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
1253	**ILLINOIS CENTRAL RAILROAD COMPANY..** [Line north of Cairo, Illinois.]	705.50	2,322.43
1508	Blue Island Railroad Company.....	3.96	.....
1509	Chicago and Springfield Railroad Company....	111.47	.....

5961

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1510	Chicago and Texas Railroad Company.....	78.70	.....
1511	Chicago, Havana and Western Railroad Company.	131.62	.....
1512	Chicago, Madison and Northern Railroad Company.	231.30	.....

5962

1513	Dubuque and Sioux City Railroad Company...	599.59	.....
1514	Kankakee and Southwestern Railroad Company.	131.26	.....
1515	Rantoul Railroad Company.....	74.43	.....

5963

1516	Saint Louis, Alton and Terre Haute Railroad Company.	239.04	.....

DEFENDANTS' EXHIBIT 20 — 1541

[223] 5964

Remarks.	No.
Operating road, independent.....	1253
Subsidiary road, contingent money rental. Leased May 27, 1896, from July 1, 1893, to end of chartered existence. Lessee receives all earnings and out of same pays expenses of operation, taxes, betterments, and interest on bonds. Any surplus remaining appropriated by lessee.	1508
Subsidiary road, fixed money rental. Leased Dec. 1, 1877, for 50 years from July 1, 1877; in lieu of annual rental, lessee issued currency bonds for $2,000,000 secured by lessor on demised property; $1,600,000 of these bonds were used by lessor to pay for the property, the remainder being reserved for improvements, etc.; lessee agrees to pay principal and interest of these bonds, taxes, assessments, etc.	1509

5965

[225]

Subsidiary road, contingent money rental. Leased Oct. 1, 1897, for 25 years; terminable on 15 days' written notice by either party. Rental, net earnings.	1510
Subsidiary road, contingent money rental. Leased April 1, 1888, in perpetuity; lessee receives all earnings, pays all expenses, and turns over to lessor any net earnings.	1511
Subsidiary road, contingent money rental. Line, Chicago to Freeport, Ill., leased from April 1, 1888, the remainder from March 1, 1892, in perpetuity; lessor to receive net earnings; lessee owns the entire capital stock and bonds of lessor.	1512
Subsidiary road, contingent money rental. Line from Cedar Falls Junction to Minnesota State line, 76 miles, leased from Jan. 1, 1895, for 12 years, the remainder for 56 years and 7 months; lessee receives all earnings, pays all expenses, and turns over to lessor any net earnings.	1513
Subsidiary road, fixed money rental. Leased Aug. 1, 1881, in perpetuity; in lieu of annual rental lessee issued $968,000 registered bonds, secured by lessor on demised property; $200,000 of these bonds retired a like amount previously issued and secured by the same property; residue was for equipping and improving road, lessee agreeing to pay principal and interest and all taxes, assessments, etc.	1514
Subsidiary road, contingent money rental. Leased Dec. 11, 1880, for 50 years; lessee receives all earnings, pays all expenses of operation, taxes, maintenance and cost of betterments; any surplus that may remain after payment of above expenses and deducting a reasonable charge for use of equipment shall constitute a fund for the payment of interest on bonds of the lessor. Any surplus exceeding the amount required to pay such interest on bonds shall belong to the lessee.	1515
Subsidiary road, fixed money rental. Leased Oct. 1, 1895, for 99 years; rental, interest on bonds, 2¼ per cent dividends on capital stock, expenses of operation, maintenance, and taxes. Ill. Cent. R. R. assumes all obligations of this company as lessee to the owners of the several railroads leased to and heretofore operated by it. Supplemental lease made Sept. 15, 1897, confirming lease to Ill. Cent. R. R. of Oct. 1, 1895.	1516

5966

5967

5968

No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
	ILLINOIS CENTRAL RAILROAD COMPANY— Continued.		
	[Line north of Cairo, Illinois.]		
1517	South Chicago Railroad Company.....	4.76	.....
1518	Stacyville Railroad Company.....	7.93	.....

DEFENDANTS' EXHIBIT 20 1543

Remarks.	No.
	5969
Subsidiary road, contingent money rental. Agreement dated Oct. 20, 1896, for chartered existence; lessee agrees to receive all earnings and out of same pay operating expenses, interest on bonds, taxes, and maintenance.	1517
Subsidiary road, contingent money rental. Leased June 24, 1898, from Nov., 1897, to Dec. 31, 1906. Lessee receives all earnings and out of same pays expenses of operation, taxes, repairs, etc.; balance, if any, turned over to lessor, after deducting a reasonable charge for use of equipment.	1518

[Defendants' Exhibit 20-L.]

Extracts from

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INTERSTATE COMMERCE COMMISSION REPORT, 1900.

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Illinois Central R. R. Co.	214-217
Louisville & Nashville R. R. Co.	198-201
Missouri Pacific Ry. Co.	230-231
Southern Pacific Co.	238-241
Southern Pacific Co.	246-249

5971

5972 [122]

REPORT OF THE INTERSTATE COMMERCE COMMISSION.

CLASSIFICATION OF RAILWAYS AND MILE

[The above running title con-

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
12	**BOSTON AND MAINE RAILROAD COMPANY.**	519.50	1,787.04
13	BOSTON AND LOWELL RAILROAD COMPANY.....	96.95	.....
5973			
14	Central Massachusetts Railroad Company...	98.77	.....
15	*Connecticut and Passumpsic Rivers Railroad Company.*	110.30	.....
16	*Nashua and Lowell Railroad Company*.....	14.50	.....
5974			
17	*Northern Railroad Company*.....	82.91	.....
18	Concord and Claremont New Hampshire Railroad Company.	70.90	.....
5975 19	Peterborough and Hillsborough Railroad Company.	18.51	.....
20	Peterborough Railroad Company.....	10.50	.....
21	Stony Brook Railroad Company.....	13.16	.....

DEFENDANTS' EXHIBIT 20-L. 1547

[123] 5976

STATISTICS OF RAILWAYS IN THE UNITED STATES.

AGE FOR THE YEAR ENDING JUNE 30, 1900.

tinues throughout the report.]

Remarks.	No.
Operating road, independent. "Line operated" includes 38.41 miles not in United States.	12
Subsidiary road, fixed money rental. Leased to Boston & Me. R. R., April 1, 1887, for 99 years; rental, 7 per cent on its capital stock for 10 years, and 8 per cent thereafter, operating expenses, and all interest on debt.	13
Subsidiary road, contingent money rental. Leased to Boston & Lowell R. R., Oct. 1, 1886, for 99 years; rental, 20 per cent of gross earnings up to $1,000,000 and 25 per cent of any excess over that amount, deducting from said 20 per cent 5 per cent on $2,000,000 of bonds; lessee to pay $1,500 for organization expenses, and taxes, insurance, and assesments.	14
Subsidiary road, fixed money rental. Leased Jan. 1, 1887, for 99 years, at 5 per cent for 10 years, and 6 per cent thereafter on capital stock, interest on bonds, and $3,000 for organization expenses, annually; lease assumed by Boston & Me. R. R.	15
Subsidiary road, contingent money rental. Leased Oct. 1, 1880, for 99 years, to Boston & Lowell R. R., for $60,000; lease assumed July 12, 1887, by Boston & Me. R. R., and rental increased to $72,000, and, in addition, $1,000 a year for organization expenses.	16
Subsidiary road, fixed money rental. Leased to Boston & Lowell R. R., Jan. 1, 1890, for 99 years; rental, 5 per cent on Northern R. R. capital stock for the first 7½ years, and 6 per cent on the same thereafter. Also principal of and interest on $500,000 first mortgage bonds of Conc. & Claremont N. H. R. R. and $100,000 first mortgage bonds of Peterb. & Hillsb. R. R.; lease assigned to Boston & Me. R. R., Feb. 28, 1890.	17
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	18
....do	19
Subsidiary road, fixed money rental. Leased April 1, 1893, for 93 years; rental, 4 per cent on capital stock, $300 organization expenses, operating expenses and taxes. Boston & Me. R. R. operates road by reason of being the lessee of Boston & Lowell R. R.	20
Subsidiary road, fixed money rental. Leased to Boston & Lowell R. R., Jan. 1, 1890, for 99 years; rental, 7 per cent on capital stock, taxes, repairs, etc., and $500 per annum for organization expenses; lease assumed by Boston & Me. R. R.	21

5977

5978

5979

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No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	BOSTON AND MAINE RAILROAD COMPANY —Continued.		
	BOSTON AND LOWELL RAILROAD COMPANY—Continued.		
22	Wilton Railroad Company.....	15.50	.....
5981 23	Concord and Montreal Railroad Company.....	233.33	.....
24	Concord and Portsmouth Railroad Company.	47.50	.....
25	Franklin and Tilton Railroad Company.....	5.00	.....
26	Lake Shore Railroad Company.....	17.28	.....
27	Nashua, Acton and Boston Railroad Company.	20.83	.....
5982			
28	New Boston Railroad Company.....	5.19	.....
29	Pemigewasset Valley Railroad Company....	22.93	.....
30	Profile and Franconia Notch Railroad Company.	12.84	.....
31	Suncook Valley Railroad Company.....	17.37	.....
5983			
32	Suncook Valley Extension Railroad Company.	4.46	.....
33	Tilton and Belmont Railroad Company.....	4.17	.....
34	Whitefield and Jefferson Railroad Company.	33.69	.....
35	*Connecticut River Railroad Company*.....	79.85	.....

Remarks.	No.	
Subsidiary road, fixed money rental. Leased to Boston & Lowell R. R. for 99 years from Oct., 1883; rental, $16,800, all public taxes, and $150 for organization, annually; July 12, 1874, lease assigned to Boston & Me. R. R. without consent of lessor; Dec. 19, 1890, lessor assented to assignment of lease at a semi-annual rental of $10,200.	22	
Subsidiary road, fixed money rental. Leased June 29, 1895, for 91 years; rental, 7 per cent on capital stock, interest on bonds, operating expenses, all taxes, and expenses of organization; lessee assumes all traffic balances due from lessor to other railroads.	23	5985
Subsidiary road, fixed money rental. Contract dated May 26, 1862, for 99 years from Jan. 1, 1862; rental, 7 per cent on capital stock and $500 for organization, annually.	24	
Subsidiary road, fixed money rental. Leased Oct. 8, 1895, for 91 years from April 1, 1895; rental, $1 annually, with such additional sums as may be necessary to keep up the organization of lessor. Lease assigned to Boston & Me. R. R.	25	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	26	
Subsidiary road, other relation. Controlled through ownership of majority of capital stock. Operated by Boston & Me. R. R. under its lease of Conc. & Montreal R. R. Boston & Me. R. R. is entitled to all receipts, and is to pay all expenses, including taxes.	27	5986
Subsidiary road, fixed money rental. Leased June 19, 1893, for 99 years; rental, $2,800 per annum. Lease assigned to Boston & Me. R. R., June 29, 1895.	28	
Subsidiary road, fixed money rental. Leased to Boston, Conc. & Montreal R. R. (now Conc. & Montreal R. R.), Feb. 1, 1882, for 100 years; rental, 6 per cent per annum on capital stock, and, in addition, $300 annually for organization expenses, and all taxes; lease assumed by Conc. & Montreal R. R.; lease assigned to Boston & Me. R. R., June 29, 1895.	29	
Subsidiary road, other relation. Controlled through ownership of capital stock.	30	
Subsidiary road, fixed money rental. Leased Jan. 1, 1870, for 42 years, to Manch. & Law, and Concord R. Rs. at an annual rental of $14,400 and $300 for organization expenses. Lease assumed by Conc. & Montreal R. R.	31	5987
Subsidiary road, other relation. Controlled through ownership of capital stock.	32	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	33	
Subsidiary road, other relation. Controlled through ownership of capital stock.	34	
Subsidiary road, fixed money rental. Leased Jan. 1, 1893, for 99 years; rental, 10 per cent on capital stock, 4 per cent interest on bonds, and $2,000 for organization expenses.	35	

	No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
5988		**BOSTON AND MAINE RAILROAD COMPANY —Continued.**		
	36	Danvers Railroad Company	9.26	.....
	37	Kennebunk and Kennebunkport Railroad Company.	4.50	.....
	38	Lowell and Andover Railroad Company	8.73	.....
	39	Manchester and Keene Railroad Company	29.59	.....
5989				
	40	Manchester and Lawrence Railroad Company.	22.39	.....
	41	Newburyport Railroad Company	26.98	.....
	42	Worcester, Nashua and Rochester Railroad Company.	94.48	.....
	43	MAINE CENTRAL RAILROAD COMPANY	346.38	815.83
	44	Belfast and Moosehead Lake Railroad Company.	33.13	.....
5990	45	Dexter and Newport Railroad Company	14.23	.....
	46	Dexter and Piscataquis Railroad Company	16.54	.....
	47	Eastern Maine Railway Company	18.80	.....
	48	European and North American Railway Company.	120.34	.....
	49	Knox and Lincoln Railway Company	48.39	.....
5991				
	50	*Portland and Ogdensburg Railway Company*	109.10	.....
	51	Upper Coos Railroad Company	55.00	.....

DEFENDANTS' EXHIBIT 20-L. 1551

Remarks.	No.	
		5992
Subsidiary road, fixed money rental. Leased May 30, 1853, for 100 years, at $7,500 per annum.	36	
Subsidiary road, fixed money rental. Leased May 15, 1883, for 99 years, for 4½ per cent dividend per annum.	37	
Subsidiary road, fixed money rental. Leased Dec. 1, 1874, for 99 years, at $52,500 per annum, lessee to keep road and property in repair and pay all public taxes.	38	
Subsidiary road, other relation. Sold under foreclosure; bonds purchased by Boston & Lowell and Conc. & Montreal R. Rs. Operated by Boston & Me. R. R. for account of these companies, each being credited with one-half of all earnings and charged with one-half of all expenses.	39	
		5993
Subsidiary road, fixed money rental. Leased Sept. 1, 1887, for 50 years; rental, 10 per cent per annum on capital stock, interest on bonds, and $2,000 per annum for organization expenses.	40	
Subsidiary road, fixed money rental. Leased Feb. 21, 1860, for 100 years, for $225,000 cash and debt due Boston & Me. R. R. of $75,000.	41	
Subsidiary road, fixed money rental. Leased Jan. 1, 1886, for 50 years, for $250,000 per annum and all taxes.	42	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock since Dec. 2, 1884. "Line operated" includes 52.18 miles not in United States.	43	
Subsidiary road, fixed money rental. Leased May 10, 1871, for 50 years, at an annual rental of $36,000 and taxes.	44	
Subsidiary road, fixed money rental. Leased Dec. 13, 1888, for 999 years, at an annual rental of $18,000 until Nov. 24, 1898, and $6,100 per annum thereafter, and $250 per annum for organization expenses; lessee also guarantees the principal and interest of bonds of lessor.	45	5994
Subsidiary road, fixed money rental. Leased Dec. 13, 1888, for 999 years; rental, $13,100, and $250 per annum for organization expenses, and taxes.	46	
Subsidiary road, fixed money rental. Leased May 1, 1883, for 999 years, annual rental, $9,000, all taxes, and $500 for organization expenses.	47	
Subsidiary road, fixed money rental. Leased April 1, 1882, for 999 years; annual rental, $125,000, interest on bonds, all taxes, and $500 for expenses of organization.	48	
Subsidiary road, fixed money rental. Leased Aug. 1, 1891, for 999 years, lessee to pay all taxes, interest, and indebtedness of lessor, a dividend of 5 per cent to the stockholders, and $200 for organization expenses.	49	
		5995
Subsidiary road, fixed money rental. Leased Aug. 20, 1888, for 999 years, lessee to pay all taxes, interest, and indebtedness of lessor, and a dividend of 1 per cent per annum for 3 years, and 2 per cent thereafter.	50	
Subsidiary road, fixed money rental. Leased May 1, 1890, for 999 years; rental, interest on bonds, 6 per cent on capital stock, and $500 for charter obligations.	51	

5996 [126]

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	BOSTON AND MAINE RAILROAD COMPANY —Continued.		
52	Mount Washington Railway Company.....	3.33	3.33
53	*Saint Johnsbury and Lake Champlain Railroad Company.*	131.50	131.50
54	Vermont Valley Railroad Company of 1871...	24.00	24.00

5997

55	Sullivan County Railroad Company.....	26.00	26.00
56	York Harbor and Beach Railroad Company...	11.17	11.17

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5998

93	**NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY.**	438.30	2,037.68
94	Berkshire Railroad Company.....	20.53	.....
95	*Boston and New York Air Line Railroad Company.*	51.50	.....
96	Colchester Railway Company.....	3.59	.....

5999

97	Chatham Railroad Company.....	7.07	.....
98	Danbury and Norwalk Railroad Company....	36.20	.....
99	Harlem River and Port Chester Railroad Company.	11.50	.....

DEFENDANTS' EXHIBIT 20-L. 1553

[127] 6000

Remarks.	No.
Operating road, subsidiary, other relation. Cog-wheel road. Operated only during the summer months.	52
Operating road, subsidiary, other relation. Boston & Lowell R. R., a leased line of Boston & Me. R. R., owns majority of capital stock.	53
Operating road, subsidiary, contingent money rental. Operated by Boston & Me. R. R. as agent, under its lease of Conn. Riv. R. R., the Vt. Vy. R. R. of 1871 receiving gross earnings, less operating expenses, taxes, and interest, with a minimum guarantee of a sufficient sum to pay 4 per cent on entire capital stock.	54
Operating road, subsidiary, contingent money rental. Gross earnings, less operating expenses, interest, and taxes, paid lessor, with a minimum guarantee of a sufficient amount to pay 8 per cent on entire capital stock. Operated by Boston & Me. R. R. as agent, under its lease of Conn. Riv. R. R. Entire capital sock owned by Vt. Vy. R. R. of 1871.	55
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	56

6001

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6002

Operating road, independent.....	93

Subsidiary road, fixed money rental. Leased April 1, 1893, for 99 years; rental, 6 per cent on capital stock, all expenses, taxes, and $250 for maintenance of organization.	94
Subsidiary road, fixed money rental. Leased Oct. 1, 1882, for 99 years; rental, $120,000 per annum, and interest on its bonds and the bonds of Colchester, Ry.	95
Subsidiary road, fixed money rental. Leased April 3, 1878, for 999 years. Interest on bonds guaranteed by Boston & N. Y. Air Line R. R. Operation assumed by N. Y., New Hav. & Hartf. R. R., Oct. 1, 1882.	96
Subsidiary road, contingent money rental. Contract in effect Nov. 22, 1894. Terminable by either party after 30 days' notice in writing. Lessee equips, maintains, and operates railroad, collects all revenue, and pays to the lessor 30 per cent of gross receipts.	97
Subsidiary road, fixed money rental. Leased July 1, 1892, for 99 years; rental, 5 per cent dividend on capital stock, interest on bonds, all taxes, and assesments.	98
Subsidiary road, fixed money rental. Leased Sept. 30, 1873, for 99 years, to N. Y., New Hav. & Hartf. R. R., for interest on bonds. The lessee owns entire capital stock of lessor road.	99

6003

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
		NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY—Continued.		
	100	Middletown, Meriden and Waterbury Railroad Company.	30.34	.....
	101	Milford and Woonsocket Railroad Company...	15.33	.....
	102	Milford, Franklin and Providence Railroad Company.	4.65	.....
6005				
	103	Naugatuck Railroad Company.....	60.99	.....
	104	**New England Railroad Company**.....	359.16	.....
	105	New Haven and Derby Railroad Company....	16.69	.....
	106	*New Haven and Northampton Company*.....	126.31	.....
6006				
	107	Holyoke and Westfield Railroad Company...	10.32	.....
	108	*Norwich and Worcester Railroad Company*...	71.60	.....
	109	OLD COLONY RAILROAD COMPANY.....	507.49	.....
6007				
	110	*Boston and Providence Railroad Company*..	63.03	.....
	111	Attleboro Branch Railroad Company.....	4.00	.....

DEFENDANTS' EXHIBIT 20-L. 1555

Remarks.	No.	
		6008
Subsidiary road, fixed money rental. Leased Nov. 1, 1899, for 1 year; rental, $1,000 per annum.	100	
Subsidiary road, fixed money rental. Leased to New England R. R., April 1, 1897, for 5 years; rental, $4,200 per annum, taxes, and 12½ per cent of the gross earnings of this road and Milf., Frank. & Prov. R. R. in excess of $40,000 per annum. Lease assumed by N. Y., New Hav. & Hartf. R. R., July 1, 1898.	101	
Subsidiary road, fixed money rental. Leased to New England R. R., April 1, 1897, for 5 years; rental, $1,800 and all expenses; also 12½ per cent of gross receipts in excess of $40,000. Lease assumed by N. Y., New Hav. & Hartf. R. R., July 1, 1898.	102	
		6009
Subsidiary road, fixed money rental. Leased April 1, 1887, for 99 years; rental, interest on bonds and 10 per cent per annum on capital stock.	103	
Subsidiary road, fixed money rental. Leased July 1, 1898, for 99 years; rental, 3 per cent on preferred stock, lessee to further pay interest on bonds, all taxes, rates, charges and assessments. Lessee owns majority of capital stock.	104	
Subsidiary road, fixed money rental. Leased July 1, 1892, for 99 years; rental, 3 per cent dividend on capital stock until June 30, 1895, and 4 per cent thereafter during term of lease, interest on bonds, all taxes and assessments.	105	
Subsidiary road, fixed money rental. Leased April 1, 1887, for 99 years; rental, 1 per cent on capital stock for 3 years, 2 per cent for the second 3 years, 3 per cent for the third 3 years, and 4 per cent thereafter; interest on bonds and taxes.	106	
		6010
Subsidiary road, contingent money rental. Leased Dec. 3, 1870, in perpetuity; rental, 50 per cent of gross receipts, subject to interest on bonds of $200,000 guaranteed by New Hav. & Northamp. Co. Lease assumed by N. Y., New Hav. & Hartf. R. R., with lease of New Hav. & Northamp. Co.	107	
Subsidiary road, fixed money rental. Leased to Boston, Hartf. & Erie R. R. (now New England R. R.), Feb. 9, 1869, for 100 years; annual rental, interest on bonds and dividend on preferred stock. Lease assumed by N. Y., New Hav. & Hartf. R. R., July 1, 1898.	108	
Subsidiary road, fixed money rental. Leased Mar. 1, 1893, for 99 years; rental, 7 per cent on capital stock, interest on funded debt, taxes and organization expenses.	109	
		6011
Subsidiary road, fixed money rental. Leased April 1, 1888, for 99 years; annual rental, 10 per cent on capital stock, interest on bonds, taxes and assessments, etc. Excludes one-half of 5 miles owned jointly by Prov. & Worc. and Boston & Prov. R. Rs.	110	
Subsidiary road, fixed money rental. Leased Dec. 31, 1870, for 30 years; annual rental, 7 per cent on capital stock and taxes. Included in lease to Old Colony R. R.	111	

6012

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY—Continued.		
	OLD COLONY RAILROAD COMPANY—Continued.		
112	Nantasket Beach Railroad Company.....	6.95	.....
113	Plymouth and Middleborough Railroad Company.	15.03	.....

6013

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114	Providence, Warren and Bristol Railroad Company.	14.35	.....
115	Pawtuxet Valley Railroad Company.....	5.67	.....
116	Providence and Springfield Railroad Company	27.73	.....

6014

117	*Providence and Worcester Railroad Company*..	50.41	.....
118	Rhode Island and Massachusetts Railroad Company in Massachusetts.	6.52	.....
119	Rhode Island and Massachusetts Railroad Company of Rhode Island.	7.07	.....
120	Rockville Railroad Company.....	4.48	.....

6015

121	Stockbridge and Pittsfield Railroad Company.	22.02	.....
122	West Stockbridge Railroad Company.....	2.64	.....
123	Woonsocket and Pascoag Railroad Company..	9.45	.....

Remarks.	No.
	6016
Subsidiary road, fixed money rental. Leased April 1, 1888, for 99 years; lessee guarantees interest on bonds up to $6,250, pays taxes, and has option of purchasing property after 20 years of lease for $150,000. Road equipped with electric power June 30, 1895.	112
Subsidiary road, contingent money rental. Leased Jan. 1, 1891, for 99 years. No returns to be made to the road for 25 years; thereafter one-third of gross receipts for remainder of lease.	113
	6017
	[131]
Subsidiary road, fixed money rental. Leased Jan. 1, 1892, for 95 years and 9 months from July 1, 1891; rental, 5 per cent on common and preferred stock for first 10 years and 6 per cent thereafter; also interest and taxes, and not exceeding $500 per annum for salaries.	114
Subsidiary road, fixed money rental. Leased July 1, 1884, for 99 years; annual rental, 7 per cent on capital stock, interest on bonds, taxes, assessments, etc. Lease assumed by N. Y., New Hav. & Hartf. R. R., April 1, 1892.	115
Subsidiary road, fixed money rental. Leased to New England R. R., July 1, 1896, for 93 years; rental, 4 per cent on capital stock, interest on bonds, taxes, and assessments. Lease assumed by N. Y., New Hav. & Hartf. R. R., July 1, 1898.	116
	6018
Subsidiary road, fixed money rental. Leased July 1, 1892, for 99 years; rental, 10 per cent on capital stock, interest on bonds, taxes, etc. Excludes one-half of 5 miles owned jointly by Prov. & Worc. and Boston & Prov. R. Rs.	117
Subsidiary road, fixed money rental. Leased to N. Y. & New Eng. R. R. (now New England R. R.), Nov. 21, 1887, for 99 years; annual rental, $10,000 and all taxes, assessments, etc. Lease assumed by N. Y., New Hav. & Hartf. R. R., July 1, 1898.	118
Subsidiary road, fixed money rental. Leased to New England R. R., Oct. 1, 1887, for 99 years; rental, $10,000, all taxes, and repairs. Operated by N. Y., New Hav. & Hartf. R. R. since July 1, 1898, on same terms without contract.	119
Subsidiary road, fixed money rental. Agreement entered into April 1, 1896; rental, $10 per day. Lease terminable on 30 days' notice by either party.	120
	6019
Subsidiary road, fixed money rental. Leased April 1, 1893, for 99 years; rental, 6 per cent on capital stock, all expenses, taxes, and $250 toward organization expenses.	121
Subsidiary road, fixed money rental. Leased April 1, 1893, for 99 years; rental, $1,800 per annum and all taxes.	122
Subsidiary road, other relation. Operated under continued temporary arrangement made with New England R. R. Lessee owns entire capital stock.	123

6020 [134]

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
205	**CENTRAL RAILROAD COMPANY OF NEW JERSEY.**	93.40	695.78
206	Beaver Meadow, Tresckow and New Boston Railroad Company.	2.06	.....
207	Buena Vista Railroad Company.....	1.03	.....
208	Carteret and Sewaren Railroad Company.....	1.25	.....
209	Carteret Extension Railroad Company.....	1.82	.....
210	Constable Hook Railroad Company.....	1.95	.....
6021 211	Cumberland and Maurice River Railroad Company.	22.43	.....
212	Elizabeth Extension Railroad Company.....	.89	.....
213	Freehold and Atlantic Highlands Railroad Company.	24.47	.....
214	Hibernia Mine Railroad Company.....	5.50	.....
215	High Bridge Railroad Company.....	17.46	.....
216	Lafayette Railroad Company.....	.55	.....
217	Lake Hopatcong Railroad Company.....	5.56	.....
218	Lehigh and Lackawanna Railroad Company...	25.39	.....
6022 219	Wind Gap and Delaware Railroad Company.	9.96	.....

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6023	220	Lehigh and Susquehanna Railroad Company..	163.76	.....
	221	Tresckow Railroad Company.....	7.60	.....
	222	Long Branch and Sea Shore Railroad Company	6.53	.....
	223	Longwood Valley Railroad Company.....	13.64	.....
	224	Dover and Rockaway Railroad Company....	5.12	.....

DEFENDANTS' EXHIBIT 20-L. 1559

[135] 6024

Remarks.	No.	
Operating road, independent	205	
Subsidiary road, other relation. Cent. R. R. of N. J. and Phila. & Read. Ry. are given the privilege of running their trains (hauling coal from the Coleraine Colliery) over the tracks of this road, for which privilege the track is to be maintained.	206	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	207	
....do	208	
....do	209	
....do	210	
....do	211	6025
....do	212	
....do	213	
Subsidiary road, contingent money rental. Leased to Cent. R. R. of N. J., Oct. 1, 1890, for 20 years. Rental, $12,500 per annum. When one-third gross earnings amount to $14,000, the rental shall be that amount, and for every $6,000 additional earnings, $2,000 shall be added.	214	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	215	
....do	216	
....do	217	
Subsidiary road, contingent money rental. Operated by Cent. R. R. of N. J. in connection with Wind Gap & Del. R. R. under operating agreement. Rental, 21 per cent of gross receipts, with a minimum rental of $18,000 per annum. Agreement is made for 5 years from Jan. 1, 1893, and continues thereafter, terminable on 1 year's notice.	218	6026
Subsidiary road, contingent money rental. Operated by Cent. R. R. of N. J. in connection with Lehigh & Lack. R. R. under operating agreement. Rental, 21 per cent of gross receipts, with a minimum rental of $18,000 per annum. Agreement is made for 5 years from Jan. 1, 1893, and continues thereafter, terminable on 1 year's notice.	219	

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Subsidiary road, contingent money rental. Owned by Lehigh Coal & Nav. Co., and leased to Cent. R. R. of N. J., March 31, 1871, for 999 years, for one-third of the gross receipts.	220	6027
....do	221	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	222	
....do	223	
Subsidiary road, fixed money rental. Leased April 1, 1881, for 999 years. Rental, 6 per cent on capital stock, taxes, and $500 per annum for organization expenses.	224	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
		CENTRAL RAILROAD COMPANY OF NEW JERSEY—Continued.		
	225	Manufacturers Railroad Company.....	1.68	.....
	226	Manufacturers Extension Railroad Company..	1.23	.....
	227	Middle Valley Railroad Company.....	1.38	.....
	228	Navesink Railroad Company.....	4.66	.....
	229	Nesquehoning Valley Railroad Company.....	16.66	.....
	230	New Jersey Southern Railroad Company.....	71.15	.....
6029	231	New York and Long Branch Railroad Company	38.04	.....
	232	Newark and New York Railroad Company...	6.22	.....
	233	Ogden Mine Railroad Company.....	9.86	.....
	234	Raritan North Shore Railroad Company.....	1.75	.....
	235	Sound Shore Railroad Company.....	5.99	.....
	236	South Branch Railroad Company (of new Jersey).	15.78	.....
	237	Toms River Railroad Company.....	7.57	.....
	238	Toms River and Barnegat Railroad Company.	14.71	.....
	239	Vineland Railroad Company.....	46.82	.....
6030	240	West End Railroad Company.....	1.55	.....
	241	West Side Connecting Railroad Company.....	.94	.....
	242	Wilkes Barre and Scranton Railway Company	4.37	.....

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	464	**NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY.**	819.45	2,951.62
6031	465	Amsterdam, Chuctanunda and Northern Railroad Company.	1.50	.....
	466	Beech Creek Railroad Company.....	159.96	.....
	467	Buffalo Erie Basin Railroad Company.....	.25	.....

DEFENDANTS' EXHIBIT 20-L. 1561

Remarks.	No.	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	225	6032
....do	226	
....do	227	
....do	228	
Subsidiary road, contingent money rental. Leased Nov. 4, 1868, for 999 years, to Lehigh Coal & Nav. Co. for guaranteed annual dividend of 5 per cent; subleased to Cent. R. R. of N. J. for one-third of gross receipts, paid to Lehigh Coal & Nav. Co.	229	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	230	
Subsidiary road, other relation. Entire capital stock owned by Cent. R. R. of N. J., and road operated by that company and Pennsylvania R. R. jointly. Agreement dated Jan. 2, 1888.	231	6033
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	232	
Subsidiary road, fixed money rental. Leased Nov. 4, 1881, for 999 years from Jan. 1, 1882, rental, 5 per cent per annum on capital stock and $500 per annum for office expenses.	233	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	234	
....do	235	
....do	236	
....do	237	
....do	238	
....do	239	
....do	240	6034
....do	241	
Subsidiary road, fixed money rental. Leased May 1, 1888, to Lehigh Coal & Nav. Co., during continuance of charter of lessor, less one year, and lease transferred to Cent. R. R. of N. J.; rental, $47,500 and taxes.	242	

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Operating road, independent. Figures for operated mileage include certain pieces of track aggregating 11.54 miles not in operation.	464	
Subsidiary road, other relation. Operated under verbal agreement, Sept. 23, 1879, to deliver and receive freight to and from Kellogg & Miller's Linseed Oil Works. "Line operated" included as sidings in N. Y. Cent. & Hud. Riv. R. R.	465	6035
Subsidiary road, fixed money rental. Leased Dec. 15, 1890, for 999 years from Oct. 1, 1890. Lessee guarantees principal and interest of $5,000,000 first-mortgage 4 per cent bonds and 4 per cent on $5,000,000 capital stock; also the interest, not to exceed 6 per cent, upon such additional bonds as may be issued by Beech Ck. R. R. under terms of the lease; and agrees to pay the expenses of maintaining corporate organization, not to exceed $6,000 per annum, and all taxes.	466	
Subsidiary road, other relation. Used as a switching road to facilitate delivery of property at the docks.	467	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
6036		**NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY—Continued.**		
	468	Carthage and Adirondack Railway Company..	46.10	.....
	469	Fall Brook Railway Company.....	101.34	.....
	470	Gouverneur and Oswegatchie Railroad Company.	13.05	.....
	471	Mohawk and Malone Railway Company.....	181.50	.....
6037	472	New Jersey Junction Railroad Company.....	4.85	.....
	473	*New York and Harlem Railroad Company*....	135.90	.....
	474	New York and Putnam Railroad Company....	57.16	.....
6038	475	Mahopac Falls Railroad Company.....	4.05	.....
	476	New York Central Niagara River Railroad Company.	2.81	.....
	477	Pine Creek Railway Company.....	74.80	.....
	478	*Rome, Watertown and Ogdensburg Railroad Company.*	412.55	.....
6039	[150]			
	479	Buffalo, Thousand Islands and Portland Railroad Company.	.03	.....
	480	Niagara Falls Branch Railroad Company...	8.57	.....

DEFENDANTS' EXHIBIT 20-L. 1563

Remarks.	No.	
		6040
Subsidiary road, fixed money rental. Leased Jan. 9, 1893, from May 1, 1893, for term of corporate existence. Lessee guarantees principal of and interest on bonds not exceeding $1,600,000.	468	
Subsidiary road, fixed money rental. Leased May 1, 1899, for 999 years; rental, $175,000 per annum, being 3½ per cent on capital stock.	469	
Subsidiary road, fixed money rental. Leased July 8, 1892, in perpetuity. Lessee guarantees principal of and interest on bonds not exceeding $300,000.	470	
Subsidiary road, fixed money rental. Leased May 1, 1893, in perpetuity; rental, 4 per cent interest, and principal guaranteed on not exceeding $2,500,000 first-mortgage bonds.	471	6041
Subsidiary road, fixed money rental. Leased July 1, 1886, for 100 years, with privilege of further term of 100 years, at an annual rental of interest at 4 per cent on its outstanding bonds.	472	
Subsidiary road, fixed money rental. Leased April 1, 1873, for 401 years; annual rental, interest on funded debt and 8 per cent on capital stock, and from May 1, 1900, under a supplementary contract of that date, an additional 2 per cent on capital stock during continuance of original lease.	473	
Subsidiary road, fixed money rental. Leased Jan. 30, 1894, in perpetuity; rental, 4 per cent interest on first-mortgage bonds and 5 per cent on $1,200,000 first consolidated mortgage forty-year bonds of N. Y. & Nn. Ry. pending retirement.	474	
Subsidiary road, other relation. Operated since Jan. 1, 1894, as a branch of N. Y. & Putnam R. R. by N. Y. Cent. & Hud. Riv. R. R., lessee. N. Y. & Putnam R. R. owns entire capital stock.	475	6042
Subsidiary road, other relation.....	476	
Subsidiary road, fixed money rental. Leased May 1, 1899, for 999 years; lessee guarantees principal of and interest on bonds and, in addition, pays lessor $35,000 per annum.	477	
Subsidiary road, fixed money rental. Leased Mar. 14, 1891, in perpetuity. Lessee guarantees principal of and interest on bonds, 5 per cent on capital stock, and a rental of $15,000 per annum until April 1, 1901, and thereafter $7,000 per annum.	478	
		6043
	[151]	
Subsidiary road, other relation. "Line owned" not in operation..	479	
Subsidiary road, fixed money rental. Leased Sept. 21, 1881, in perpetuity, at 7 per cent per annum on capital stock; included in lease to N. Y. Cent. & Hud. Riv. R. R., dated Mar. 14, 1891.	480	

	No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
6044		**NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY—Continued.**		
		Rome, Watertown and Ogdensburg Railroad Company—Continued.		
	481	Oswego and Rome Railroad Company.....	28.49	.....
	482	Utica and Black River Railroad Company..	149.81	.....
6045				
	483	Carthage, Watertown and Sackets Harbor Railroad Company.	28.81	.....
	484	Spuyten Duyvil and Port Morris Railroad Company.	6.04	.....
	485	Syracuse, Geneva and Corning Railway Company.	64.82	.....
	486	Tivoli Hollow Railroad Company.....	1.23	.....
6046	487	Troy and Greenbush Railroad Company.....	6.00	.....
	488	Troy Union Railroad Company.....	5.05	.....
	489	Wallkill Valley Railroad Company.....	32.88	.....
	490	West Shore Railroad Company.....	495.20	.....
	491	Pittsburg and Eastern Railroad Company....	12.00	12.00
6047	492	Saint Lawrence and Adirondack Railway Company.	10.20	65.10

Remarks.	No.	
		6048
Subsidiary road, fixed money rental. Leased Dec. 2, 1869, in perpetuity; annual rental, interest on first-mortgage bonds and $24,000 cash. Lease amended Mar. 2, 1891; rental, 7 per cent on $350,000 first-mortgage bonds and 5 per cent on $400,000 second-mortgage bonds per annum; included in lease to N. Y. Cent. & Hud. Riv. R. R., dated Mar. 14, 1891.	481	
Subsidiary road, fixed money rental. Leased April 14, 1886, for the term of corporate existence; annual rental, 7 per cent on capital stock, interest on bonds, and $4,500 for organization expenses; included in lease to N. Y. Cent. & Hud. Riv. R. R., dated March 14, 1891.	482	6049
Subsidiary road, contingent money rental. Leased for the term of corporate existence for 37½ per cent of gross earnings; included in the lease of Utica & Black Riv. R. R. to Rome, Watert. & Ogdensb. R. R., and to N. Y. Cent. & Hud. Riv. R. R., dated March 14, 1891.	483	
Subsidiary road, fixed money rental. Leased Nov. 1, 1871, to Dec. 31, 1970; annual rental, 8 per cent on $989,000 capital stock.	484	
Subsidiary road, fixed money rental. Leased May 1, 1899, for the term of corporate existence; rental, interest on bonds and all obligations of lessor company, and, in addition, $46,375 per annum.	485	
Subsidiary road, other relation. Operated under contract dated April 3, 1894, with Van Rensselaer Land Co.	486	
Subsidiary road, fixed money rental. Leased Feb. 3, 1851, in perpetuity, at an annual rental of $19,250.	487	6050
Subsidiary road, other relation. One-half of stock owned by N. Y. Cent. & Hud. Riv. R. R., and one-fourth each by Del. & Hud. Co. and Fitchburg R. R. These companies pay these proportions of maintenance and operation.	488	
Subsidiary road, fixed money rental. Leased May 1, 1899, for term of corporate existence; rental, 3½ per cent on capital stock and interest on bonds.	489	
Subsidiary road, fixed money rental. Leased Jan. 1, 1886, for 475 years, with privilege of further term of 500 years; annual rental, interest at 4 per cent on bonds.	490	
Operating road, subsidiary, other relation. Operations controlled by N. Y. Cent. & Hud. Riv. R. R. as joint owner with Pennsylvania Co. of the capital stock of this company.	491	
Operating road, subsidiary, other relation. Operated by N. Y. Cent. & Hud. Riv. R. R. under agreement dated June 1, 1898, by which the operating company acts as agent only of St. Law. & Adirondack Ry., and does not participate in the profits or share the losses of the line thus operated. "Line operated" includes 54.90 miles in Canada, 13.20 miles of which are leased from Grand Trunk Ry.	492	6051

6052

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY—Continued.		
493	Terminal Railway Company of Buffalo.....	11.00	11.00

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509	**PENNSYLVANIA RAILROAD COMPANY**.....	551.49	2,893.89
510	Bald Eagle Valley Railroad Company.....	92.63	.....
511	Bedford and Bridgeport Railway Company....	49.17	.....
512	Bustleton Railroad Company.....	4.16	.....

6054

513	Cambria and Clearfield Railroad Company....	102.07	.....
514	Columbia and Port Deposit Railway Company	43.21	.....
515	Columbus, Kinkora and Springfield Railroad Company.	10.84	.....

6055

516	Cresson and Irvona Railroad Company.....	29.54	.....
517	Delaware River Railroad and Bridge Company	10.27	.....

DEFENDANTS' EXHIBIT 20-L. 1567

Remarks.	No.
Operating road, subsidiary, other relation. Road used exclusively by N. Y. Cent. & Hud. Riv. R. R. and L. Shore & Mich. Sn. Ry., under terms of an agreement entered into by the companies concerned, dated Jan. 1, 1899. N. Y. Cent. & Hud. Riv. R. R. furnishes cars and equipment and operates the road, providing train crews without expense to Term. Ry. of Buff. The two companies using the Term. Ry. of Buff. pay certain rates per car moved over the road, and divide operating expenses. Term. Ry. of Buff. bears the expense of maintaining the property.	493
Operating road, independent	509
Subsidiary road, contingent money rental. Leased July 1, 1864, for 99 years; rental, 40 per cent of gross earnings. Lease does not apply to Nittany Brh., which is operated for cost. Net earnings paid to Bald Eagle Vy. R. R.	510
Subsidiary road, contingent money rental. Operated under resolutions of the directors of both companies, adopted April 29 and May 27, 1891, this arrangement being terminable at option of either party on 30 days' notice; rental, net earnings.	511
Subsidiary road, contingent money rental. Operated under resolutions of the directors of both companies, which took effect Jan. 1, 1891, this arrangement being terminable at option of either party on 30 days' notice; rental, net earnings. lutions of boards of directors, in effect July 1, 1890, this ar-	512
Subsidiary road, contingent money rental. Operated under resolutions of boards of directors of both companies, in effect Sept. 24, 1888, this arrangement being terminable at any time on 30 days' notice; rental, net earnings.	513
Subsidiary road, contingent money rental. Operated under resolutions of boards of directors in effect July 1, 1890, this arrangement being terminable by either party at any time on 30 days' notice in writing; rental, net earnings.	514
Subsidiary road, contingent money rental. Lease dated July 1, 1889, runs from year to year, unless terminated by 6 months' notice. Lessee collects all earnings, pays all expenses for operating the road and maintenance of way, and taxes; balance, if any, is paid to lessor.	515
Subsidiary road, contingent money rental. Operated under resolutions of boards of directors of both companies, in effect June 28 and July 6, 1894, respectively; this arrangement terminable at any time by either party on 30 days' notice; rental, net earnings.	516
Subsidiary road, contingent money rental. Operated under resolutions of the directors of both companies, adopted by Del. Riv. R. R. & Brg. Co., April 17, 1896, and by Pennsylvania R. R., April 22, 1896. Rental, net earnings. Terminable on 30 days' notice from either party.	517

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6057

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6059

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
6060		**PENNSYLVANIA RAILROAD COMPANY—Continued.**		
	518	Downingtown and Lancaster Railroad Company.	37.58	.....
	519	Ebensburg and Black Lick Railroad Company.	15.10	.....
	520	Engelside Railroad Company.....	.17	.....
6061	521	Fair Hill Railroad Company.....	.78	.....
	522	Freehold and Jamesburg Agricultural Railroad Company.	27.54	.....
	523	Harrisburg, Portsmouth, Mount Joy and Lancaster Railroad Company.	52.99	.....
	524	Johnsonburg Railroad Company.....	19.69	.....
	525	Kensington and Tacony Railroad Company...	6.89	.....
6062	526	Lancaster and Reading Narrow Gauge Railroad Company.	15.21	.....
	527	Lewisburg and Tyrone Railroad Company....	85.12	.....
	528	Millstone and New Brunswick Railroad Company.	6.64	.....
	529	Monongahela and Washington Railroad Company.	11.06	.....
6063	530	New York Bay Railroad Company.....	9.20	.....

DEFENDANTS' EXHIBIT 20-L. 1569

Remarks.	No.	
		6064
Subsidiary road, contingent money rental. Operated under resolutions of board of directors of each company, in effect Aug. 1, 1888; this arrangement terminable at any time on 30 days' notice; rental, net earnings.	518	
Subsidiary road, contingent money rental. Operated under resolutions of boards of directors of both companies, in effect Nov. 27 and Dec. 12, 1894, respectively; this arrangement terminable on 30 days' notice from either party; rental, net earnings.	519	
Subsidiary road. "Operated by Pennsylvania R. R. as a siding," pending execution of a formal contract.	520	
Subsidiary road, fixed money rental. Leased Feb. 1, 1896, for 20 years; rental, 4 per cent on capital stock, 4 per cent on outstanding debenture certificate, and taxes,	521	6065
Subsidiary road, contingent money rental. Contract dated July 16, 1879, terminable on 30 days' notice by either party; rental, net earnings.	522	
Subsidiary road, fixed money rental. Leased Jan. 1, 1861, for 999 years; annual rental, 7 per cent on capital stock, 4 per cent interest on bonds, all taxes levied on stock and bonds, and organization expenses up to $2,000.	523	
Subsidiary road, contingent money rental. Leased July 8, 1889, for 50 years, terminable by lessee after expiration of 5 years from date of lease; rental, net earnings.	524	
Subsidiary road, fixed money rental. Leased May 1, 1895, for 20 years; rental, 4 per cent on capital stock, and all taxes.	525	
Subsidiary road, contingent money rental. Operated under resolutions of board of directors of each company, in effect Jan. 1, 1900; this arrangement terminable at any time on 30 days' notice; rental, net earnings. Lessee owns entire capital stock.	526	6066
Subsidiary road, contingent money rental. Leased Jan. 1, 1880, for 99 years; rental, net earnings. "Line owned" includes .24 mile over the Lewisburg Bridge.	527	
Subsidiary road, contingent money rental. Operated by Pennsylvania R. R. since Jan. 1, 1897, by virtue of certain resolutions adopted by board of directors of each company; rental, net earnings; this arrangement terminable at option of either party on 30 days' notice.	528	
Subsidiary road, contingent money rental. Operated under resolutions of boards of directors of both companies, in effect June 21, 1900, this arrangement being terminable at any time on 30 days' notice; rental, net earnings.	529	
Subsidiary road, other relation. Controlled through ownership of entire capital stock. No contract has been made. During the year ending Dec. 31, 1899, Pennsylvania R. R. paid to this company for use of road the sum of $38,683, and taxes amounting to $3,560, to June 30, 1900.	530	6067

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	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
		PENNSYLVANIA RAILROAD COMPANY—Continued.		
	531	Perth Amboy and Woodbridge Railroad Company.	6.40	.....
	532	Philadelphia and Beach Haven Railroad Company.	12.09	.....
6069	533	**Philadelphia and Erie Railroad Company....**	301.62	.....
	534	Philadelphia and Long Branch Railroad Company.	49.07	.....
	535	Philadelphia, Bustleton and Trenton Railroad Company.	3.55	.....
	536	Philadelphia, Germantown and Chestnut Hill Railroad Company.	13.87	.....
	537	Pittsburgh, Virginia and Charleston Railway Company.	77.36	.....
6070	538	Pomeroy and Newark Railroad Company.....	26.70	.....
	539	Ridgway and Clearfield Railroad Company....	27.23	.....
	540	Riverfront Railroad Company.....	4.62	.....
	541	Scalp Level Railroad Company.....	24.69	.....
	542	Schuylkill and Juniata Railroad Company....	289.32	.....
	543	South Fork Railroad Company.....	12.17	.....
6071	544	Southwest Pennsylvania Railway Company...	115.35	.....
	545	Susquehanna and Clearfield Railroad Company	24.89	.....
	546	Tipton Railroad Company.....	4.44	.....

Remarks.	No.	
Subsidiary road, contingent money rental. Operated by virtue of resolutions adopted May 6, 1889, by stockholders of this company, and June 26, 1889, by directors of Pennsylvania R. R.; rental, net earnings. This arrangement terminable at option of either party on 30 days' notice.	531	
Subsidiary road, contingent money rental. Operated by Pennsylvania R. R. as agent, under resolution adopted Jan. 1, 1894; rental, net earnings. Terminable at option of either party on 30 days' notice in writing.	532	
Subsidiary road, contingent money rental. Lease executed Jan. 16, 1862, modified Jan. 1, 1870, for 999 years from Jan. 1, 1862; surplus of gross receipts, after paying operating expenses, etc., to be applied to organization expenses and interest on bonds; any balance to be paid lessor.	533	6078
Subsidiary road, contingent money rental. Leased Jan. 1, 1884, for 50 years; any surplus of earnings after paying operating and other expenses to be paid lessor.	534	
Subsidiary road, other relation. Used by Pennsylvania R. R. as a siding. Formal lease not executed.	535	
Subsidiary road, contingent money rental. Leased May 1, 1883, for 30 years; rental, net earnings.	536	
Subsidiary road, contingent money rental. Leased April 1, 1895, for 30 years; rental, net earnings.	537	
Subsidiary road, contingent money rental. Leased Mar. 1, 1880, for 99 years; rental, net earnings.	538	6074
Subsidiary road, contingent money rental. Lease dated Nov. 1, 1894, for 50 years; rental, 5 per cent on bonded debt, taxes, and 6 per cent on capital stock, if earned.	539	
Subsidiary road, fixed money rental. Leased May 1, 1882, for 50 years; rental, $28,000 per annum and taxes.	540	
Subsidiary road, contingent money rental. Operated by Pennsylvania R. R. as agent, under resolution of board of directors, in effect Aug. 27, 1897, this arrangement being terminable by either company on 30 days' notice; rental, net earnings.	541	
Subsidiary road, contingent money rental. Leased June 1, 1900, for 20 years; rental, net earnings.	542	
Subsidiary road, contingent money rental. Operated under resolutions of the directors of both companies, adopted Aug. 15, 1891; this arrangement terminable at option of either party on 30 days' notice; rental, net earnings.	543	
Subsidiary road, contingent money rental. Leased April 1, 1873, for five years; lease extended by agreement March 9, 1878, for one year, and from year to year thereafter; terminable at the end of any year after 6 months' notice by either party; rental, net earnings.	544	6075
Subsidiary road, contingent money rental. Operated under resolutions of board of directors of each company, in effect Sept. 10, 1884, this arrangement terminable at option of either party on 30 days' notice; rental, net earnings.	545	
Subsidiary road, contingent money rental. Agreement dated May 1, 1886, terminable at option of either party on 30 days' notice; road not in operation.	546	

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	PENNSYLVANIA RAILROAD COMPANY—Continued.		
547	Trenton Delaware Bridge Company.....	.19	.....
548	Tyrone and Clearfield Railway Company.....	134.43	.....
549	United New Jersey Railroad and Canal Company.	144.84	.....
550	Belvidere Delaware Railroad Company.....	81.00	.....
551	Camden and Burlington County Railroad Company.	29.61	.....
552	Mount Holly, Lumberton and Medford Railroad Company.	5.95	.....
553	Philadelphia and Trenton Railroad Company.	26.50	.....
554	Connecting Railway Company.....	6.75	.....
555	Rocky Hill Railroad and Transportation Company.	2.38	.....
556	Vincentown Branch Railroad Company.....	2.84	.....
557	West Chester Railroad Company.....	5.22	.....
558	Western Pennsylvania Railroad Company....	140.17	.....

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DEFENDANTS' EXHIBIT 20-L. 1578

Remarks.	No.
Subsidiary road, fixed money rental. Trackage contract dated June 20, 1877, for 993 years, 5 months and 10 days; annual rental, $32,000 and taxes.	547
Subsidiary road, fixed money rental. Leased Jan. 1, 1882, for 50 years; lessee to pay annually 5 per cent on capital stock, interest on bonds, taxes, and $10,000 for the sinking fund.	548
Subsidiary road, fixed money rental. Leased June 30, 1871, for 999 years; annual rental, 10 per cent on capital stock, interest on funded and other debts, taxes, damages, losses, etc.	549
Subsidiary road, contingent money rental. Leased from Jan. 1, 1876, to June 30, 2870; assigned to Pennsylvania R. R., March 7, 1876, revenue to be applied, first, to operations; second, to interest on bonds; any balance to be paid lessor.	550
Subsidiary road, fixed money rental. Leased April 24, 1868, for the term of corporate existence, to Camden & Amb. R. R., one of the constituent companies of United N. J. R. R. & Canal Co.; annual rental, 6 per cent on capital stock and bonds, taxes, and $500 for organization expenses; lease assigned to Pennsylvania R. R., June 30, 1871.	551
Subsidiary road, fixed money rental. Leased May 14, 1869, during corporate existence; rental, 6 per cent on capital stock, interest on bonds, taxes, and $200 for maintenance of organization; lease assigned to Pennsylvania R. R., June 15, 1871.	552
Subsidiary road, fixed money rental. Leased June 30, 1871, from United N. J. R. R. & Canal Co. for 999 years; annual rental, 10 per cent on capital stock (excluding 7,650 shares owned by United N. J. R. R. & Canal Co.), taxes, assessments, etc.	553
Subsidiary road, fixed money rental. Leased Feb. 18, 1863, for 999 years; rental, 6 per cent on capital stock, 6 per cent on bonds, and taxes; included in lease to Pennsylvania R. R.	554
Subsidiary road, fixed money rental; Leased Nov. 22, 1869, for the term of charter, to Camden & Amb. R. R., one of the constituent companies of United N. J. R. R. & Canal Co., at 6 per cent per annum on capital stock; lease assigned to Pennsylvania R. R., Nov. 30, 1871.	555
Subsidiary road, fixed money rental. Leased April 7, 1868, during corporate existence; rental, 6 per cent on capital stock owned by individuals, and on bonds, which is $15,000 each; of capital stock, $10,000 is owned by lessee and nothing is paid on it; lessee pays all taxes. Lease assigned to Pennsylvania R. R., June 30, 1871.	556
Subsidiary road, fixed money rental. Leased Aug. 6, 1879, for 99 years; rental, 5 per cent on capital stock, interest on bonds, and taxes.	557
Subsidiary road, fixed money rental. Leased Jan. 1, 1897, for 50 years; rental, interest on bonds, taxes, organization expenses not exceeding $1,000 per annum, and 6 per cent dividend on capital stock, if earned.	558

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	No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
		PENNSYLVANIA RAILROAD COMPANY—Continued.		
6084	559	York, Hanover and Frederick Railroad Company.	55.65	.....
	560	Allegheny Valley Railway Company.....	260.30	260.30
	561	Baltimore, Chesapeake and Atlantic Railway Company.	87.66	87.66
	562	Cumberland Valley Railroad Company.....	82.20	162.85
6085	563	Cumberland Valley and Martinsburg Railroad Company.	33.65	.....
	564	Dillsburg and Mechanicsburg Railroad Company.	7.70	.....
	565	Mont Alto Railroad Company.....	17.90	.....
	566	Southern Pennsylvania Railway and Mining Company.	21.40	.....
	567	**Northern Central Railway Company**.....	148.24	379.51
6086	568	Elmira and Lake Ontario Railroad Company.	99.61	.....
	569	Elmira and Williamsport Railroad Company	75.50	.....
	570	Lykens Valley Railroad and Coal Company.	19.70	.....
	571	Shamokin Valley and Pottsville Railroad Company.	36.87	.....
	572	Baltimore and Sparrows Point Railroad Company.	5.43	5.43
6087	573	Union Railroad Company of Baltimore.....	9.65	9.65
	574	*Philadelphia, Wilmington and Baltimore Railroad Company.*	117.86	687.56
	575	*Baltimore and Potomac Railroad Company*..	93.20	.....

DEFENDANTS' EXHIBIT 20-L. 1575

Remarks.	No.	
		6088
Subsidiary road, contingent money rental. Operated under resolutions of boards of directors of both companies, adopted March 2 and March 10, 1897, this arrangement being terminable at option of either party on 30 days' notice; rental, net earnings.	559	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	560	
Operating road, subsidiary, other relation. Controlled through ownership of capital stock.	561	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	562	
Subsidiary road, contingent money rental. Leased March 17, 1888, for 99 years; receipts from operation to be applied to maintain the road, pay operating expenses, taxes, insurance, etc.; balance to be paid lessor.	563	6089
Subsidiary road, contingent money rental. Leased Jan. 1, 1873, for 99 years; terms of lease same as those of Cumb. Vy. & Martinsb. R. R.	564	
Subsidiary road, contingent money rental. Leased Jan. 1, 1897, for 25 years; terms of lease same as those of Cumb. Vy. and Martinsb. R. R.	565	
Subsidiary road, contingent money rental. Leased March 1, 1870, for 199 years; terms of lease same as those of Cumb. Vy. & Martinsb. R. R.	566	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	567	
Subsidiary road, contingent money rental. Contract terminable at option of either party on 30 days' notice in writing; net receipts, after paying charges for use of equipment, paid to this company. Contract took effect Jan. 1, 1887. Controlled through ownership of entire capital stock by Nn. Cent. Ry.	568	6090
Subsidiary road, fixed money rental. Leased May 1, 1863, for 999 years; annual rental, 7 per cent on preferred and 5 per cent on common stock, interest on bonds, and $3,000 for organization expenses.	569	
Subsidiary road, fixed money rental. Leased April 20, 1896; rental, $35,000 per annum. Terminable on 60 days' written notice by either party.	570	
Subsidiary road, fixed money rental. Leased Feb. 27, 1863, for 999 years; rental, 7 per cent interest on bonds, 6 per cent on capital stock, and taxes.	571	
Operating road, subsidiary, other relation.....	572	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	573	6091
....*do*.....	574	
Subsidiary road, contingent money rental. Contract took effect Nov. 1, 1891, and is terminable at the option of either party upon giving 30 days' notice in writing; rental, entire net earnings.	575	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
6092		**PENNSYLVANIA RAILROAD COMPANY**—Continued.		
		Philadelphia, Wilmington and Baltimore Railroad Company—Continued.		
	576	Catonsville Short Line Railroad Company..	3.80	.....
	577	Delaware Railroad Company.....	224.38	.....
	578	Delaware, Maryland and Virginia Railroad Company.	97.53	.....
6093	579	Junction Railroad Company (of Philadelphia).	3.62	.....
	580	Philadelphia and Baltimore Central Railroad Company.	73.68	.....
	581	Chester Creek Railroad Company.....	6.69	.....
	582	Philadelphia and Delaware County Railroad Company.	11.89	.....
6094	583	South Chester Railroad Company.....	3.76	.....
	584	Washington Southern Railway Company...	37.85	.....
	[158]			
	585	Elkton and Middletown Railroad Company of Cecil County.	.47	.47
	586	West Jersey and Seashore Railroad Company..	329.64	330.54
	592	**PHILADELPHIA AND READING RAILWAY COMPANY.**	365.55	1,002.78
6095	593	Allentown Railroad Company.....	4.45	.....
	594	Allentown Terminal Railroad Company.....	3.27	.....

DEFENDANTS' EXHIBIT 20-L. 1577

Remarks.	No.	
		6096
Subsidiary road, contingent money rental. Operated by Phila., Wilm. & Balt. R. R., which provides cars and motive power and pays a stipulated amount per ton for the privilege of using tracks.	576	
Subsidiary road, contingent money rental. Leased May 1, 1897, for 30 years; terminable thereafter on 6 months' written notice from either party; rental, net earnings.	577	
Subsidiary road, contingent money rental. Agreement dated Aug. 1, 1885; took effect July 1, 1885; terminable on 30 days' notice; rental, entire net earnings.	578	6097
Subsidiary road, fixed money rental. Leased March 1, 1899, for 50 years; rental, 6 per cent on capital stock, interest on bonds, taxes, and $1,000 per annum for organization expenses.	579	
Subsidiary road, contingent money rental. Agreement dated Aug. 1, 1881; took effect Sept. 1, 1881; rental, entire net earnings.	580	
Subsidiary road, fixed money rental. Leased Jan. 13, 1868, for 999 years; rental, 6 per cent on $185,000 capital stock, interest on bonds, and taxes.	581	
Subsidiary road, contingent money rental. Operated under resolutions of boards of directors of both companies, adopted, respectively, June 26 and June 29, 1894; this arrangement terminable on 30 days' notice from either party; rental, net earnings.	582	
Subsidiary road, other relation. Controlled through ownership of entire capital stock. Road used as a siding.	583	6098
Subsidiary road, contingent money rental. Agreement went into effect Nov. 1, 1891; terminable at option of either party on 30 days' notice; rental, net earnings.	584	

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Operating road, subsidiary, other relation. Operated under resolutions of board of directors of each company, in effect Sept. 20, 1899; this arrangement terminable on 30 days' written notice.	585	
Operating road, subsidiary, other relation	586	
Operating road, independent	592	6099
Subsidiary road, contingent money rental. Road operated under oral agreement; expenses of operation sustained by Phila. & Read. Ry., which also pays 30 per cent of gross receipts to this company.	593	
Subsidiary road, fixed money rental. Leased July 10, 1889, for 999 years, to Lehigh Coal & Nav. Co., and Phila. & Read. R. R. (reorganized as Phila. & Read. Ry.); rental, $40,500 per annum and taxes. Lehigh Coal & Nav. Co. assigned the lease on the same date to Cent. R. R. of N. J., which company operates the road jointly with Phila. & Read. Ry.	594	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
6100		**PHILADELPHIA AND READING RAILWAY COMPANY—Continued.**		
	595	Catawissa Railroad Company.....	96.50	.....
	596	Chestnut Hill Railroad Company.....	4.00	.....
	597	Colebrookdale Railroad Company.....	12.84	.....
	598	Delaware and Bound Brook Railroad Company	30.70	.....
6101				
	599	East Trenton Railroad Company.....	3.00	.....
	600	East Pennsylvania Railroad Company.....	35.38	.....
	601	Little Schuylkill Navigation, Railroad and Coal Company.	31.10	.....
	602	East Mahanoy Railroad Company.....	10.95	.....
6102				
	603	Mill Creek and Mine Hill Navigation and Railroad Company.	3.81	.....
	604	Mine Hill and Schuylkill Haven Railroad Company.	51.80	.....
	605	Mount Carbon and Port Carbon Railroad Company.	2.50	.....
	606	Norristown Junction Railroad Company.....	.37	.....
	607	North Pennsylvania Railroad Company.....	86.40	.....
6103	608	Philadelphia and Frankford Railroad Company	2.59	.....
	609	Philadelphia and Reading Terminal Railroad Company.	1.30	.....

DEFENDANTS' EXHIBIT 20-L. 1579

Remarks.	No.	
		6104
Subsidiary road, fixed money rental. Leased Dec. 1, 1896, for 999 years; rental, 5 per cent on preferred capital stock, interest on bonds, and maintenance of organization.	595	
Subsidiary road, fixed money rental. Leased Dec. 2, 1870, for 999 years; annual rental, 6 per cent on capital stock and $300 for organization expenses.	596	
Subsidiary road, contingent money rental. Leased Jan. 17, 1870, for 20 years from Jan. 1, 1870; lessee pays all operating expenses, and as rental a sum equal to 30 per cent of gross receipts. Lease assumed by Phila. & Read. Ry., Dec. 1, 1896.	597	
Subsidiary road, fixed money rental. Leased May 1, 1879, for 990 years; rental, 8 per cent on capital stock, interest on funded and floating debt, $6,000 per annum for organization expenses, and taxes.	598	6105
Subsidiary road, other relation. Leased with Del. & Bound Brk. R. R. to Phila. & Read. Ry. Entire capital stock owned by Del. & Bound Brk. R. R.	599	
Subsidiary road, fixed money rental. Leased May 16, 1869, for 999 years from May 1, 1869; lessee pays taxes, interest on bonds, and 6 per cent per annum on capital stock. Lease assumed by Phila. & Read. Ry., Dec. 1, 1896.	600	
Subsidiary road, fixed money rental. Leased Dec. 1, 1896, for 999 years; annual rental, $129,393 and all taxes.	601	
Subsidiary road, contingent money rental. Leased to Little Schuyl. Nav., R. R. & Coal Co., Dec. 1, 1896, for 999 years. Subleased same date to Phila. & Read. Ry. Lessee pays all expenses of operation, all taxes, and as rental a sum equal to 5 per cent on capital stock.	602	
Subsidiary road, fixed money rental. Leased July 25, 1861, for 999 years; annual rental, $33,000 and taxes. Lease assumed by Phila. & Read. Ry., Dec. 1, 1896.	603	6106
Subsidiary road, fixed money rental. Leased May 12, 1864, for 999 years; annual rental, 6 per cent on capital stock.	604	
Subsidiary road, fixed money rental. Leased to Phila. & Read. R. R. March 5, 1860, for 50 years from Jan. 1, 1860; annual rental, $36,250. Lease assumed by Phila. & Read. Ry., Dec. 1, 1896.	605	
Subsidiary road, fixed money rental. Operated under verbal agreement based upon the amount of interest on bonds and taxes.	606	
Subsidiary road, fixed money rental. Leased May 1, 1879, for 990 years; annual rental, interest on bonds, 6 per cent on floating debt, 8 per cent on capital stock, all taxes, and $12,000 for organization expenses.	607	
Subsidiary road, contingent money rental. Leased May 4, 1894; rental, 25 per cent of gross receipts, to be applied by the trustees to the payment of interest on first mortgage bonds. Tenure of lease contingent on the payment of certificates for arrears of interest and floating debt held by the trustees.	608	6107
Subsidiary road, fixed money rental. Leased May 1, 1891, for 999 years; lessee pays all operating expenses, and in addition a sum sufficient for the payment of interest on bonds issued by lessee for construction of Phila. & Read. Term. R. R. and buildings. Lease assumed by Phila. & Read. Ry., Dec. 1, 1896.	609	

	No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
6108		**PHILADELPHIA AND READING RAILWAY COMPANY—Continued.**		
	610	Philadelphia, Germantown and Norristown Railroad Company.	20.60	.....
	611	Plymouth Railroad Company.....	8.94	.....
	612	Philadelphia, Harrisburg and Pittsburg Railroad Company.	47.17	.....
6109	[160]			
	613	Pickering Valley Railroad Company.....	11.21	.....
	614	Schuylkill and Lehigh Railroad Company....	43.86	.....
	615	Schuylkill Valley Navigation and Railroad Company.	10.96	.....
	616	Shamokin, Sunbury and Lewisburg Railroad Company.	31.29	.....
6110	617	Wilmington and Northern Railroad Company.	88.41	.....
	618	Atlantic City Railroad Company.....	83.52	167.44
	619	Camden County Railroad Company.....	7.27	.....
	620	Seacoast Railroad Company.....	66.35	.....
	621	Ocean City Railroad Company.....	10.30	.....
6111	622	Central Dock and Terminal Railway Company	.40	.40
	623	Chester and Delaware River Railroad Company.	5.35	5.35
	624	Gettysburg and Harrisburg Railway Company	42.45	34.07

DEFENDANTS' EXHIBIT 20-L. 1581

Remarks.	No.	
		6112
Subsidiary road, fixed money rental. Leased Nov. 10, 1870, for 999 years; annual rental, $269,623, and $8,000 for organization expenses. Lease transferred to Phila. & Read. Ry.	610	
Subsidiary road, other relation. Included in lease of Phila., Germant. & Norrist. R. R. to Phila. & Read. Ry.	611	
Subsidiary road, fixed money rental. Leased Oct. 15, 1890, for 999 years; lessee pays expenses of operation, all taxes, and as a rental, $200,000 per annum. Lease assumed by Phila. & Read. Ry., Dec. 1, 1896.	612	
	[161]	6113
Subsidiary road, contingent money rental. Leased Sept. 1, 1871, for 29 years; rental, 30 per cent of gross earnings. Lease assumed by Phila. & Read. Ry., Dec. 1, 1896.	613	
Subsidiary road, contingent money rental. Leased April 11, 1883, for 999 years, from May 1, 1883; lease modified May 2, 1898; lessee to pay all operating expenses and financial obligation of lessor. Lease assumed by Phila. & Read. Ry., Dec. 1, 1896.	614	
Subsidiary road, fixed money rental. Leased July 25, 1861, for 999 years; annual rental, $29,450 and taxes. Lease assumed by Phila. & Read. Ry., Dec. 1, 1896.	615	
Subsidiary road, contingent money rental. Leased July 2, 1883, for 999 years; lessee pays all operating expenses and financial obligations of lessor. Lease assumed by Phila. & Read. Ry., Dec. 1, 1896.	616	
		6114
Subsidiary road, fixed money rental. Leased Feb. 1, 1900, for 999 years; rental, 3½ per cent on capital stock, interest on bonds, and taxes.	617	
Operating road, subsidiary, other relation. Subsidiary in the sense that the directors consider a close working alliance with Phila. & Read. Ry. advantageous to the property.	618	
Subsidiary road, other relation. Leased Dec. 1, 1896. Terminable on 3 months' notice. Atl. Cy. R. R. assumes all expenses of operation and taxes.	619	
Subsidiary road, fixed money rental. Leased May 2, 1898, for 999 years; rental, interest on bonds, if earned, and taxes.	620	
Subsidiary road, contingent money rental. Leased May 2, 1898, for 999 years; lessee to maintain the property and pay lessor as a rental a mileage prorate of all through traffic and 50 per cent on all local traffic.	621	
Operating road, subsidiary, other relation. Leased Jan. 30, 1891, to Phila. & Read. R. R., for a term expiring March 31, 1910; lease assumed by Phila. & Read. Ry. Nov. 30, 1896.	622	6115
Operating road, subsidiary, other relation. Subsidiary in the sense that the directors consider a close working alliance with Phila. & Read. Ry. advantageous to the property.	623	
Operating road, subsidiary, other relation. Subsidiary in the sense that the directors consider a close working alliance with Phila. & Read. Ry. advantageous to the property. "Line owned" includes 8.38 miles leased to Hunters Run & Slate Belt R. R., July 13, 1891 (before the formation of Gettysb. & Harrisb. Ry.), for 999 years, without monetary or property consideration.	624	

	No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
6116		**PHILADELPHIA AND READING RAILWAY COMPANY—Continued.**		
	625	Middletown and Hummelstown Railroad Company.	6.35	6.35
	626	Northeast Pennsylvania Railroad Company...	25.64	25.64
	627	Perkiomen Railroad Company.....	38.33	38.33
	628	Philadelphia and Chester Valley Railroad Company.	21.49	21.49
	629	Philadelphia, Newtown and New York Railroad Company.	21.70	21.70
	630	Port Reading Railroad Company.....	19.72	19.72
	631	Reading and Columbia Railroad Company....	53.37	59.73
6117	632	Reading, Marietta and Hanover Railroad Company.	6.36	.....
	633	Rupert and Bloomsburg Railroad Company..	1.57	1.57
	634	Stony Creek Railroad Company.....	10.07	10.07
	635	Tamaqua, Hazleton and Northern Railroad Company.	9.91	9.91

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	764	**CLEVELAND, CINCINNATI, CHICAGO AND SAINT LOUIS RAILWAY COMPANY.**	205.60	1,411.83
6118		[Line east of Terre Haute, Indiana.]		
	765	Cincinnati and Southern Ohio River Railroad Company.	3.90	.....
	766	Columbus, Hope and Greensburg Railroad Company.	26.21	.....
	767	Fairland, Franklin and Martinsville Railroad Company.	37.84	.....
	768	Harrison Branch Railroad Company.....	7.70	.....
6119	769	Louisville and Jeffersonville Bridge Company.	2.60	.....
	770	Vernon, Greensburg and Rushville Railroad Company.	45.10	.....
	771	Dayton and Union Railroad Company.....	31.69	46.95
	772	Mount Gilead Short Line Railway Company..	2.00	2.00

DEFENDANTS' EXHIBIT 20-L. 1583

Remarks.	No.	
		6120
Operating road, subsidiary, other relation. Subsidiary in the sense that the directors consider a close working alliance with Phila. & Read. Ry. advantageous to the property.	625	
....do	626	
....do	627	
....do	628	
....do	629	
....do	630	
....do	631	
Subsidiary road, other relation. Controlled through ownership of capital stock since Feb. 28, 1882.	632	6121
Operating road, subsidiary, other relation. Subsidiary in the sense that the directors consider a close working alliance with Phila. & Read. Ry. advantageous to the property.	633	
....do	634	
....do	635	

[169]

Operating road, independent	764	
		6122
Subsidiary road, other relation. Cin., Indpls., St. L. & Chic. Ry. furnished all money to construct this road. Clev., Cin., Chic. & St. L. Ry. now owns all of the securities, operating it as a branch of its own line.	765	
Subsidiary road, contingent money rental. Cin., Indpls., St. L. & Chic. Ry. owned all the bonds and a majority of capital stock, and operated the road from May, 1884, applying the net earnings toward payment of interest on bonds. By virtue of the consolidation of Cin., Indpls., St. L. & Chic. Ry. with others, on July 1, 1889, into Clev., Cin., Chic. & St. L. Ry., the rights and obligations were vested in the latter company, which owns the entire capital stock.	766	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	767	
....do	768	
Subsidiary road, fixed money rental. Stock owned by Clev., Cin., Chic. & St. L. and Ches. & Ohio Rys., two-thirds and one-third, respectively. The principal of and interest on bonds are guaranteed by the railway companies in the same proportion.	769	6123
Subsidiary road, other relation. Controlled through ownership of capital stock and bonds.	770	
Operating road, subsidiary, other relation. Controlled through ownership of capital stock.	771	
Operating road, subsidiary, contingent money rental. Leased for 20 years from April 15, 1880, the agreement being renewable for 99 years; annual rental, one-third net earnings. Road owned by trustees of Mount Gilead Township.	772	

6124

No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
	CLEVELAND, CINCINNATI, CHICAGO AND SAINT LOUIS RAILWAY COMPANY—Continued.		
	[Line east of Terre Haute, Indiana.]		
773	Peoria and Eastern Railway Company.....	218.55	218.55
	[Line east of Danville, Illinois.]		
[174] 464	**NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY.**		
846	Dunkirk, Allegheny Valley and Pittsburg Railroad Company.	90.60	90.60
847	Titusville, Cambridge and Lake Erie Railroad Company.	1.00	1.00
848	LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY.	862.15	1,412.78

6125

6126

849	Central Trunk Railroad Company.....	5.26	.....
850	Detroit and Chicago Railroad Company.....	25.56	.....
851	Detroit, Hillsdale and Southwestern Railroad Company.	64.76	.....
852	Detroit, Monroe and Toledo Railroad Company.	54.76	.....
853	Elkhart and Western Railroad Company...	11.72	.....
854	Erie and Kalamazoo Railroad Company.....	.....	.....

6127

855	Fort Wayne and Jackson Railroad Company	97.83	.....
856	Jamestown and Franklin Railroad Company	50.91	.....

DEFENDANTS' EXHIBIT 20-L. 1585

Remarks. No. 6128

Operating road, subsidiary, other relation. Controlled through ownership of one-half capital stock. Operated by Clev., Cin., Chic. & St. L. Ry. under guarantee of payment of interest on bonds and all current expenses; also the advancement of any deficit. Agreement effective April 1, 1890. 773

[175] 6129

Operating road, subsidiary, fixed money rental. Leased Dec. 1, 1872, for 501 years; annual rental, 7 per cent interest on bonds, 1½ per cent dividends on capital stock. 846

Operating road, subsidiary. Used as a siding by Dunk., Allegh. Vy. & Pittsb. R. R. 847

Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock. "Line owned" excludes 7.84 miles leased to N. Y., Chic. & St. L. R. R. for 99 years, at a rental of $5,000, which, with .87 mile not used for traffic purposes, once formed a part of main line between Silver Creek and Dunkirk, N. Y. "Line operated" includes 7.20 miles leased from Battle Ck. & Sturgis Ry. 848 6130

Subsidiary road, other relation. Controlled through ownership of capital stock. 849

Subsidiary road, other relation. Controlled through ownership of entire capital stock. 850

Subsidiary road, fixed money rental. Leased Sept. 5, 1881, in perpetuity; annual rental, $54,000, and $500 for organization expenses. 851

Subsidiary road, contingent money rental. Leased July 1, 1856, in perpetuity. Lessee pays operating expenses and all fixed charges, and receives gross surplus from operation. Capital stock, except one share, owned by lessee. 852

Subsidiary road, other relation. Controlled through ownership of entire capital stock and bonds. 853

Subsidiary road, other relation. Included in branches of L. Shore & Mich. Sn. Ry. 854 6131

Subsidiary road, contingent money rental. Leased Aug. 24, 1882, in perpetuity; annual rental, 5½ per cent on preferred stock, $1,500 for organization expenses, taxes, assessments, etc. Should net earnings in any year after Aug. 24, 1887, exceed 8 per cent on preferred stock, lessee will pay amount of such excess up to 2 per cent on common stock. 855

Subsidiary road, contingent money rental. Leased Jan. 1, 1900, for 5 years; annual rental, 30 per cent of gross earnings, and all taxes except those imposed by United States or State of Pennsylvania upon tonnage, dividends, or interest on bonds. 856

6132

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY—Continued.		
	LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY—Continued.		
857	Kalamazoo and White Pigeon Railroad Company.	36.54	.....
858	Kalamazoo, Allegan and Grand Rapids Railroad Company.	58.45	.....
859	Mahoning Coal Railroad Company.....	47.35	.....

6133

860	Northern Central Michigan Railroad Company.	61.36	.....
861	Oberlin and La Grange Railway Company..	4.00	.....

6134

862	Sturgis, Goshen and Saint Louis Railroad Company.	28.28	.....
863	Swan Creek Railway Company.....	1.31	.....
864	**New York, Chicago and St. Louis Railroad Company.**	505.58	533.88
865	Chicago and State Line Railroad Company	9.96	.....

6135

866	Pittsburgh and Lake Erie Railroad Company	71.31	180 09
867	Beaver and Ellwood Railroad Company...	7.51	.....
868	Mahoning State Line Railroad Company..	3.16	.....

DEFENDANTS' EXHIBIT 20-L. 1587

Remarks.	No.
	6136
Subsidiary road, contingent money rental. Leased May 1, 1897, in perpetuity. Lessee pays operating expenses and all fixed charges, and receives gross surplus from operation. Capital stock owned by lessee.	857
Subsidiary road, fixed money rental. Leased Sept. 21, 1869, for 999 years; annual rental, 6 per cent on capital stock and interest on bonds.	858
Subsidiary road, contingent money rental. Leased July 1, 1884, in perpetuity; annual rental, 40 per cent of gross earnings; if that is insufficient to pay interest on bonds, 5 per cent on preferred stock, and $1,000 for corporate expenses, lessee will advance necessary amount and charge same against future rental. Lessee pays all taxes and assessments. "Line owned" includes mileage of Mahon. & Shen. Vy., Shen. Vy., and Stewart R. Rs.	859
	6137
Subsidiary road, contingent money rental. Leased May 1, 1897, in perpetuity. Lessee pays operating expenses and all fixed charges and receives gross surplus from operation. Capital stock owned by lessee.	860
Subsidiary road, contingent money rental. Contract dated Mar. 29, 1894, provides that the lessee furnish rails and fastenings used in constructing road, for which it shall receive a mortgage for the amount, payable in 10 years. For train service the lessee shall receive pay at the rate of $5 for each round trip of a train, and collects $1 per car for Oberlin & La Grange Ry. on each car of freight received. From any surplus over $5 per round trip is deducted the interest on mortgage at rate of 6 per cent and balance paid to Oberlin & La Grange Ry.	861
	6138
Subsidiary road, fixed money rental. L. Shore & Mich. Sn. Ry. acquired entire capital stock of this company Dec. 1, 1889, and assumed its bonded indebtedness of $322,000, for which interest of $9,660 per annum is paid.	862
Subsidiary road, other relation. Mileage included in sidings of L. Shore & Mich. Sn. Ry., and is used exclusively for switching purposes; entire capital stock owned by that company.	863
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock. "Line operated" includes 7.84 miles owned by L. Shore & Mich. Sn. Ry.	864
Subsidiary road, fixed money rental. Leased in perpetuity to Ft. Way. & Ill. R. R.; annual rental, $100, organization expenses up to $500, all taxes, assessments, etc. Ft. Way. & Ill. R. R. merged into N. Y., Chic. & St. L. R. R., Aug. 18, 1887.	865
	6139
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	866
Subsidiary road, contingent money rental. Leased July 1, 1899, for 20 years; rental, 40 per cent of gross earnings.	867
Subsidiary road, fixed money rental. Leased Nov. 26, 1895, for 99 years; rental, annual taxes, maintenance, and assessments; entire capital stock owned by lessee company.	868

6140 [176]

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY—Continued.		
	LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY—Continued.		
	Pittsburgh and Lake Erie Railroad Company —Continued.		
869	Pittsburgh, McKeesport and Youghiogheny Railroad Company.	100.79	.....
6141 870	Youghiogheny Northern Railway Company.	1.92	.....
871	Thompson Run Railroad Company.....	4.50	.....
872	Ellwood Connecting Railroad Company...	.68	.68
873	MICHIGAN CENTRAL RAILROAD COMPANY.....	270.07	1,657.78
874	Battle Creek and Sturgis Railway Company.	41.00	.....
875	Bay City and Battle Creek Railway Company.	18.00	.....
6142 876	Buchanan and Saint Joseph River Railroad Company.	1.88	.....
877	Canada Southern Bridge Company.....	3.66	.....
878	Detroit and Bay City Railroad Company....	155.00	.....
6143 879	Detroit, Delray and Dearborn Railroad Company.	4.84	.....
880	East Chicago Belt Railroad Company.....	5.44	.....
881	Grand River Valley Railroad Company.....	83.79	.....
882	Grayling, Twin Lakes and Northeastern Railroad Company.	27.50	.....

Remarks.	No.	
Subsidiary road, fixed money rental. Leased Jan. 1, 1884, for 999 years; Pittsb. & L. Erie R. R. and L. Shore & Mich. Sn. Ry. guarantee 6 per cent on capital stock and interest on bonds.	869	
Subsidiary road, contingent money rental. Leased for 50 years from April 1, 1883; lessee agrees to pay $1 per carload for each freight car loaded with coal or coke transported over any portion of road.	870	6145
Subsidiary road, other relation.....	871	
Operating road, subsidiary, other relation. Controlled through ownership of entire capital stock.	872	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock. Of "line operated," 380.04 miles not in United States.	873	
Subsidiary road, fixed money rental. Rental, interest on bonds, operating expenses, and taxes. Mich. Cent. R. R. also owns a majority of capital stock. Of "line owned," 7.20 miles operated by L. Shore & Mich. Sn. Ry. with Sturgis, Goshen & St. L. Ry.	874	
Subsidiary road, fixed money rental. Agreement dated Feb. 1, 1890, in perpetuity; rental, interest on bonds and taxes.	875	
Subsidiary road, other relation. Used as a spur track by Mich. Cent. R. R. leading to manufacturing industries.	876	6146
Subsidiary road, contingent money rental. Operated under agreement dated Dec. 12, 1882, for 21 years, with Can. Sn. Ry., which owns substantially all its capital stock and bonds, the Bridge Company being credited with its earnings and charged with its expenses.	877	
Subsidiary road, other relation. Under a contract dated Mar. 10, 1881, Det. & Bay Cy. R. R. gave entire possession and control of its railroad and property to Mich. Cent. R. R., which agreed to operate the same during its corporate existence. By this contract the lessee was authorized to issue and did issue its bonds to the amount of $4,000,000, bearing interest at 5 per cent, and maturing 50 years from Mar. 1, 1881. To secure the payment of said bonds both said companies joined in the execution of a mortgage upon all the railroad property and franchises of Det. & Bay Cy. R. R.	878	6147
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	879	
Subsidiary road, other relation. Controlled through ownership of capital stock.	880	
Subsidiary road, fixed money rental. Leased Jan. 20, 1870, to continue during the corporate existence of lessor. Under new articles of association of April 25, 1894, period was extended to 999 years from that date. Lessee guarantees all obligations and 5 per cent per annum on stock.	881	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	882	

6148

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY—Continued.		
	MICHIGAN CENTRAL RAILROAD COMPANY—Continued.		
883	Jackson, Lansing and Saginaw Railroad Company.	295.10	.....
884	Joliet and Northern Indiana Railroad Company.	45.00	.....
885	Kalamazoo and South Haven Railroad Company.	39.50	.....
6149			
886	Lansing Transit Railway Company.....	.77	.....
887	Michigan Air Line Railroad Company.....	115.16	.....
888	Michigan Midland and Canada Railroad Company.	14.68	.....
889	Saginaw Bay and Northwestern Railroad Company.	82.82	.....
890	Terminal Railroad Company.....	10.16	.....
891	Toledo, Canada Southern and Detroit Railway Coompany.	58.92	.....
6150			

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901	**PENNSYLVANIA COMPANY**.....	.....	1,328.30
902	Calumet River Railway Company.....	4.43	.....
903	Cleveland and Marietta Railway Company....	103.13	.....
6151			
904	Cleveland and Pittsburgh Railroad Company..	201.41	.....

DEFENDANTS' EXHIBIT 20-L. 1591

Remarks.	No.	
		6152
Subsidiary road, fixed money rental. Leased Aug. 31, 1871, in perpetuity; lessee pays principal of and interest on bonds of lessor and a dividend of 3½ per cent per annum and $750 per annum for organization purposes.	883	
Subsidiary road, fixed money rental. Operated under contracts executed Sept. 7 and Sept. 26, 1854; on completion, turned over to Mich. Cent. R. R. to operate forever at an annual rental of $89,000.	884	
Subsidiary road, fixed money rental. Leased July 1, 1870, in perpetuity; lessee to pay taxes and interest on bonds.	885	
Subsidiary road, fixed money rental. Leased Feb. 18, 1888, for 99 years from Sept. 15, 1887; rental, $1 per annum. Used for switching purposes by Mich. Cent. R. R.	886	6153
Subsidiary road, fixed money rental. Leased Jan. 1, 1870, for 999 years, lessee guaranteeing principal of and interest on bonds.	887	
Subsidiary road, other relation. Operated under agreement dated Dec. 12, 1882, for 21 years, with Can. Sn. Ry., which owns a majority of its capital stock and all its bonds, Mich. Midl. & Can. R. R. being credited with its earnings and charged with its expenses.	888	
Subsidiary road, other relation. Controlled through ownership of majority of capital stock.	889	
Subsidiary road, other relation. Controlled through ownership of capital stock.	890	
Subsidiary road, other relation. Operated under agreement dated Dec. 12, 1882, for 21 years, with Can. Sn. Ry., which owns substantially all its capital stock and bonds, Tol., Can. Sn. & Det. Ry. being credited with its earnings and charged with its expenses.	891	6154

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Operating road, independent.....	901	
Subsidiary road, contingent money rental. Operated by Pennsylvania Co. under temporary arrangement; rental, net earnings. Operating company has owned entire capital stock since March 3, 1883.	902	
Subsidiary road, contingent money rental. Operated under arrangement in effect Jan. 1, 1900, terminable on first day of any year on six months' notice by either party; rental, net earnings. Operating company owns majority of capital stock.	903	6155
Subsidiary road, fixed money rental. Leased to Pennsylvania R. R., Dec. 1, 1871, for 999 years; lessee agrees to pay a rental of $786,795 per annum, interest on bonds, $10,000 for organization expenses, all payments for account of sinking fund, and all other obligations of lessor company. Lease transferred to Pennsylvania Co., April 14, 1873.	904	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
		PENNSYLVANIA COMPANY—Continued.		
6156	905	**Erie and Pittsburgh Railroad Company**.....	84.47	.....
	906	Indianapolis and Vincennes Railroad Company	133.11	.....
	907	Marginal Railroad Company.....	2.96	.....
6157	908	**Pittsburgh, Fort Wayne and Chicago Railway Company.**	469.89	.....
	909	Massillon and Cleveland Railroad Company.	12.23	.....
	910	New Castle and Beaver Valley Railroad Company.	14.98	.....
6158	911	Pittsburgh, Ohio Valley and Cincinnati Railroad Company.	15.27	.....
	912	Pittsburgh, Youngstown and Ashtabula Railroad Company.	125.09	.....
	913	Rochester, Beaver Falls and Western Railway Company.	.55	.....
	914	South Chicago and Southern Railroad Company.	10.25	.....
6159	915	State Line and Indiana City Railway Company	7.56	.....
	916	Toledo, Walhonding Valley and Ohio Railroad Company.	125.40	.....
	917	Rolling Mill Railroad Company.....	.71	.....
	918	Cincinnati, Lebanon and Northern Railway Company.	37.81	31.76

DEFENDANTS' EXHIBIT 20-L. 1593

6160

Remarks.	No.	
Subsidiary road, fixed money rental. Leased to Pennsylvania R. R., Mar. 1, 1870, for 999 years; annual rental, 7 per cent on capital stock and bonds, $2,500 for organization expenses, and taxes; lease transferred to Pennsylvania Co. April 1, 1871.	905	
Subsidiary road, contingent money rental. Leased Jan. 1, 1879, for 99 years; lessee agrees to operate and maintain road for cost of such service; net earnings paid to lessor to be applied to payment of interest on bonds. Majority of capital stock owned by lessee since April 24, 1872.	906	
Subsidiary road, other relation. Branch line connecting certain industries in Beaver Falls, Pa., with main line of Pittsb., Ft. Way. & Chic. Ry., and is operated by Pennsylvania Co. in connection with that road. It is not an organized company.	907	6161
Subsidiary road, fixed money rental. Leased July 1, 1869, for 999 years, to Pennsylvania R. R.; annual rental, interest on bonds, $104,100 to sinking funds, 7 per cent on capital stock, organization expenses, and taxes. Pennsylvania Co. acts as agent or operator for lessee company.	908	
Subsidiary road, contingent money rental. Leased May 22, 1869, for 99 years, at a rental of 40 per cent of gross earnings, minimum being fixed at $20,000 a year; lease transferred to Pennsylvania R. R., July 1, 1869. Pennsylvania Co. acts as agent or operator for lessee company.	909	
Subsidiary road, contingent money rental. Leased July 1, 1865, for 99 years, at a rental of 40 per cent of gross earnings; lease assigned to Pennsylvania R. R., June 7, 1869, and by the latter to Pennsylvania Co., June 29, 1874, to take effect as of date April 1, 1871. Entire capital stock owned by Pennsylvania Co.	910	6162
Subsidiary road, other relation. Operated by Pennsylvania Co. for cost of such service. Controlled through ownership of majority of capital stock since May, 1871.	911	
Subsidiary road, contingent money rental. Leased Aug. 1, 1887, for 1 year, and thereafter from year to year, subject to termination on 12 months' written notice from either party; operated by lessee at cost. Majority of capital stock held by lessee since Aug. 17, 1887.	912	
Subsidiary road, other relation. Controlled through ownership of entire capital stock since Jan., 1891. No contract; road operated and maintained for cost of such service.	913	
Subsidiary road, other relation. No contract; operated at cost under a provisional arrangement. Controlled through ownership of entire capital stock since Dec., 1888.	914	
Subsidiary road, other relation. Controlled through ownership of entire capital stock since July, 1887. No contract; road operated and maintained for cost of such service.	915	6163
Subsidiary road, contingent money rental. Operated under arrangement with Pennsylvania Co. from May 22, 1891; rental, net earnings.	916	
Subsidiary road, other relation. Controlled through ownership of capital stock since May 12, 1892.	917	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock. Of "line owned," 6.05 miles leased to Day., Leb. & Cin. R. R.	918	

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
6164		**PENNSYLVANIA RAILROAD COMPANY**—Continued.		
	919	Cleveland, Akron and Columbus Railway Company.	187.87	204.47
	920	Grand Rapids and Indiana Railway Company.	422.55	578.46
	921	Cincinnati, Richmond and Fort Wayne Railroad Company.	85.60	.....
6165	922	Muskegon, Grand Rapids and Indiana Railroad Company.	36.85	.....
	923	Traverse City Railroad Company.....	26.00	.....
	[180]			
	924	**Pittsburgh, Cincinnati, Chicago and Saint Louis Railway Company.**	1,095.03	1,407.36
6166	925	Chartiers Railway Company.....	23.48	.....
	926	Englewood Connecting Railway Company...	2.35	.....
	927	Little Miami Railroad Company.....	101.80	.....
	928	Columbus and Xenia Railroad Company..	55.00	.....
	929	Dayton and Western Railroad Company..	37.99	.....
6167	930	Ohio Connecting Railway Company.....	3.27	.....
	931	Pittsburgh, Wheeling and Kentucky Railroad Company.	28.04	.....

DEFENDANTS' EXHIBIT 20-L. 1595

Remarks.	No.	
		6168
Operating road, subsidiary other relation. Controlled through ownership of majority of capital stock since June, 1899.	919	
Operating road, subsidiary, other relation. The organization of this company is controlled by Pennsylvania R. R. through stock ownership.	920	
Subsidiary road, other relation. Operated under agreement with Gr. Rap. & Ind. Ry., which accounts for net earnings and applies same toward the interest on bonds, any deficiency being met by Gr. Rap. & Ind. Ry., Pennsylvania Co., and Pittsb., Cin., Chic. & St. L. R. R. in equal proportions. Pennsylvania Co. has owned majority of capital stock since April, 1893.	921	
Subsidiary road, other relation. Operated under agreement with Gr. Rap. & Ind. Ry., which accounts for net earnings and applies same toward interest on bonds.	922	6169
....do	923	

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Operating road, subsidiary, other relation. Controlled through ownership of capital stock. Road owns jointly with Balt. & Ohio R. R. 33.03 miles of double track between Newark, Ohio, and Columbus, Ohio, neither company being restricted to the separate use of one track.	924	
Subsidiary road, contingent money rental. Leased Dec. 8, 1871, for 99 years from Jan. 1, 1872; rental, net earnings.	925	6170
Subsidiary road, other relation. Operated and maintained at cost, any surplus earnings paid to lessor. Pennsylvania Co. has owned entire capital stock since July, 1872.	926	
Subsidiary road, fixed money rental. Leased Dec. 1, 1869, for 99 years, renewable forever; annual rental, 8 per cent on capital stock, interest on bonds, and organization expenses.	927	
Subsidiary road, fixed money rental. Leased Nov. 30, 1868, to Little Miami R. R. for 99 years, renewable forever. Subsequently Little Miami R. R. was leased to Pittsb., Cin., Chic. & St. L. Ry. for 99 years; annual rental, 8 per cent on stock and interest on bonds of both companies, the terms and conditions being guaranteed by Pennsylvania Co.	928	
Subsidiary road, fixed money rental. Leased Jan. 1, 1865, for 99 years, renewable forever; rental, interest on bonds; included in lease of Little Miami R. R. to Pennsylvania Co.	929	
Subsidiary road, contingent money rental. Operated at cost since Oct. 20, 1890; net earnings paid to lessor. Pennsylvania Co. has controlled road through ownership of entire capital stock since organization, Nov. 22, 1886.	930	6171
Subsidiary road, contingent money rental. Leased Feb. 25, 1878, for 99 years; lessee operates the road at cost and pays net earnings to lessor. Majority of capital stock owned by Pennsylvania Co. since April, 1879.	931	

	No.	Name of Road.	Line Owned. Miles.	Line Operated Miles.
6172		PENNSYLVANIA RAILROAD COMPANY—Continued.		
	932	Steubenville Extension of Pennsylvania Railroad Company.	1.23	.....
	933	Cincinnati and Muskingum Valley Railroad Company.	148.45	148.45
6173	934	Newport and Cincinnati Bridge Company...	.73	.73
	935	Pittsburgh, Chartiers and Youghiogheny Railway Company.	16.47	17.87
6174		[190]		
	1094	SOUTHERN RAILWAY COMPANY..... [Line in Virginia and the Carolinas.]	1,574.76	3,339.13
	1095	Asheville and Spartanburg Railroad Company	133.90	.....
	1096	Atlanta and Charlotte Air Line Railway Company.	268.17	.....
	1097	Atlantic and Danville Railway Company.....	275.92	.....
	1098	Atlantic and Yadkin Railway Company.....	166.22	.....
6175	1099	Carolina Midland Railway Company.....	85.26	.....
	1100	Franklin and Pittsylvania Railroad Company.	29.90	.....
	1101	High Point, Randleman, Asheboro and Southern Railroad Company.	26.80	.....
	1102	Lockhart Railroad Company.....	13.81	.....

DEFENDANTS' EXHIBIT 20-L. 1597

6176

Remarks.	No.
Subsidiary road, fixed money rental. There is no corporation known as Steubenville Extension R. R. The piece of road called Steubenville Extension, virtually owned by Pennsylvania Co., was built by Pennsylvania R. R., and upon the organization of Pennsylvania Co., in 1871, the latter leased this piece of road for 999 years, paying for the lease a sum equivalent to cost of construction. In 1876 it was subleased for a term of 25 years to Pittsb., Cin. & St. L. Ry., now Pittsb., Cin., Chic. & St. L. Ry., at an annual interest rental based upon the original cost.	932
Operating road, subsidiary, other relation. Controlled through ownership of entire capital stock since 1898.	933
Operating road, subsidiary, other relation. Pittsb., Cin., Chic. & St. L. Ry. operates the bridge for Newpt. & Cin. Bridge Co. (used by Louisv. & Nashv. R. R. under trackage arrangement). Pennsylvania Co. has owned majority of capital stock since Dec., 1880.	934
Operating road, subsidiary, other relation. Controlled jointly by Pittsb., Cin., Chic. & St. L. Ry. and Pittsb. & L. Erie R. R. through joint ownership of entire capital stock, as per agreement dated Jan. 25, 1892.	935

6177

[191]

Operating road, independent. "Line owned" includes 9.40 miles leased to Ches. & Ohio Ry.	1094
Subsidiary road, other relation. Controlled through ownership of majority of capital stock.	1095
Subsidiary road, fixed money rental. Agreement dated March 26, 1881, for an indefinite time, under which Southern Ry. (formerly Rich. & Danv. R. R.) pays as annual rental interest on bonds, 6 per cent on capital stock, and $4,000 for organization expenses.	1096
Subsidiary road, fixed money rental. Leased Sept. 1, 1899, to continue until July 1, 1949; rental, $127,000 per annum to June 30, 1901, $157,000 per annum to June 30, 1904, $188,000 per annum to June 30, 1909, and $218,000 per annum thereafter; lessee also pays taxes, charges, assessments, and maintenance of road.	1097
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	108
....do	1099
Subsidiary road, fixed money rental. Leased Sept. 19, 1878, to Rich. & Danv. R. R. for 34 years from completion; annual rental, $7,000; lease assigned to Southern Ry., July 1, 1894.	1100

6178

6179

Subsidiary road, other relation. Controlled through ownership of majority of capital stock.	1101
Subsidiary road, other relation	1102

	No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
6180		**SOUTHERN RAILWAY COMPANY**—Continued.		
		[Line in Virginia and the Carolinas.]		
	1103	North and South Carolina Railroad Company.	4.62	.....
	1104	North Carolina Railroad Company.....	223.55	.....
	1105	North Carolina Midland Railroad Company...	53.62	.....
	1106	Richmond and Mecklenburg Railroad Company	31.30	.....
6181	1107	Selvern and Knoxville Railroad Company....	17.44	.....
	1108	South Carolina and Georgia Railroad Company	241.11	.....
	1109	Sumter and Wateree River Railroad Company.	15.81	.....
6182				
	1110	State University Railroad Company.....	10.20	.....
	1111	Yadkin Railroad Company.....	41.00	.....
	1112	Danville and Western Railway Company.....	83.00	83.00

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	1094	**SOUTHERN RAILWAY COMPANY**.....	2,018.90	3,091.98
		[Line west of Virginia and the Carolinas.]		
	1326	Athens Belt Line Railroad Company.....	.63	.....

DEFENDANTS' EXHIBIT 20-L. 1599

Remarks.	No.	
		6183
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	1103	
Subsidiary road, fixed money rental. Leased Jan. 1, 1896, for 99 years; rental from Jan. 1, 1896, to Dec. 31, 1901, to be $266,000 per annum and all taxes; rental thereafter to be $286,000 per annum and all taxes.	1104	
Subsidiary road, other relation. Controlled through ownership of majority of capital stock.	1105	
Subsidiary road, fixed money rental. Leased Nov. 1, 1898, for 50 years; annual rental, $12,600.	1106	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	1107	6184
Subsidiary road, contingent money rental. Leased April 29, 1889, for 30 years; Southern Ry. makes no guarantees under the terms of lease, but agrees to pay to shareholders of S. Car. & Ga. R. R. the net income from operation of the property after deducting operating expenses and taxes, expenses for betterments, interest on S. Car. & Ga. R. R. bonds, and rental of Aug. Sn. R. R. Lessee owns majority of capital stock.	1108	
Subsidiary road, contingent money rental. Lease dated April 16, 1900, to continue from Oct. 2, 1899, unless terminated by six months' notice in writing from either party. Lessee pays operating expenses, interest, and all other charges, and turns over balance of earnings to lessor. Lessee, at its option, may make advances to cover deficiencies taking certificates of indebtedness therefor. Operated by Southern Ry. under its lease of S. Car. & Ga. R. R.	1109	6185
Subsidiary road, other relation. Controlled through ownership of majority of capital stock.	1110	
....do	1111	
Operating road, subsidiary, other relation. Controlled through ownership of entire capital stock.	1112	

[203]

Operating road, independent	1094	
Subsidiary road, fixed money rental. Leased to Rich. & Danv. R. R. (now Southern Ry.), Dec. 1, 1891, for 99 years; rental, $1,050, taxes, assessments, and charges. Operated by Cent. of Ga. Ry., acting as agent for account of Southern Ry., which receives the revenues less proportion allowed for performance of service.	1326	6186

6187 [204]

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	SOUTHERN RAILWAY COMPANY—Continued.		
	[Line west of Virginia and the Carolinas.]		
1327	Augusta Southern Railroad Company.....	82.50	.....
1328	Elberton Air Line Railroad Company.....	50.60	.....
6188			
1329	Georgia Midland Railway Company.....	97.88	.....
1330	Knoxville and Ohio Railroad Company.....	69.32	.....
1331	Memphis and Charleston Railway Company...	34.10	.....
1332	Mobile and Birmingham Railroad Company...	149.40	.....
6189			
1333	Roswell Railroad Company.....	9.80	.....
1334	Southern Railway Company in Kentucky.....	123.20	.....
1335	Southern Railway Company in Mississippi.....	238.87	.....
1336	Watauga Railroad Company.....	1.00	.....
6190			
1337	Alabama Great Southern Railroad Company..	296.84	309.86
1338	Belt Railway Company of Chattanooga.....	41.96	.....

DEFENDANTS' EXHIBIT 20-L. 1601

[205] 6191

Remarks.	No.
Subsidiary road, fixed money rental. Leased Mar. 1, 1897, during corporate existence, to S. Car. & Ga. R. R., the majority of the stock of which is owned by Southern Ry. Lessee guarantees principal of and interest on first-mortgage bonds, and one-half of surplus after payment of operating expenses and fixed charges.	1327
Subsidiary road, contingent money rental. Contract covered by that made by Atlanta & Charl. Air Line Ry. and Rich. & Danv. R. R., Mar. 26, 1881, under which all revenues are received and accounted for. Operated now by Southern Ry. for account of Elberton Air Line R. R. under an unwritten agreement and by virtue of control of securties of this company.	1328
Subsidiary road, fixed money rental. Leased July 1, 1896, for 99 years; rental, interest on bonds. Lessee owns entire capital stock.	1329
Subsidiary road, other relation. Controlled and operated by Southern Ry. since Aug. 1, 1894, through ownership of majority of capital stock. Southern Ry. pays over the entire net earnings to this company.	1330
Subsidiary road, fixed money rental. Contract dated Mar. 1, 1898, which provides that Southern Ry. shall furnish equipment and pay interest on bonds, being reimbursed out of net earnings.	1331
Subsidiary road, fixed money rental. Leased Mar. 1, 1899, for 99 years; rental, interest on bonds, 1 per cent on preferred stock for the first year, 2 per cent the second year, 3 per cent the third year, 4 per cent the fourth year and thereafter during the continuance of the lease. Lessee owns entire capital stock.	1332
Subsidiary road, other relation. Operated by Southern Ry. on behalf of Atlanta & Charl. Air Line Ry., which owns majority of capital stock of Roswell R. R.	1333
Subsidiary road, other relation. Controlled through ownership of entire capital stock and bonds.	1334
Subsidiary road, other relation. Operated as a proprietary line of Southern Ry. under contract between that road and Sn. Ry. in Miss., which provides that Southern Ry. proper shall furnish all equipment and pay all interest accruing on the line in Mississippi, Southern Ry. to be reimbursed for rental of equipment and interest on bonds out of the net earnings.	1335
Subsidiary road, contingent money rental. Agreement dated Nov. 14, 1891, for 25 years, between Watauga Vy. R. R., to which Watauga R. R. is successor, and E. Tenn., Va. & Ga. Ry., merged in Southern Ry. Aug. 1, 1894. Used as a siding by Southern Ry. Watauga R. R. receives 20 per cent of revenue arising from switching charges, first deducting 20 per cent of cost of repairs to road.	1336
Operating road, subsidiary, other relation. The capital stock is owned by Ala. Gt. Sn. Ry. Co., Limited, an English corporation. Southern Ry. Co. owns a majority of capital stock of Ala. Gt. Sn. Ry. Co.	1337
Subsidiary road, fixed money rental. Leased Dec. 21, 1895, until July 1, 1945; rental, operating expenses and interest on bonds. Included in sidings of Ala. Gt. Sn. R. R.	1338

6192

6193

6194

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	SOUTHERN RAILWAY COMPANY—Continued.		
	[Line west of Virginia and the Carolinas.]		
1339	Hartwell Railway Company	10.10	10.10
1340	Northern Alabama Railway Company	117.74	117.74
	[198]		
1223	**ILLINOIS CENTRAL RAILROAD COMPANY**	.....	1,356.31
	[Line south of Cairo, Illinois.]		
1224	**Canton, Aberdeen and Nashville Railroad Company.**	87.89	.....
1225	**Chicago, Saint Louis and New Orleans Railroad Company.**	1,178.84	.....
1226	Hodgenville and Elizabethtown Railway Company.	11.10	.....
1227	Paducah Union Depot Company	.70	.....
1228	Troy and Tiptonville Railroad Company	4.60	.....
1229	**Yazoo and Mississippi Valley Railroad Company.**	1,000.68	1,000.68
1230	Rosedale and Mississippi Central Valley Railroad Company.	6.25	.....
1251	**LOUISVILLE AND NASHVILLE RAILROAD COMPANY.**	2,336.53	3,025.20
	[Line south of Ohio River.]		
1252	Alabama and Florida Railroad Company	32.71	.....
	[200]		
1253	Alabama Mineral Railroad Company	133.88	.....
1254	Birmingham Mineral Railroad Company	162.86	.....
1255	Elkton and Guthrie Railroad Company	10.92	.....

DEFENDANTS' EXHIBIT 20-L. 1603

Remarks. No. 6199

Operating road, subsidiary, other relation. Controlled through ownership of entire capital stock. On Feb. 19, 1898, Hartwell Ry. leased its property to T. J. Linder for a term of 10 years at an annual rental of $2,000 and taxes. 1339

Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock. 1340

[199]

Operating road, independent..... 1223 6200

Subsidiary road, contingent money rental. Leased Mar. 31, 1888, until June 1, 1952; rental, net earnings of the road, which lessee guarantees to be $60,000 per annum. 1224

Subsidiary road, fixed money rental. Leased July 1, 1882, for 400 years; annual rental, 4 per cent on capital stock, interest on bonds, taxes, assessments, etc. 1225

Subsidiary road, contingent money rental. Contract dated Sept. 30, 1896; rental, net earnings. 1226

Subsidiary road, fixed money rental. Leased July 1, 1898, for 98 years; rental, $2,500 per annum. 1227

Subsidiary road, contingent money rental. Contract dated Sept. 30, 1896; rental, net earnings. 1228

Operating road, subsidiary, other relation..... 1229 6201

Subsidiary road, other relation. "Line owned" not in operation. 1230

Operating road, independent. "Line owned" includes 50.38 miles not in operation, 253.63 miles operated by Nashv., Chatt. & St. L. Ry., and 5.31 miles owned jointly by this road and Balt. & Ohio S. Wn. R. R. 1251

Subsidiary road, other relation. Controlled through ownership of entire capital stock. 1252

[201] 6202

Subsidiary road, other relation. Controlled through ownership of entire capital stock. Louisv. & Nashv. R. R. operates the road and receives net results, if any. 1253

Subsidiary road, other relation. Entire capital stock issued to Louisv. & Nashv. R. R., under contract of construction of the road. Louisv. & Nashv. R. R. operates the road and receives net results, if any. 1254

Subsidiary road, contingent money rental. Leased Aug. 30, 1884, for 25 years; rental, net earnings. 1255

	No.	Name of Road.	Line Operated. Miles.	Line Owned. Miles.
6203		**LOUISVILLE AND NASHVILLE RAILROAD COMPANY—Continued.**		
		[Line south of Ohio River.]		
	1256	Glasgow Railroad Company.....	10.50	.....
	1257	Mobile and Montgomery Railway Company....	178.49	.....
6204	1258	Nashville and Decatur Railroad Company....	119.24	.....
	1259	Owensboro and Nashville Railway Company..	88.10	.....
	1260	Shelby Railroad Company.....	19.10	.....
	1261	South and North Alabama Railroad Company.	188.97	.....
	1262	Southern Division, Cumberland and Ohio Railroad Company.	30.90	.....
	1263	Henderson Bridge Company.....	10.06	10.06
6205				
	1264	Nashville, Chattanooga and Saint Louis Railway Company.	804.84	1,188.75
	1265	Western and Atlantic Railroad Company...	136.82	.....
	[214]			
6206	1223	**ILLINOIS CENTRAL RAILROAD COMPANY.**	705.50	2,639.55
		[Line north of Cairo, Illinois.]		
	1488	Blue Island Railroad Company.....	3.96	.....

DEFENDANTS' EXHIBIT 20-L. 1605

Remarks.	No.	
		6207
Subsidiary road, contingent money rental. Leased Jan. 8, 1897, for 5 years; rental, net earnings. Any excess of operating expenses over earnings shall be chargeable to Glasgow R. R., and collected out of future earnings or otherwise.	1256	
Subsidiary road, contingent money rental. Leased Jan. 12, 1881, for 20 years. Lessee pays operating expenses, taxes, interest, and also principal of debts maturing during lease, and keeps road in repair; balance of earnings paid to lessor. Entire capital stock owned by lessee.	1257	
Subsidiary road, fixed money rental. Leased July 1, 1872, for 30 years, lessee assuming all bonded and floating debts up to $2,450,000 and guaranteeing 6 per cent on capital stock.	1258	6208
Subsidiary road, other relation. Controlled through ownership of entire capital stock. Louisv. & Nashv. R. R. operates the road and receives net results, if any.	1259	
Subsidiary road, fixed money rental. Leased July 16, 1879, for 30 years, at an annual rental of $15,000.	1260	
Subsidiary road, other relation. Controlled through ownership of majority of capital stock.	1261	
Subsidiary road, contingent money rental. Leased Sept. 19, 1878, for 25 years; net earnings to be applied to payment of interest on bonds and to provide for sinking fund.	1262	
Operating road, subsidiary, fixed money rental. The use of track is given to the following railroad companies in consideration of a guaranteed gross income of $200,000 per annum: Louisv. & Nashv., Louisv. Evansv. & St. L. Consol., Evansv. & T. Haute R. Rs. and Peoria, Dec. & Evansv. Ry. Local traffic between Henderson, Ky., and Evansville, Ind., is conducted by Louisv. & Nashv. R. R. for 50 per cent of gross earnings.	1263	6209
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock. "Line operated" includes 253.63 miles leased from Louisv. & Nashv. R. R. Of "line owned," 6.54 miles not in operation.	1264	
Subsidiary road, fixed money rental. Leased from State of Georgia, Dec. 27, 1890, for 29 years; rental, $420,012 per annum.	1265	
		[215]
Operating road, independent.....	1223	6210
Subsidiary road, contingent money rental. Leased May 27, 1896, from July 1, 1893, to end of chartered existence. Lessee receives all earnings and out of same pays expenses of operation, taxes, betterments, and interest on bonds. Any surplus remaining appropriated by lessee.	1488	

6211 [216]

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	ILLINOIS CENTRAL RAILROAD COMPANY— Continued.		
	[Line north of Cairo, Illinois.]		
1489	Chicago and Springfield Railroad Company....	111.47	.....
6212 1490	Chicago and Texas Railroad Company.....	78.70	.....
1491	Chicago, Havana and Western Railroad Company.	131.62	.....
1492	Chicago, Madison and Northern Railroad Company.	231.30	.....
1493	Dubuque and Sioux City Railroad Company...	730.61	.....
1494	Illinois and Indiana Railroad Company.....	88.51	.....
6213 1495	Kankakee and Southwestern Railroad Company.	131.26	.....
1496	Rantoul Railroad Company.....	74.43	.....
6214 1497	Saint Louis, Alton and Terre Haute Railroad Company.	239.04	.....

DEFENDANTS' EXHIBIT 20-L. 1607

[217] 6215

Remarks.	No.
Subsidiary road, fixed money rental. Leased Dec. 1, 1877, for 50 years from July 1, 1877; in lieu of annual rental, lessee issued currency bonds for $2,000,000 secured by lessor on demised property; $1,600,000 of these bonds were used by lessor to pay for the property, the remainder being reserved for improvements, etc.; lessee agrees to pay principal and interest of these bonds, taxes, assessments, etc.	1489
Subsidiary road, contingent money rental. Leased Oct. 1, 1897, for 25 years; terminable on 15 days' written notice by either party. Rental, net earnings.	1490
Subsidiary road, contingent money rental. Leased April 1, 1888, in perpetuity; lessee receives all earnings, pays all expenses, and turns over to lessor any net earnings.	1491
Subsidiary road, contingent money rental. Line, Chicago to Freeport, Ill., leased from April 1, 1888, the remainder from March 1, 1892, in perpetuity; lessor to receive net earnings; lessee owns the entire capital stock and bonds of lessor.	1492
Subsidiary road, contingent money rental. Line from Cedar Falls Junction to Minnesota State line, 76 miles, leased from Jan. 1, 1895, for 12 years, the remainder for 56 years and 7 months; lessee receives all earnings, pays all expenses, and turns over to lessor any net earnings.	1493
Subsidiary road, contingent money rental. Leased Jan. 1, 1900, for 25 years; lessee collects all revenue, pays all expenses of operation and maintenance and taxes, any net earnings being turned over to lessor.	1494
Subsidiary road, fixed money rental. Leased Aug. 1, 1881, in perpetuity; in lieu of annual rental lessee issued $968,000 registered bonds, secured by lessor on demised property; $200,000 of these bonds retired a like amount previously issued and secured by the same property; residue was for equipping and improving road, lessee agreeing to pay principal and interest and all taxes, assessments, etc.	1495
Subsidiary road, contingent money rental. Leased Dec. 11, 1886, for 50 years; lessee receives all earnings, pays all expenses of operation, taxes, maintenance, and cost of betterments; any surplus that may remain after payment of above expenses and deducting a reasonable charge for use of equipment shall constitute a fund for the payment of interest on bonds of the lessor. Any surplus exceeding the amount required to pay such interest on bonds shall belong to the lessee.	1496
Subsidiary road, fixed money rental. Leased Oct. 1, 1895, for 99 years; rental, interest on bonds, 2¼ per cent dividends on capital stock, expenses of operation, maintenance, and taxes. Ill. Cent. R. R. assumes all obligations of this company as lessee to the owners of the several railroads leased to and heretofore operated by it. Supplemental lease made Sept. 15, 1897, confirming lease to Ill. Cent. R. R. of Oct. 1, 1895.	1497

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No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	ILLINOIS CENTRAL RAILROAD COMPANY—Company.		
1498	Saint Louis, Peoria and Northern Railway Company.	97.59	.....
1499	South Chicago Railroad Company.....	4.76	.....
1500	Stacyville Railroad Company.....	7.93	.....

6220

[230]

1697	**MISSOURI PACIFIC RAILWAY COMPANY**...	1,060.60	3,164.25
1698	Boonville, Saint Louis and Southern Railway Company.	43.97	.....
1699	Fort Scott Central Railway Company.....	57.05	.....
1700	Joplin and Western Railway Company.....	4.59	.....
1701	Kanopolis and Kansas Central Railway Company.	14.16	.....
1702	Kansas and Colorado Pacific Railway Company	1,449.50	.....
1703	Pueblo and State Line Railroad Company...	152.12	.....
1704	Kansas City and Southwestern Railway Company of Missouri.	20.70	.....
1705	Kansas City and Southwestern Railway Company (of Kansas).	27.00	.....
1706	Kansas Southwestern Railway Company.....	24.91	.....
1707	Leroy and Caney Valley Air Line Railroad Company.	51.78	.....
1708	Nevada and Minden Railway Company.....	73.71	.....

6221

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Remarks.	No.
Subsidiary road, fixed money rental. The part of St. L., Peoria & Nn. Ry. between Springfield and East St. Louis, Ill., 97.59 miles, having been sold under foreclosure and purchased by Frederick P. Voorhees, was leased by him to Ill. Cent. R. R. for 99 years, from Dec. 1, 1899, at an annual rental of $90,000.	1498
Subsidiary road, contingent money rental. Agreement dated July 1, 1890, for chartered existence; lessee agrees to receive all earnings and out of same pay operating expenses, interest on bonds, taxes, and maintenance.	1499
Subsidiary road, contingent money rental. Leased June 24, 1898, from Nov., 1897, to Dec. 31, 1906. Lessee receives all earnings and out of same pays expenses of operation, taxes, repairs, etc.; balance, if any, turned over to lessor, after deducting a reasonable charge for use of equipment.	1500

6224

[231]

Operating road, independent	1697
Subsidiary road, fixed money rental. Leased July 1, 1880, for 30 years, at an annual rental of $25,000.	1698
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	1699
Subsidiary road, other relation. Controlled through ownership of capital stock.	1700
Subsidiary road, other relation. Controlled through ownership of majority of capital stock.	1701
Subsidiary road, other relation. Controlled through ownership of majority of capital stock. "Line owned" includes 80.62 miles of line leased to Mo. Pac. Ry. for 40 years from Sept. 27, 1886, for a rental of $500 per mile per annum, together with all taxes and expenses of maintenance.	1702
Subsidiary road, fixed money rental. Leased to Kans. & Colo. Pac. Ry., July 1, 1891, for 25 years; rental, fixed interest charges, taxes, renewals and maintenance, etc. Mo. Pac. Ry. owns entire capital stock.	1703
Subsidiary road, fixed money rental. Leased Jan. 1, 1891, for 25 years; rental, fixed charges, together with all taxes, renewals, and expenses of maintenance. Operating company owns entire capital stock.	1704
Subsidiary road, fixed money rental. Leased to Kans. Cy. & S. Wn. Ry. of Mo., Jan. 1, 1891, for 25 years; rental, fixed charges, taxes, renewals, and maintenance. Operating company owns majority of capital stock.	1705
Subsidiary road, other relation. Controlled through ownership of majority of capital stock.	1706
Subsidiary road, fixed money rental. Leased Oct. 31, 1886, for 40 years, for a rental of $500 per mile per annum, together with taxes and expense of maintenance, etc.	1707
Subsidiary road, other relation. Controlled through ownership of majority of capital stock.	1708

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No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
	MISSOURI PACIFIC RAILWAY COMPANY— Continued.		
1709	Rooks County Railroad Company.....	18.25	.....
1710	Saint Louis, Oak Hill and Carondelet Railway Company.	6.30	.....
1711	Central Branch Railway Company.....	388.19	388.19
1712	Saint Louis, Iron Mountain and Southern Railway Company.	1,028.86	1,773.77
1713	Little Rock and Fort Smith Railway Company.	168.87	.....
6228 1714	Kansas and Arkansas Valley Railway Company.	170.64	.....
1715	Little Rock Junction Railway Company....	.59	.....
1716	Arkansas and Louisiana Railway Company..	25.54	25.54
1717	Sedalia, Warsaw and Southwestern Railway Company.	42.30	42.30

[238]

1845	**SOUTHERN PACIFIC COMPANY**..... [Line in Louisiana.]	.....	464.44
1846	Louisiana Western Railroad Company.....	140.67	.....
6229			
1847	Morgan's Louisiana and Texas Railroad and Steamship Company.	300.17	.....
1848	Austin and Northwestern Railroad Company..	107.86	107.86
1849	Central Texas and Northwestern Railway Company.	12.57	12.57

6230

[240]

1850	Fort Worth and New Orleans Railway Company.	41.97	41.97
1851	Galveston, Harrisburg and San Antonio Railway Company.	918.16	918.16
1852	Galveston, Houston and Northern Railway Company.	56.25	60.15
1853	Gulf, Western Texas and Pacific Railway Company.	111.20	111.20

Remarks.	No.	
		6231
Subsidiary road, other relation. Controlled through ownership of majority of capital stock.	1709	
Subsidiary road, other relation. Controlled through ownership of entire capital stock.	1710	
Operating road, subsidiary, other relation. Controlled through ownership of entire capital stock since July 8, 1899.	1711	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	1712	
Subsidiary road, fixed money rental. Leased Jan. 1, 1890, for 50 years; rental, fixed charges, together with all taxes, renewals, and expenses of maintenance.	1713	
....do	1714	6232
....do	1715	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	1716	
Operating road, subsidiary, other relation. Controlled through ownership of entire capital stock.	1717	
		[239]
Operating road, independent	1845	
Subsidiary road, contingent money rental. Leased Feb. 10, 1885, for 99 years. Lessee assumes payment of all fixed charges, except for betterments and additions and pays over 7 per cent of any net profits remaining after the payment of all expenses and fixed charges of various properties operated by Sn. Pac. Co. under similar leases.	1846	6233
Subsidiary road, contingent money rental. Leased for 99 years from March 15, 1885; lessee to receive the rents and earnings, pay the expenses of operating, maintenance, taxes, and interest on bonded and floating debt.	1847	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	1848	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	1849	
		[241] 6234
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	1850	
....do	1851	
....do	1852	
Operating road, subsidiary, other relation. Majority of capital stock owned by Morgan's La. & Tex. R. R. & Steamship Co.	1853	

6235

No.	Name of Road.	Line Owned. Miles.	Line Operated. Miles.
	SOUTHERN PACIFIC COMPANY—Continued. [Line in Louisiana.]		
1854	Houston and Texas Central Railroad Company	507.75	507.75
1855	Iberia and Vermilion Railroad Company.....	16.13	21.43
1856	New York, Texas and Mexican Railway Company.	91.00	91.00
1857	Texas and New Orleans Railroad Company....	326.17	326.17

6236 [246]

1845	**SOUTHERN PACIFIC COMPANY**..... [Pacific System.]	.....	5,159.74
1996	**Central Pacific Railway Company**.....	1,348.58	.....

6237

1997	New Mexico and Arizona Railroad Company..	87.78	.....
1998	Oregon and California Railroad Company.....	654.04	.....

DEFENDANTS' EXHIBIT 20-L. 1613

Remarks.	No.	
		6238
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	1854	
Operating road, subsidiary, other relation. Majority of capital stock owned by Morgan's La. & Tex. R. R. & Steamship Co.	1855	
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	1856	
....do	1857	
	[247]	6239
Operating road, independent	1845	
Subsidiary road, contingent money rental. Leased as Cent. Pac. R. R. (now Cent. Pac. Ry.) for 90 years from Jan. 1, 1894; lessee is to operate said leased property and apply the earnings and income derived therefrom to paying all operating expenses thereof, incidental expenses connected therewith, including rental of leased lines, and, according to their lawful priorities, to the payment of the current interest, sinking fund contributions, United States requirements, etc.; lessee shall pay to lessor such balance, if any, of the net earnings or income as shall remain in its hands after payments provided for are made, provided that, if such balance shall exceed the sum of 6 per cent on the capital stock of lessor, lessee shall retain one-half of such excess; lessee is also to pay $10,000 per annum for maintaining organization.	1996	6240
Subsidiary road, fixed money rental. Leased Sept. 1, 1898, retroactive to July 1, 1897. Lessee pays an annual rental of $54,647, taxes, and all expenses of operation. Atch., Top. & S. Fe Ry. owns entire capital stock.	1997	
Subsidiary road, contingent money rental. Leased for 34 years from Aug. 1, 1893; annual rental $5,000. Lessee to pay, from income and earnings, all operating and incidental expenses, taxes, insurance, improvements, etc., and apply any residue to interest and sinking fund on bonded debt. If, after such payments, the balance of net income exceeds 7 per cent on preferred and 6 per cent on common stock, lessee retains such excess. If net income is insufficient to pay current interest on bonded debt, advancement to cover such deficiency is optional with lessee, which, if it advances any sum for that purpose, has a lien on the property and income thereof until reimbursed, the reimbursement to include interest at 6 per cent. Lessee also guarantees payment of principal and interest of all bonds of lessor under mortgage to Union Trust Co. of New York, dated July 1, 1887.	1998	6241

6242 [248]

No.	Name of Road.	Line Owned. *Miles.*	Line Operated. *Miles.*
	SOUTHERN PACIFIC COMPANY—Continued.		
	[Pacific System.]		
1999	South Pacific Coast Railway Company.....	101.10	.....
2000	Southern Pacific Railroad Company (of Arizona).	392.90	.....

6243

2001	Southern Pacific Railroad Company (of California.)	2,662.15	.....
2002	Southern Pacific Railroad Company of New Mexico.	167.45	.....
2003	Carson and Colorado Railway Company.....	299.62	299.62

DEFENDANTS' EXHIBIT 20-L. 1615

[249] 6244

Remarks.	No.
Subsidiary road, fixed money rental. Leased July 1, 1887, for 55 years; lessee pays all taxes, interest on bonds, sinking-fund requirements, etc.; any balance remaining after such payments is retained by, or the deficit, if any, is charged to, lessee. Lessee has owned majority of capital stock since July 1, 1887.	1999
Subsidiary road, contingent money rental. Leased Feb. 10, 1885, for 99 years; lessee guarantees principal and interest of bonds and pays lessor a percentage of net profits from operations of this and other lessor companies. Entire capital stock owned by Sn. Pac. Co.	2000
Subsidiary road, contingent money rental. Leased Mar. 1, 1885, for 99 years, lessor receiving 44 per cent of the net profits. Of "line owned," 242.51 miles included in "line operated" by S. Fe Pac. R. R.	2001
Subsidiary road, contingent money rental. Leased Feb. 10, 1885, for 99 years; lessee pays operating expenses and fixed charges, guarantees principal and interest of funded debt and pays lessor a percentage of net profits from operation of this and other lessor companies. Lessee owns entire capital stock.	2002
Operating road, subsidiary, other relation. Controlled through ownership of majority of capital stock.	2003

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COMPLAINANT'S EXHIBIT J.

BY-LAWS OF THE NORTHERN PACIFIC RAILWAY COMPANY (AS AMENDED OCTOBER 7, 1902).

ARTICLE I.—OF STOCKHOLDERS.

SECTION 1.—*Annual meeting.*

Stockholders' annual meeting.

A meeting of the stockholders of this company shall be held annually, on the first Tuesday of October (and if that be a legal holiday, then on the
6948 next business day), for the purpose of electing directors, and for the transaction of such other business as may properly be brought before the meeting.

SECTION 2.—*Special meetings.*

Stockholders' special meetings.

Special meetings of the stockholders may be held whenever and as often as a majority of the board of directors or the president may deem expedient; and such majority or said president shall call such meetings upon the written request of the owners or holders of one-quarter in
6949 amount of the capital stock of the company.

SECTION 3.—*Notice of meetings.*

Notice of meetings.

Written or printed notice of every meeting of stockholders shall be advertised at least once in each week for two weeks immediately preceding such meeting in one or more daily or weekly newspapers published in the cities of Milwaukee and New York, which notice shall, in general terms, state the object of the meeting. At least two weeks before such meeting a copy of such notice shall be mailed from
6950 one of the offices of the company to each stockholder of record who shall have furnished to the company's stock transfer agents in the city where the certificates of such stockholder shall have been issued an address to which such notice may be sent; but failure to mail any such notice shall not invalidate any action taken at such meeting or at any adjournment thereof.

SECTION 4.—*Quorum.*

Quorum.

To constitute a meeting of stockholders for any purpose there must be present, in person

or by proxy, those who can give one-third of all the votes which 6951
could be given by all stockholders entitled to vote at such meeting.

If the holders of the requisite amount of stock shall fail in person or by proxy to attend at the time and place of the meeting, pursuant to a notice duly given, those who do attend may adjourn from time to time without further notice than by announcement to be given at the meeting until holders of the requisite amount of stock shall attend.

SECTION 5.—*Voting and inspectors.* 6952

Voting.

At all meetings of stockholders every registered owner of shares may vote in person or by proxy, and shall have one vote for every share standing in his or her name on the books of the company. At all elections of directors the voting shall be by ballot, and a majority of the votes cast thereat, either in person or by proxy, shall elect.

Inspectors of election.

The stockholders at each annual meeting shall elect two inspectors of election to serve at the next annual meeting. In case of failure so to elect, or in case of failure of any inspector so elected to act, the president 6953
or the vice-president presiding at the meeting shall fill the vacancies, but no candidate for the office of director shall be appointed to serve as such inspector. Each inspector of election, immediately before entering on the execution of his duties, shall subscribe an oath or affirmation faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his ability; but no failure to take or subscribe such oath or affirmation shall affect the result of any such election. The inspectors shall take charge of the polls, and after the balloting shall make a certificate of the result of 6954
the vote taken.

Any holder of proxies at any time prior to any meeting, but subsequent to the date of the closing of the transfer books, may submit his proxies for examination to the secretary or to such other officer as from time to time may be designated by the board of directors or by the executive committee, and the certificate of the secretary or other officer so designated as to the number of votes represented by such proxies, and as to the regularity thereof, shall be received as presumptive evidence thereof.

6955

ARTICLE II.—BOARD OF DIRECTORS.

SECTION 1.—*Number, and time of holding office.*

Directors, number of. The business, property, and affairs of this company shall be managed and controlled by a

Directors must be stockholders. board of fifteen directors. Every director shall be, at the time of his election, or before accepting and qualifying as such director, a holder of record of at least one share of the capital stock of the company, and when he shall cease to be such holder of record he shall thereupon

6956 cease to be a director.

Term. The several directors shall be elected each to hold office for one year and until the election and qualification of his successor.

Number of directors may be increased or diminished. The stockholders may at any meeting increase or diminish the number of directors to be elected at the next annual meeting of the stockholders, and the number to be elected shall be specified in the notice of meeting, but shall never be less than five nor more than seventeen.

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Polls open one hour. At all elections of directors the polls shall remain open at least one hour.

Directors continue in office until successors are elected. If for any cause any election of directors shall not be had on the day as prescribed in the by-laws, such election may be had on any other day after due notice as in the by-laws provided; and the directors then in office shall continue in office until their successors are duly elected and qualified.

SECTION 2.—*Powers and duties.*

6958

Board shall annually elect officers, etc. In each year, at a meeting to be held as soon as practicable after the election of directors, the board shall elect the executive committee specified in section 10 of this article, and the officers specified in section 1 of Article III hereof, and may elect or appoint such other officers and agents as they may deem necessary for the proper conduct of the company's business. All officers, agents, and employees shall be removable at the will of the board, but any member present at a meeting may require such removal to be by a majority vote of the entire board.

The board shall determine the compensation to be paid to all officers and agents of the company, and the amount of the bonds to be given by them. 6959

SECTION 3.—*Vacancies.*

Vacancies, how filled.

Whenever any vacancy shall have occurred in the board or in any office, by death, resignation or otherwise, it shall be filled by the board for the remainder of the current corporate year and until the next annual election, or until a qualified successor be elected.

Directors must signify acceptance within 30 days.

If any person who shall have been elected as a director shall not, within thirty days after the date of the notice of his election, in writing, signify his acceptance of the office, the board of directors may declare a vacancy to exist in respect thereof. 6960

SECTION 4.—*Place of meeting.*

Directors may meet without the State of Wisconsin.

The directors may hold their meetings and have an office or offices and keep the books of the company, without as well as within the State of Wisconsin, at such place or places as the board may from time to time determine. 6961

SECTION 5.—*Meetings of the board.*

Meeting of directors.

Meetings of the board shall be held whenever called, by direction of the president or of the vice-president, or of any three of the directors for the time being in office.

The secretary or the assistant secretary shall give notice of each meeting, by mailing the same at least two days before the meeting, or by telegraphing the same at least one day before the meeting, to each director; but such notice may be waived by any director. 6962

Unless otherwise indicated in the notice thereof, any and all business may be transacted at any meeting.

At any meeting at which every director shall be present, even though without notice, any business may be transacted.

6963 SECTION 6.—*Quorum.*

Quorum. A majority of the board shall constitute a quorum for the transaction of business; but, if less than a quorum be present at any duly called meeting, a majority of those present may adjourn the meeting from time to time, or *sine die.*

SECTION 7.—*Order of business.*

Order of business. At meetings of the board of directors, business shall be transacted in such order as the
6964 board may by resolution from time to time determine.

SECTION 8.—*Executive committee.*

Executive committee. The executive committee shall consist of six (6) directors, of whom the president, and in case of his absence from the meeting, the vice-president, shall
Powers and duties of. be one *ex officio.* It shall possess and exercise all the powers of the board of directors, except when the latter is in session, but it may act only by the concurrent vote of not less than four (4) in number. It shall keep a record of all its proceedings, and the same shall be submitted
6965 to the board of directors. The executive committee shall have power to fill any vacancy in its own number, but the director so chosen shall serve as a member of the committee only until the next meeting of the board of directors, or until a successor shall have been elected by the board. The secretary, or, in his absence from the meeting, an assisstant secretary, or other officer or employee of the company, may act as secretary of the committee. A majority of the committee shall be a quorum. Meetings of the executive committee shall be held whenever called by the direction of the president or of the vice-president
6966 or of any two members of the committee.

The secretary or the assistant secretary shall give notice of each meeting by mailing the same, or by telegraphing the same, one day before the meeting, to each member; but such notice may be waived by any member.

Unless otherwise indicated in the notice thereof, any and all business may be transacted at any meeting.

At any meeting at which every member of the committee shall be present, even though without notice, any buiness may be transacted.

SECTION 9.—*Other committees.* 6967

Other committees.

The board of directors, in its discretion, may appoint other or additional committees for the proper transaction of the business of the company, with such duties and powers as it shall deem proper.

ARTICLE III.—OFFICERS.

SECTION 1.—*Executive officers.*

Titles of officers.

The executive officers of this company shall be a president (who shall also be a director), 6968 one or more vice-presidents (as the board from time to time may determine), a comptroller, a treasurer, an assistant treasurer, a secretary, an assistant secretary, and two general counsel, one resident in New York, and one resident in St. Paul.

SECTION 2.—*General provisions.*

Duties and powers in general.

Every executive officer shall perform such duties and exercise such powers as the board may from time to time direct.

Must not hold executive office in other companies.

No officer elected or appointed by the board 6969 shall hold executive office in any other business corporation if the board or the executive committee shall by resolution object thereto.

SECTION 3.—*Powers and duties of president.*

President.

It shall be the duty of the president to preside at all the meetings of the stockholders and of the board of directors; he may sign and execute all duly authorized instruments in the name of the company; he shall have general control and direction of the business of the company, and he shall do and perform all acts and things incident to the position of president, and such other duties as may be assigned to him from time to time by the board of directors or by the executive committee. 6970

The president shall be ex officio a member of all committees of the board, including the executive committee.

All executive officers shall report to the president.

6971 SECTION 4.—*Powers and duties of vice-president and president pro tempore.*

Vice-president and president pro tempore. In the absence or inability to act of the president, the vice-president shall perform all the duties and may exercise any of the powers of the president, subject to the control of the board of directors and of the executive committee. The vice-president shall perform such other duties as may be assigned to him from time to time by the board of directors, by the executive committee, or by the president.

6972 In the absence or inability to act of both the president and the vice-president, a president pro tempore may be appointed by the board of directors who shall perform all the duties and may exercise any of the powers of the president, subject to the control of the board of directors and of the executive committee.

The second and any additional vice-presidents shall perform such duties as may be assigned to him or them by the president.

SECTION 5.—*Powers and duties of comptroller.*

Comptroller. The comptroller shall have direct charge of

6973 the general books and accounts of the company. It shall be his duty to examine the accounts of all officers and employees and to see that the proper returns are made of all receipts from traffic and other sources, and that correct vouchers are turned over to him for all disbursements for any purpose. The comptroller shall also be the custodian of all bonds of officials and agents of the company handling funds.

SECTION 6.—*Powers and duties of treasurer.*

Treasurer. It shall be the duty of the treasurer to have

6974 the care and custody of all the funds of the company which may come into his hands, and to deposit the same, as such treasurer, in such bank or banks or depository as the board may designate; he shall sign, with such other officer as may be designated for the purpose by the board, all bills of exchange, checks, and promissory notes made by the company, and he shall pay out and dispose of the same under the direction of the board; he shall render a statement of his cash account to the board of directors as often as they shall require the same; he shall enter regularly, in books to be kept by him for that pur-

pose, full and accurate account of all moneys received and paid 6975
by him on account of this company; he shall, at all reasonable times, exhibit his books and accounts to any director of the company, upon application at the office of the company, during business hours; he shall perform all acts incident to the position of treasurer; and he shall give a bond for the faithful discharge of his duties in such sum as the board of directors may require.

SECTION 7.—*Powers and duties of secretary.*

Secretary. It shall be the duty of the secretary to keep the minutes of all meetings of the board of 6976
directors in a proper book provided for that purpose, and also the minutes of all meetings of the stockholders; he shall attend to the giving and serving of all notices of the company; he shall be the custodian of the seal of the company; he shall have charge of the stock record books and the blank stock certificate books (subject to the provisions of Article IV, section 1), and of such other books and papers as the board may direct, all of which shall at all reasonable times be open to the examination of any director during business hours; and he shall in general perform all the duties incident to the office of secretary. 6977

SECTION 8.—*Powers and duties of assistant treasurer.*

Assistant treasurer. In the absence or inability to act of the treasurer, the assistant treasurer shall perform all the duties, and may exercise any of the powers, of the treasurer; and he shall perform such other duties as may be assigned to him from time to time by the board of directors or by the executive committee.

SECTION 9.—*Powers and duties of assistant secretary.* 6978

Assistant secretary. In the absence or inability to act of the secretary, the assistant secretary shall perform all the duties, and may exercise any of the powers, of the secretary; and he shall perform such other duties as may be assigned to him from time to time by the board of directors or by the executive committee.

6979 SECTION 10.—*Duties of general counsel.*

General counsel. The general counsel resident in St. Paul shall have general charge of the legal business of the company, including the designation and direction of the division, land, and local counsel; and the general counsel in New York may exercise general power of supervision and advice over and through the general counsel in St. Paul, and also shall act in matters referred to him by the board of directors or the executive committee.

6980 ARTICLE IV.—CORPORATE STOCK. CORPORATE SEAL.

SECTION 1.—*Stock certificates and transfers.*

Stock records and certificate books. (*a*) The stock record books and the blank stock-certificate books shall be in charge of the transfer agents or officers designated by the board of directors for that purpose.

Form of certificates and signatures required. The stock certificates of the company shall be in such form as the board of directors from time to time may prescribe. Each stock certifi-
6981 cate shall be signed by transfer agents appointed by the board of directors and by some officer designated by the board of directors or by the executive committee for that purpose, and shall be countersigned by registrars of transfers appointed by the board. No new certificate shall be issued to a transferee except upon surrender and cancellation of the old certificate.

Issue, transfer, and registration of stock. (*b*) The board of directors or executive committee may make all necessary arrangements authorizing and regulating the issue and registration of stock certificates, and may provide for the issue of stock certificates in
6982 any one of the cities in which the company's stock shall be transferable, upon cancellation of certificates issued for a like number of shares in any other of the cities in which the company's stock is transferable.

Transfer books. (*c*) The agents in charge of the transfer books shall keep such books subject to the direction of the board of directors or of the executive committee, and shall prepare for presentation to the annual meeting and to all

List of stockholders. special meetings certified lists of the stockhold- 6983
ers of record on such books; and shall make such reports with reference to the matters in their charge as the board of directors or the executive committee may direct.

Transfers, how made. (*d*) Shares of the capital stock of the company shall be transferred only upon the proper transfer books by the holder of such shares, in person or by his attorney, upon surrender and cancellation of similar certificates for a like number of shares of the same kind, having indorsed thereon or attached thereto a duly executed assignment thereof and power to transfer the same. 6984

Closing of transfer books. (*e*) The stock transfer books shall be closed, as may be directed by the board of directors or by the executive committee, for a prescribed period preceding the day appointed for any annual meeting or any special meeting of the stockholders, or for the payment of a dividend; and no transfer of stock shall be made during any period so prescribed.

Lost, stolen, or destroyed certificates. (*f*) No certificate of shares in the capital stock of the company shall be issued in place of any certificate alleged to have been lost or stolen or destroyed, except upon delivery to the company of a bond of indemnity to 6985
be approved by the board of directors or by the executive committee, and except also upon furnishing such evidence of such loss, theft, or destruction as shall be satisfactory to the board of directors or to the executive committee.

SECTION 2.—*Dividends.*

Dividends. The board of directors may declare dividends from surplus net earnings of the company whenever they shall deem it expedient in the exercise of a sound discretion. 6986

SECTION 3.—*Corporate seal.*

Corporate seal. The board of directors shall adopt a suitable seal, containing the name of the company. The secretary shall procure duplicate stamps suitable to make impressions of such seal, one of which shall be in the custody of the secretary in New York and the other in the custody of the assistant secretary in St. Paul; and, when and as directed by special or general resolution of the board of directors, or of the

executive committee, the president, any vice-president, the secretary, or any assistant secretary, may and shall use one or the other of such duplicate stamps in impressing such corporate seal upon documents, indentures, and obligations of the company.

ARTICLE V.—AMENDMENTS.

By-laws, how amended, etc.

The by-laws of the company, with the exception of the provisions of Section 1, of Article II, may be altered, amended, or repealed by the vote of a majority of all the directors of the company at any regular or special meeting of the board, provided that notice of the proposed alteration, amendment, or repeal shall have been given at a previous meeting of the board.

COMPLAINANT'S EXHIBIT K.

BY-LAWS OF THE GREAT NORTHERN RAILWAY COMPANY. ADOPTED BY THE BOARD OF DIRECTORS JULY 24, 1896.

ARTICLE I.—*Directors and officers.*

SECTION 1. The stockholders of the company, at their annual meeting in each year, shall elect by ballot, and from their own number, three directors, each share of stock at such election being entitled to one vote, to be cast by the holder thereof in person or by written proxy; and the persons so elected shall, together with those previously elected whose terms of office have not yet expired, constitute the board of directors of the company.

The directors so elected shall, at their first meeting, elect by ballot, and from their own number, a president and a vice-president; and the board thus organized shall, at the same meeting, elect a secretary and a treasurer, and may, in its discretion, at the same or any other meeting duly convened, appoint an assistant secretary or an assistant treasurer, or both.

The board may also designate three of its members, of whom the president shall be one, to constitute an executive committee, and may, at any meeting duly convened, appoint a general solicitor, general manager, land commissioner, comptroller, chief engineer, and such superintendents or agents as it may deem necessary.

The president, vice-president, secretary, and treasurer, and

the directors shall hold their respective offices for one year, and 6991
until their successors shall have been duly elected and qualified. The assistant secretary, the assistant treasurer, general solicitor, general superintendent, chief engineer, land commissioner, comptroller, and such superintendents or agents so appointed may be removed at the pleasure of the board of directors. Any vacancy or vacancies occurring among the officers elected by the board, from death, resignation, or other cause, may be filled for the unexpired term by the board at any meeting thereof, and any vacancy or vacancies so occurring in the board may be filled for the unexpired term by the board at the first meeting follow- 6992
ing such vacancy, or by the president, if no meeting is held within ten days after such vacancy.

SEC. 2. All the business and affairs of the company shall be managed and conducted by or under the direction of the board of directors, and a majority of the members of the board shall constitute a quorum for the transaction of business; but any smaller number shall be competent to adjourn *sine die*, or from day to day.

ARTICLE II.—*Meetings.*

SECTION 1. The annual meeting of the stockholders shall be 6993
held at the general office of the company, in St. Paul, Minn., on the second Thursday of October in each year, upon notice thereof, given by the secretary, stating the time and place of such meeting, printed in some newspaper published in said St. Paul for ten days prior to the date of such meeting. The election of directors shall be proceeded with on said day, or such other day as such annual meeting shall or may adjourn to. The polls shall be open on the day of election from twelve (12) o'clock m. to three (3) o'clock p. m.

The secretary and two disinterested persons appointed by 6994
the president or chairman of the meeting shall be the inspectors of election, and shall canvass the votes, and make and sign a record of the result upon the minutes of the meeting. Those stockholders, equal to the number to be elected, having the greatest number of votes, shall be deemed and declared duly elected, and the secretary shall immediately notify the persons elected of their election; provided, that in the election of direct-

ors and at all other elections or meetings of the company a majority of votes shall govern.

At such election, and in all cases in which stockholders shall vote, the votes shall be delivered in person, or by proxy duly authorized, and each share of full-paid stock shall entitle the holder thereof to one vote.

SEC. 2. Special meetings of the stockholders shall be held at the general office of the company in St. Paul, and may be called by order of the board of directors, or by stockholders holding one-fourth in amount of the capital stock of the company, or by the president, on like notice as that required for annual meetings, and upon written or printed notice to each and every stockholder, to be mailed to his last known address at least ten days before the date of such special meeting, specifying the object of the meeting; and no business shall be transacted at such special meetings except such as shall be particularly set forth in such notice, nor any vote taken unless a majority of all the stock of the company shall be then and there represented either in person or by proxy.

SEC. 3. The first meeting of the newly constituted board shall be held at the general office of the company in St. Paul immediately after the adjournment of the stockholders' meeting on the day of their election, or at the general office of the company in the city of New York, upon eight days' notice of the time and place of meeting, given to each of the directors-elect by the president or secretary of the company. Other meetings of the board may be held upon call, or by adjournment, as hereinafter provided, at the office of the company in St. Paul, or at the office of the company in the city of New York, or at any other general office of the company that may hereafter be duly established. Such meetings may be called by the president or vice-president, on the request of two directors, in writing, and, without such request, may be called by the president whenever, in his judgment, a meeting of the directors shall be necessary or desirable. Eight days' notice of such special meeting shall be given to each director by depositing notice of the time and place of the holding of the same in the post-office, addressed to him at his place of residence.

Provided, however, that any other or shorter notice of any

such meeting given to any director shall be deemed regular and 6999
sufficient, if accepted as such by said director.

ARTICLE III.—*The president and vice-president.*

SECTION 1. The president will, when present, preside at all meetings, either of the board of directors or of the stockholders. In the absence of the president the vice-president will discharge the duties of the president. In case of the absence of both the president and the vice-president the directors or stockholders, as the case may be, may appoint a president *pro tempore.*

SEC. 2. The president will have and exercise general super- 7000
vision and control over the entire property, business, and affairs of the company. All the officers and agents of the corporation will be responsible to him for the proper and faithful discharge of their several duties and will obey such orders and make such reports to him touching the business of the company under their respective charge as he may from time to time direct; and any superintendent, engineer, agent, or employee of the company may be suspended or discharged by him, if, in his judgment, there be cause for such suspension or discharge, at any time when the board of directors shall not be in session. 7001

All leases, conveyances, and instruments affecting the right of way or other real property of the company, and all contracts with other railways relating to the use of the same, shall be signed by the president and shall not be valid without.

All contracts requiring the corporate seal and all certificates of stock will be signed by him or the vice-president; and he will have such other powers as are incident to the office or may from time to time be prescribed or conferred by the board.

The vice-president, in the absence or in case of the disability of the president, will preside at the meetings of the board of di- 7002
rectors and of the stockholders, may sign all bonds, contracts, and other instruments requiring the corporate seal, and may countersign all contracts and leases originating in the land department.

ARTICLE IV.—*The secretary.*

The secretary will keep a record of all meetings of the stockholders and of the board of directors and attest the same by his signature. He will have charge of all books, papers, and documents which properly belong to his office. He will sign all

7003 certificates of stock and have charge of the corporate seal and keep the books appertaining to his office. He will keep proper stock transfer and register books, and generally perform such duties and make such reports as the board may direct. In case of his absence or disability, the assistant secretary, if any, will perform his duties, or a secretary *pro tempore* may be elected in case of the absence of both.

ARTICLE V.—*The treasurer.*

The treasurer will safely keep and account for all moneys,
7004 funds, or other property which may come into his hands, keeping full and true statements of all financial transactions of the company in his books. He will give bonds, under the direction of the board, for the faithful performance of his duties. He will keep his accounts as treasurer in such banks or places of deposit as the president or the board of directors may direct, and generally will render all such accounts and perform such duties as the board may direct. In case of his absence or disability, the assistant treasurer, if any, shall perform his duties.

7005 ARTICLE VI.—*Executive committee.*

The duty of the executive committee will be to superintend the transaction of the current administrative business of the company during the intervals between the meetings of the board of directors and to conduct such other matters of business as may from time to time be committed to it by the board. Three members of the committee shall constitute a quorum for the transaction of business, and without such quorum the committee will not do or attempt any business whatever. They will record their proceedings in full in a book to be kept for
7006 that purpose, and the record of each proceeding will be signed by all the members of the committee participating therein. Such records will be open at all times to the inspection of any member of the board of directors. They will be subject to the control of the board, and they will be produced to the board for its action thereon at any meeting thereof upon the request of any director. Any member of the board may be present at the meetings of the executive committee.

ARTICLE VII.—*Stock certificates and transfers.* 7007

All certificates for shares of the capital stock will be signed by the president or vice-president and the secretary. They will be numbered in progression, beginning with number one, and each certificate will show upon its face the number of shares for which it is issued and that the stock therein mentioned is transferable only on the books of the company and upon the surrender of such certificate.

Upon the issuance of each certificate an entry thereof will be made in a book called the "register of stockholders," stating the number of such certificate, the name of the stockholder, 7008 and the number of shares to which he is entitled. The transfer of any share or shares of stock may be made by the surrender of the certificate issued therefor and a written assignment thereof, signed by the owner or his duly authorized attorney in fact, upon a book to be called the "register of transfers." Upon such surrender and assignment a new certificate or certificates will be issued to the assignee as he may be entitled; but without such surrender and assignment no transfer of stock will be recognized by the company.

The "register of transfers" will be closed at least ten days 7009 before each annual meeting of the stockholders and at such other times and for such other purposes as may be ordered by the board of directors or by the executive committee; and no assignee of shares will be entitled to vote, as such assignee, at any meeting unless such surrender and assignment shall have been made or tendered before the time specified for the closing of said "registers of transfers."

ARTICLE VIII.—*Second vice-president and third vice-president.*

In addition to the officers prescribed and required by the 7010 charter of this company, there may be a second vice-president and a third vice-president, who shall be elected by the board of directors in the same manner as is provided in Article I of these by-laws for the election of secretary and treasurer, and who shall hold his office at the pleasure of the board.

The board of directors may invest the respective officers provided for in this article with such powers and authority, and charge them respectively with such duties, not inconsistent with the charter of the company nor with the laws of this State, as it

7011 shall deem proper and necessary in the due and orderly conduct and management of the business and affairs of the company; and it will, by resolution, establish and clearly prescribe and define such powers, authority, and duties, and said officers will have, possess, and exercise all the authority and powers, and be charged with all the duties, thus established, defined, and prescribed.

ARTICLE IX.—*Change of by-laws.*

These by-laws, or any of them, may be added to, altered,
7012 amended, or repealed by the board of directors at any meeting thereof; and any addition, alteration, amendment, or repeal so made shall be valid and operative until the next annual meeting of the company thereafter, and if not disapproved at such annual meeting will be valid and effectual to all intents and purposes as if adopted by the stockholders at such annual meeting, as well as by the board.

COMPLAINANT'S EXHIBIT L.

7013 **BY-LAWS OF NORTHERN SECURITIES COMPANY. ADOPTED BY THE INCORPORATORS NOVEMBER 13, 1901. AMENDED BY THE BOARD OF DIRECTORS NOVEMBER 14, 1901. RATIFIED BY THE BOARD OF DIRECTORS IN AMENDED FORM NOVEMBER 29, 1901.**

BY-LAWS OF NORTHERN SECURITIES COMPANY.

ARTICLE I.—*Stockholders.*

SECTION I. *Annual meeting.*—A meeting of the stockholders of the company shall be held annually at the principal office of
7014 the company, in the State of New Jersey, at 12 o'clock noon on the second Monday in November in each year, if not a legal holiday, and if a legal holiday then on the next succeeding Monday not a legal holiday, for the purpose of electing directors, and for the transaction of such other business as may be brought before the meeting.

It shall be the duty of the secretary to cause notice of each annual meeting to be published once in each of the four calendar weeks next preceding the meeting in at least one newspaper in each of the following places: Jersey City, N. J., and New York,

N. Y. Nevertheless, a failure to publish such notice, or any 7015
irregularity in such notice or in the publication thereof, shall not affect the validity of any annual meeting, or of any proceedings at any such meeting.

SEC. 2. *Special meetings.*—Special meetings of the stockholders may be held at the principal office of the company in the State of New Jersey, whenever called in writing or by vote by a majority of the board of directors.

Notice of the time and place of each special meeting shall by the secretary be published once in each of the two calendar weeks next preceding the meeting in at least one newspaper in 7016
each of the following places: Jersey City, N. J., and New York, N. Y. Nevertheless, if all the stockholders shall waive notice of a special meeting, no notice of such meeting shall be required; and whenever all the stockholders shall meet in person or by proxy, such meeting shall be valid for all purposes without call or notice, and at such meeting any corporate action may be taken.

SEC. 3. *Quorum.*—At any meeting of the stockholders the holders of a majority of all the shares of capital stock of the company, present in person or represented by proxy, shall constitute a quorum of the stockholders for all purposes, unless the 7017
representation of a larger number shall be required by law, and in that case the representation of the number so required shall constitute a quorum.

If the holders of the amount of stock necessary to constitute a quorum shall fail to attend in person or by proxy at the time and place fixed by these by-laws for an annual meeting, or fixed by notice as above provided for a special meeting called by the directors, a majority in interest of the stockholders present in person or by proxy may adjourn, from time to time, without notice other than by announcement at the meeting, until holders 7018
of the amount of stock requisite to constitute a quorum shall attend. At any such adjourned meeting at which a quorum shall be present any business may be transacted which might have been transacted at the meeting as originally notified.

SEC. 4. *Organization.*—The president, and in his absence, one of the vice-presidents, in order of their numbers, beginning with the first, shall call meetings of the stockholders to order, and shall act as chairman of such meetings. The board of directors

7019 may appoint any stockholder to act as chairman of any meeting in the absence of the president and all the vice-presidents.

The secretary of the company shall act as secretary at all meetings of the stockholders; but in the absence of the secretary at any meeting of the stockholders the presiding officer may appoint any person to act as secretary of the meeting.

SEC. 5. *Voting.*—At each meeting of the stockholders every stockholder shall be entitled to vote in person, or by proxy appointed by instrument in writing, subscribed by such stockholder or by his duly authorized attorney, and delivered to the 7020 inspectors at the meeting; and he shall have one vote for each share of stock standing registered in his name at the time of the closing of the transfer books for said meeting. The votes for directors, and, upon demand of any stockholder, the votes upon any question before the meeting, shall be by ballot.

At each meeting of the stockholders a full, true, and complete list, in alphabetical order, of all of the stockholders entitled to vote at such meeting, and indicating the number of shares held by each, certified by the secretary or by the treasurer, shall be furnished. Only the persons in whose names shares of stock 7021 stand on the books of the company at the time of the closing of the transfer books for such meeting, as evidenced by the list of stockholders so furnished, shall be entitled to vote in person or by proxy on the shares so standing in their names.

Prior to any meeting, but subsequent to the time of closing the transfer books for such meeting, any proxy may submit his powers of attorney to the secretary or to the treasurer for examination. The certificate of the secretary or of the treasurer as to the regularity of such powers of attorney, and as to the number of shares held by the persons who severally and respectively 7022 executed such powers of attorney, shall be received as prima facie evidence of the number of shares represented by the holder of such powers of attorney, for the purpose of establishing the presence of a quorum at such meeting, and of organizing the same, and for all other purposes.

SEC. 6. *Inspectors.*—At each meeting of the stockholders the polls shall be opened and closed; the proxies and ballots shall be received and be taken in charge; and all questions touching the qualification of voters and the validity of proxies, and the acceptance or rejection of votes, shall be decided by two inspect-

ors. Such inspectors shall be appointed by the board of directors 7023
before or at the meeting, or, if no such appointment shall have been made, then by the presiding officer at the meeting. If for any reason any of the inspectors previously appointed shall fail to attend, or refuse or be unable to serve, inspectors in place of any so failing to attend, or refusing or unable to attend, shall be appointed in like manner.

ARTICLE II.—*Board of directors.*

SECTION 1. *Number, classification, and term of office.*—The 7024
business and the property of the company shall be managed and controlled by the board of directors.

As provided in the certificate of incorporation, the directors shall be classified in respect of the time for which they shall severally hold office, by dividing them into three classes, each class consisting of one-third of the whole number of the board of directors. The directors of the first class shall be elected for a term of one year; the directors of the second class shall be elected for a term of two years; and the directors of the third class shall be elected for a term of three years. At each annual election the successors to the directors of the class whose terms 7025
shall expire in that year shall be elected to hold office for the term of three years, so that the term of office of one class of directors shall expire in each year.

The number of the first board of directors shall be three, but the number of directors may be altered from time to time, and so soon as deemed advisable by the first board of directors shall be increased to fifteen by the alteration of these by-laws.[a]

In case of any increase of the number of directors, the additional directors shall be elected by the directors then in office; one-third of such additional directors for the unexpired portion 7026
of the term of one year; one-third for the unexpired portion of the term of two years; and one-third for the unexpired portion of the term of three years; so that each class of directors shall be increased equally.

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[a]At a meeting of the board, held 10 a. m. November 14, 1901, these by-laws were amended by striking out this paragraph and inserting in place thereof the words: "The number of the board of directors shall be fifteen, but the number of directors may be altered from time to time by the alteration of these by-laws."

Every director shall be a holder of at least one share of the capital stock of the company. Each director shall serve for the term for which he shall have been elected and until his successor shall have been duly chosen.

At all elections of the directors the polls shall remain open for at least one hour, unless every registered owner of shares has sooner voted in person or by proxy or in writing has waived the statutory provision.

SECTION 2. *Vacancies.*—In case of any vacancy in the directors of any class through death, resignation, disqualification, or other cause, the remaining directors, by affirmative vote of a majority thereof, may elect a successor to hold office for the unexpired portion of the term of the director whose place shall be vacant and until the election of his successor.

Such vacancy shall be filled upon and after nominations therefor shall have been made by the finance committee.

SECTION 3. *Place of meeting, etc.*—The directors may hold their meetings and may have an office and keep the books of the company (except as otherwise may be provided for by law) in such place or places in the State of New Jersey or outside of the State of New Jersey as the board from time to time may determine.

SECTION 4. *Special meetings.*—Special meetings of the board of directors shall be held whenever called by the president or by one-third of the directors for the time being in office.

The secretary shall give notice of each special meeting by mailing the same at least five days before the meeting, or by telegraphing the same at least three days before the meeting, to each director; but such notice may be waived by any director. At any meeting at which every director shall be present, even though without any notice, any business may be transacted.

SECTION 5. *Quorum.*—A majority of the board of directors shall constitute a quorum for the transaction of business, but if at any meeting of the board there be less than a quorum present, a majority of those present may adjourn the meeting from time to time.

SECTION 6. *Order of business.*—At meetings of the board of directors business shall be transacted in such order as from time to time the board may determine by resolution.

At all meetings of the board of directors, the president, or in 7031
his absence one of the vice-presidents, in order of their numbers, beginning with the first, shall preside.

ARTICLE III.—*Executive committee.*

SECTION 1. The board of directors may elect from the directors an *executive committee.* The president shall *ex officio* be chairman, and in his absence, one of the members, in the order of their election, shall act as chairman.

The board of directors shall fill vacancies in the executive committee by election from the directors. 7032

All action by the executive committee shall be reported to the board of directors at its meeting next succeeding such action, and shall be subject to revision or alteration by the board of directors: *Provided*, That no rights or acts of third parties shall be affected by any such revision or alteration.

The executive committee shall fix its own rules of proceeding, which rules shall be subject to approval by the board, and shall meet where and as provided by such rules, or by resolution of the board of directors, but in every case the presence of a majority shall be necessary to constitute a quorum. 7033

In every case the affirmative vote of a majority of all of the members of the committee shall be necessary to its adoption of any resolution.

During the intervals between the meetings of the board of directors, the executive committee shall possess, and may exercise, all the powers of the board of directors in the management and direction of the business and affairs of the company in such manner as the executive committee shall deem best for the interests of the company, in all cases in which specific directions shall not have been given by the board of directors. 7034

ARTICLE IV.—*Officers.*

SECTION 1. *Officers.*—The executive officers of the company shall be a president, a vice-president, or more than one vice-president, a treasurer, and a secretary, all of whom shall be elected by the board of directors.

The board of directors may appoint such other officers as they shall deem necessary, who shall have such authority and shall

perform such duties as from time to time may be prescribed by the board of directors.

The powers and duties of the treasurer and secretary may be exercised and performed by the same person.

In its discretion, the board of directors, by the vote of a majority thereof, may leave unfilled for any such period as it may fix by resolution any office except those of president, treasurer, and secretary.

All officers and agents shall be subject to removal at any time by the affirmative vote of a majority of the whole board of directors. All officers, agents, and employees, other than officers appointed by the board of directors, shall hold office at the discretion of the committee or of the officer appointing them.

SECTION 2. *Powers and duties of the president.*—The president shall preside at all meetings of the stockholders and of the board of directors, and by virtue of his office he shall be a member of the executive committee. Subject to the board of directors, or to the executive committee, if any be elected, he shall have general charge of the business of the company, may sign and execute all authorized bonds, contracts, or other obligations in the name of the company, and, with the treasurer, or an assistant treasurer, may sign all certificates of the shares in the capital stock of the company. He shall do and perform such other duties as from time to time may be assigned to him by the board of directors.

SECTION 3. *Vice-presidents.*—Each vice-president shall have such powers, and shall perform such duties, in addition to those mentioned in the by-laws, as may be assigned to him by the board of directors or the executive committee.

SECTION 4. *Powers and duties of treasurer.*—The treasurer shall have custody of all the funds and securities of the company which may have come into his hands; when necessary or proper, he shall indorse on behalf of the company for collection, checks, notes, and other obligations and shall deposit the same to the credit of the company in such bank or banks or depositary as the board of directors or the executive committee may designate; he shall sign all receipts and vouchers for payments made to the company; jointly with the president or a vice-president, or such other officer as may be designated by the board or executive committee, he shall sign all checks made by

the company, and shall pay out and dispose of the same under 7039
the direction of the board or of the executive committee; he shall sign, with the president or a vice-president, or such other person or persons as may be designated for the purpose by the board of directors or the executive committee, all bills of exchange and promissory notes of the company; he may sign, with the president or a vice-president, all certificates of shares in the capital stock; whenever required by the board of directors or by the executive committee, he shall render a statement of his cash account; he shall enter regularly, in books of the company to be kept by him for the purpose, full and accurate 7040
account of all moneys received and paid by him on account of the company; he shall, at all reasonable times, exhibit his books and accounts to any director of the company upon application at the office of the company during business hours, and he shall perform all acts incident to the position of treasurer, subject to the control of the board of directors or of the executive committee.

He shall give security for the faithful discharge of his duties in such sum as the board of directors or the executive committee may require. 7041

SECTION 6. *Assistant treasurers.*—The board of directors or the executive committee may appoint an assistant treasurer or more than one assistant treasurer. Each assistant treasurer shall have such powers and shall perform such duties as may be assigned to him by the board of directors or by the executive committee.

SECTION 7. *Powers and duties of secretary.*—The secretary shall keep the minutes of all meetings of the board of directors and the minutes of all meetings of the stockholders, and also the minutes of all committees, in books provided for that pur- 7042
pose; he shall attend to the giving and serving of all notices of the company; he may sign, with the president or a vice-president, in the name of the company all contracts authorized by the board of directors or by the executive committee, and when so ordered by the board of directors or executive committee, he shall affix the seal of the company thereto; he shall have charge of the certificate books, transfer books, and stock ledgers, and such other books and papers as the board of directors or the executive committee may direct, all of which shall, at all reason-

able times, be open to the examination of any director, upon application at the office of the company during business hours; and he shall in general perform all the duties incident to the office of secretary, subject to the control of the board of directors and of the executive committee.

SECTION 8. *Assistant secretaries.*—The board of directors or the executive committee may appoint one or more assistant secretaries. Each assistant secretary shall have such powers and shall perform such duties as may be assigned to him by the board of directors or by the executive committee.

SECTION 9. *Auditor.*—The auditor shall be the principal officer in charge of the accounts of the company, and shall perform such duties as from time to time may be assigned to him by the board of directors or the executive committee.

ARTICLE V.—*Capital stock—seal.*

SECTION 1. *Certificates of shares.*—Certificates for shares of the capital stock of the company shall be in such form, not inconsistent with the certificate of incorporation, as shall be prepared or be approved by the board of directors. The certificates shall be signed by the president or a vice-president, and also by the treasurer or an assistant treasurer.

All certificates shall be consecutively numbered. The name of the person owning the shares represented thereby, with the number of such shares and the date of issue, shall be entered on the company's books.

No certificate shall be valid unless it be signed by the president or a vice-president, and by the treasurer or an assistant treasurer.

All certificates surrendered to the company shall be canceled, and no new certificate shall be issued until the former certificate for the same number of shares of the same class shall have been surrendered and canceled.

SECTION 2. *Transfer of shares.*—Shares in the capital stock of the company shall be transferred only on the books of the company by the holder thereof in person, or by his attorney, upon surrender and cancellation of certificates for a like number of shares.

SECTION 3. *Regulations.*—The board of directors, and the executive committee also, shall have power and authority to

make all such rules and regulations as, respectively, they may 7047
deem expedient concerning the issue, transfer, and registration of certificates for shares of the capital stock of the company.

The board of directors or the executive committee may appoint one or more transfer agents and a registrar of transfers, and may require all stock certificates to bear the signature of one of such transfer agents and of such registrar of transfers.

SECTION 4. *Closing of transfer books.*—The stock transfer books shall be closed for the meetings of the stockholders and for the payment of dividends during such periods as from time to time may be fixed by the board of directors or by the execu- 7048
tive committee, and during such periods no stock shall be transferable.

SECTION 5. *Dividends.*—The board of directors may declare dividends from the surplus or net profits of the company over and above the amount which from time to time may be fixed by the board as the amount to be reserved as working capital.

SECTION 6. *Working capital.*—The directors shall not be required in January in each year, after reserving over and above its capital stock paid in, as a working capital for said corporation, such sum, if any, as shall have been fixed by the 7049
stockholders, to declare a dividend among its stockholders of the whole of its accumulated profits exceeding the amount so reserved, and pay the same to such stockholders on demand; but the board of directors may fix a sum which may be set aside or reserved, over and above the company's capital paid in, as a working capital for the company, and from time to time they may increase, diminish, and vary the same in their absolute judgment and discretion.

SECTION 7. *Corporate seal.*—The board of directors shall provide a suitable seal containing the name of the company, 7050
which seal shall be in charge of the secretary, if and when so directed by the board of directors or by the executive committee. A duplicate of the seal may be kept and used by the treasurer, or by any assistant secretary or assistant treasurer.

ARTICLE VI.—*Amendments.*

SECTION 1. The board of directors shall have power to make, amend, and repeal the by-laws of the company, by vote of a majority of all the directors, at any regular or special meeting

7051 of the board: *Provided*, That notice of intention to make, amend, or repeal the by-laws, in whole or in part, shall have been given at the next preceding meeting; or without any such notice, by a vote of two-thirds of all of the directors.

COMPLAINANT'S EXHIBIT M.

CLASSIFIED LIST OF DIRECTORS OF NORTHERN SECURITIES CO. ELECTED NOVEMBER 14 AND 15, 1901.

For one year:

7052 James J. Hill.
Daniel S. Lamont.
George W. Perkins.
George F. Baker.
N. Terhune.

For two years:

George C. Clark.
Samuel Thorne.
Jacob H. Schiff.
James Stillman.
7053 W. P. Clough.

For three years:

D. Willis James.
John S. Kennedy.
Edward T. Nichols.
Robert Bacon.
E. H. Harriman.

COMPLAINANT'S EXHIBIT N.

7054 **LIST OF DIRECTORS OF C., B. AND Q. RAILWAY CO.**

Charles E. Perkins, Burlington.
George B. Harris, Chicago.
Charles J. Paine, Boston.
James J. Hill, St. Paul.
George W. Perkins, New York.
John S. Kennedy, New York.
E. H. Harriman, New York.
Mortimer L. Schiff, New York.

W. H. McIntyre, New York. 7055
W. P. Clough, New York.
James Stillman, New York.

COMPLAINANT'S EXHIBIT O.

LIST OF DIRECTORS OF C., B. AND Q. RAILROAD CO.

F. W. Hunnewell, Boston.
J. Malcolm Forbes, Boston.
James J. Hill, St. Paul.
James N. Hill, St. Paul. 7056
Robert Bacon, New York.
Jacob H. Schiff, New York.
E. H. Harriman, New York.
George J. Gould, New York.
H. McK. Twombly, New York.
Norman B. Ream, New York.
Charles E. Perkins, Burlington.

COMPLAINANT'S EXHIBIT P. 7057

I, R. H. Relf, assistant secretary of the Northern Pacific Railway Company, hereby certify that the following is a true and correct list of the present board of directors of the Northern Pacific Railway Company:

George F. Baker .....2 Wall street, New York City.
Edward H. Harriman .....120 Broadway, New York City.
William P. Clough .....32 Liberty street, New York City.
Brayton Ives .....37 Wall street, New York City.
D. Willis James..... 99 John street, New York City.
John S. Kennedy.....31 Nassau street, New York City. 7058
Daniel S. Lamont .....49 Wall street, N. Y. City.
Charles S. Mellen .....St. Paul, Minn.
Samuel Rea.....Phila., Pa. (4th vice-pres't Penna. R. R. Co.).
William Rockefeller.....26 Broadway, N. Y. City.
Charles Steele..... ..23 Wall street, N. Y. City.
Samuel Spencer.....80 Broadway, N. Y. City.
James Stillman.....52 Wall street, N. Y. City.

7059 Eben B. Thomas.....21 Cortlandt st., N. Y. City.
Hamilton McK. Twombly..35 Wall street, N. Y. City.

Witness my hand and the seal of said company this 19th day of December, 1902.

[SEAL.] R. H. RELF,
Assistant Secretary.

COMPLAINANT'S EXHIBIT Q.

REORGANIZATION OF THE NORTHERN PACIFIC RAILROAD COMPANY.

7060 Reorganization committee: Edward D. Adams, chairman; John C. Bullitt, Louis Fitzgerald, Charles H. Godfrey, J. D. Probst, James Stillman, Ernst Thalmann.

Charles C. Beaman, Wm. Nelson Cromwell, counsel to the reorganization committee.

Arnold Marcus, secretary.

Protective committee: Brayton Ives, chairman; August Belmont, George R. Sheldon, Charlemagne Tower, jr.; Silas W. Pettit, counsel.

Depositaries: J. P. Morgan & Co., New York; Drexel &
7061 Co., Philadelphia; Deutsche Bank, Berlin, and its branches at Frankfort-on-Main, Bremen, Hamburg, Munich, and London.

Francis Lynde Stetson, Victor Morawetz, counsel to the reorganization managers.

New York, March 16, 1896.

REORGANIZATION OF THE NORTHERN PACIFIC RAILROAD COMPANY.

Announcement by the reorganization committee, pages 3 to 6.

Plan of reorganization, pages 7 to 16.

Statistics of the Northern Pacific Railroad Company, pages
7062 17 to 21.

Reorganization agreement, pages 23 to 29.

OFFICE OF THE
NORTHERN PACIFIC REORGANIZATION COMMITTEE,
Mills Building, New York, March 16, 1896.

To the Holders of the Bonds and Stocks issued or guaranteed by the Northern Pacific Railroad Company:

The property of the Northern Pacific Railroad Company comprises, in various forms of ownership and control,

A railway system of 4,706 miles; 7063

A land grant of about 43,000,000 acres, and

Sundry bonds, stocks, and accounts, representing interests in terminal, express, coal, and navigation companies.

This property is represented by fifty-four corporations, which have issued $380,000,000 of bonds and stocks, of which all are now outstanding, and $271,949,044, including defaulted interest to December 31, 1896, are owned directly by the public.

The present fixed annual interest and sinking fund charges amount to..... $10,905,690.00 7064

The adjusted net income from all sources applicable to these fixed charges has been:

For the fiscal year ending June 30, 1895.. 6,015,846.62

And during the past five years has averaged 7,801,645.78

The plan for independent reorganization of the property has been drawn upon the following basis:

First.—The abandonment of Chicago as the eastern terminus and the limitation of the railway on the east by the Mississippi River and the Great Lakes. 7065

The bonds and stocks of the Chicago and Northern Pacific Railroad Company and the Chicago and Calumet Company, or their successor companies, remaining as Northern Pacific assets, will be disposed of when they can be sold advantageously, and their proceeds applied to the benefit of the property.

Second.—The ultimate union of main line, branches, and terminal properties through direct ownership by a single company.

So far as practicable the ownership in fee or otherwise of the equipment, branch line, and terminal properties (other than the Portland terminal) will be acquired and vested in the new company and covered by its new mortgages. 7066

Third.—The reduction of the fixed annual charges to less than the minimum earnings under probable conditions.

The net income applicable to fixed charges has fluctuated from $10,067,408.37 in the fiscal year 1891–92 to $4,449,999.04 in 1893–94. The average of the past five years has been $7,801,645.78.

The smallest results were brought about by the well-known

7067 combination of currency panic, floods, social disorders, and short crops, all of which are unlikely to occur again at any one time.

The net income during the last fiscal year, 1894–95, as shown on page 20, was	$5,657,483.49
To which should be added allowance for extraordinary expenses of the receiverships, of	358,363.13
Thus making the adjusted net income of that year	6,015,846.62

7068 The gross earnings of the present fiscal year show an increase of about 16 per cent over the gross earnings for the same period of the previous year.

The fixed annual charges under the plan of reorganization, when fully carried out (exclusive of bonds reserved for new construction), will amount to $6,052,660.

Fourth.—Ample provision for additional capital as required in a series of years for the development of the property and for the greater facilities necessitated by an increased business.

In their report of September last, the receivers state "that provision should be made for extraordinary expenditures in the
7069 next five years of $9,000,000, in order to place the property on an equal footing with its rivals for economical operation."

RAILWAY SYSTEM AND ITS MORTGAGE LIENS.

The railroad of the Northern Pacific system is composed of—

Main line	45.73%	2,152.35 miles.
Branches	54.27%	2,554.09 miles.
	100 %	4,706.44 miles.

7070 The general first, second, and third mortgage bonds are secured by liens in their respective order upon the land grant and upon the main-line railroad, as above.

The consolidated mortgage bonds are secured by a fourth lien upon the land grant and upon the main-line railroad, and also by the pledge of first-mortgage bonds upon various branch lines, having an aggregate length of 1,415.85 miles.

None of the four mortgages cover (except by leasehold) any of the terminal properties owned by the St. Paul and Northern Pacific Railroad Company, the Northern Pacific Terminal Com-

pany of (Portland) Oregon, or the Northern Pacific and Mani- 7071
toba Terminal (Winnipeg), all of which are owned by separate organizations.

There are other branch roads comprising 1,138.24 miles, the bonds of which are directly owned by the public.

UNITED STATES LAND GRANT.

The public lands granted by the United States to the Northern Pacific Railroad Company under its charter July 2, 1864, amounted to 12,800 acres to the mile of track in the States of Minnesota and Oregon and 25,600 acres per mile in the inter- 7072
mediate Territories.

It is estimated that under this grant the company is entitled to receive about 43,000,000 acres, of which 22,823,115 acres have been selected as belonging to the Northern Pacific Railroad Company. Of these, United States patents, vesting the title to the fee of such lands in the company, have been received for 15,939,189 acres.

The operations of the land department, as shown on page 21, during the past five years shows that from all sources (exclusive of proceeds of sales applicable to the preferred stock, or by 7073
trustees of prior mortgages to their interest and sinking funds)

the total income was	$3,076,308.37
while the expenses and taxes amounted to	1,304,145.39
leaving for the sinking fund of the general first mortgage only	1,772,162.98
while for the same period the requirements thereunder amounted to	3,272,860.00
This deficiency in proceeds from land sales amounting to	1,500,697.02 7074

was supplied from the net earnings of the operating department of the railroad company.

Of late the diminution of sales of lands applicable to this and other mortgages has thrown upon the transportation earnings of the company the burden of their sinking-fund charges.

These charges, with the other sinking-fund obligations to the public, amounting to $1,463,763 per annum, will be entirely relieved by the full operation of the plan of reorganization.

None of the new bonds will be subject to drawing or compulsory redemption prior to their regular maturity, a feature now quite generally recognized by investors as most desirable. At the same time they will, after the retirement of the present general first-mortgage bonds, receive all benefits of the land sales through the mortgage provision that one-half the proceeds thereof, not exceeding $500,000 in any one year, shall be used in the purchase, at not exceeding 110 per cent, and the cancellation of prior lien 4 per cent bonds, and when these are not obtainable, then in the purchase, at not exceeding 100 per cent, and the cancellation of general lien 3 per cent bonds, and that the remainder shall be used for betterments and additions to the mortgaged property.

As it now stands, the system in its form of incorporation and capitalization is a development without method or adequate preparation for growth. Scarcely any single security is complete in itself. The main-line mortgages cover neither feeders nor terminals. The terminal mortgages may be bereft of their main-line support. The branch-line bonds are dependent upon the main line for interchange of business, and the main line owes a large part of its business to the branch lines.

The principal object of the reorganization committee has been to preserve the integrity of the system. The plan now presented for the reorganization of the property is founded upon the idea that its unification means its preservation and prosperity, both of which, it is believed, can now be thus permanently accomplished with the best possible security and results for all interests.

The conversion of the general first-mortgage bonds upon the terms set forth in the plan is recommended by Messrs. J. P. Morgan & Co., August Belmont & Co., and Winslow, Lanier & Co., who originally issued those bonds, as well as by the German committee of general first-mortgage bondholders.

The plan has been prepared with the approval and cooperation of Messrs. J. P. Morgan & Co. and the Deutsche Bank.

The plan has received the approval of the representatives of a majority of the bondholders of the three main-line mortgages in process of foreclosure (the general second, general third, and consolidated mortgages), and of other important interests affected by the terms of reorganization.

It has also received the approval of the interests represented 7079
by the protective committee.

Messrs. J. P. Morgan & Co. and the Deutsche Bank have formed the necessary syndicate of $45,000,000, and Messrs. J. P. Morgan & Co. will act as reorganization managers.

EDWARD D. ADAMS, *Chairman*,
JOHN C. BULLITT,
LOUIS FITZGERALD,
CHARLES H. GODFREY,
J. D. PROBST,
JAMES STILLMAN, 7080
ERNST THALMANN,
Reorganization Committee.

The undersigned protective committee hereby join in recommending the prompt acceptance of the accompanying plan and agreement.

BRAYTON IVES, *Chairman*,
AUGUST BELMONT,
GEORGE R. SHELDON,
CHARLEMAGNE TOWER, Jr., 7081
Protective Committee.

SILAS W. PETTIT, *Counsel.*

NEW YORK, *March 16, 1896.*

PLAN FOR THE REORGANIZATION OF THE NORTHERN PACIFIC SYSTEM.

CONDITIONS OF PARTICIPATION.

Participation under this plan of reorganization in any respect whatsoever is dependent on the deposit of securities with one 7082
of the depositaries, Messrs. J. P. Morgan & Co., 23 Wall street, New York; Messrs. Drexel & Co., Fifth and Chestnut streets, Philadelphia; the Deutsche Bank, Berlin, and its branches at Frankfort-on-Main, Bremen, Hamburg, Munich, and London, within such time as may be fixed by notice, and will embrace only securities so deposited.

No securities will be received on deposit unless in negotiable form, and bonds must carry all unpaid coupons.

Pursuant to the arrangement with a syndicate hereinafter stated:

As consideration for shares of the new company as hereinafter indicated, depositors of preferred stock must also pay $10 per share for new preferred and common stock, and depositors of common stock must pay $15 per share for new common stock.

The payments by depositors of such common and preferred stock must be made at the offices of Messrs. J. P. Morgan & Co., New York, or Messrs. Drexel & Co., Philadelphia, or of the Deutsche Bank, Berlin and London, at the option of each depositing stockholder, in not less than three installments, at least thirty days apart, when and as called for by advertisement in each instance at least twice a week for two weeks in two of the daily papers of general circulation published in the cities of New York, Philadelphia, London, and Berlin, respectively.

All payments must be receipted for by one of the depositaries on the certificates of deposit.

Failure to pay any installment when and as payable will subject the deposited stock and all rights on account of any prior payments to forfeiture, as hereinafter provided.

Holders of certificates of the Mercantile Trust Company of New York for general second, general third, and consolidated mortgage bonds, deposited under the existing bondholders' agreement of February 19, 1894, will be entitled to the benefits of this plan without the issue of new receipts or certificates, provided, that if hereafter required by the managers and within the time limited therefor, such existing certificates be produced to one of the depositaries and stamped as assenting to this plan.

All holders of general second, general third, and consolidated mortgage bonds who have not already deposited their bonds with the Mercantile Trust Company of New York under the existing bondholders' agreement, shall, by delivery of their bonds to the depositaries, be deemed to deposit their bonds under said bondholders' agreement, and for the bonds deposited, will receive certificates of said trust company issued under that agreement, duly stamped by one of the depositaries as assenting to this plan.

The depositaries will issue negotiable receipts for all other securities deposited with them.

The holders of receipts heretofore issued by the New York 7087
Security and Trust Company of New York for general second mortgage bonds, and by the New York Guaranty and Indemnity Company for general third mortgage bonds, must surrender the same to one of the depositaries and must obtain suitable new certificates hereunder in exchange therefor, in order to entitle them to any benefit of this plan. Bonds represented by such receipts not actually delivered to the depositaries will not be entitled to participation herein.

NEW RAILROAD COMPANY. 7088

At the discretion of the managers, the various properties will be sold under one or more of the several mortgages in default, or otherwise dealt with, and a successor company will be organized.

Pending their use for reorganization purposes, the securities deposited hereunder will be delivered by the depositaries to one or more trust companies, to be held by them respectively subject to the order and control of the managers.

All securities deposited under the plan are to be kept alive so long as deemed necessary for the purpose of reorganization. 7089

NEW STOCKS AND BONDS.

The new company is to authorize the following securities:

First. Prior lien one hundred-year 4 per cent gold bonds for $130,000,000.[a]

These bonds are to be secured by a mortgage upon the main line, branches, terminals, land grant, equipment, and other property, embraced in the reorganization as carried out, and also upon all other property thereafter acquired by the use of any of the bonds to be issued under both the new mortgages. 7090

The present general first mortgage covers only the main line, land grant, and the equipment so far as owned by the company.

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[a] Bonds will be issued in the following denominations: Coupon bonds of $500 and $1,000, with privilege of conversion into registered bonds of $1,000 and $10,000.

All interest will be payable quarterly, and both principal and interest will be payable in United States gold coin of the present standard of weight and fineness, without deduction for any taxes which the railroad company may be required to pay or retain therefrom.

7091 The proceeds of the lands applicable to the new bonds after the retirement of the general first mortgage bonds (as provided below) will be applied, one-half, but not in any one year exceeding $500,000, to the purchase of the prior lien 4 per cent bonds at not exceeding 110 per cent, and their cancellation, and the remainder, under carefully guarded restrictions in the mortgage will be used for betterments and additions to the property pledged as security for the bonds.

Whenever these bonds can not be purchased at the maximum price, the unapplied land proceeds for that year will be used to
7092 purchase the general lien 3 per cent bonds at not exceeding 100 per cent and their cancellation.

These bonds are to be appropriated approximately as follows:

To retire an equal amount of general first mortgage bonds..	$41,879,000
To provide for the conversion and, so far as necessary, for the sinking fund of the general first mortgage bonds (any amount not so used to be added to the reserve for new construction, etc.)	14,657,650
For the payment of receivers' certificates and equipment trust, and the conversion of the collateral trust notes and general second mortgage bonds	40,040,350
7093 Total present issue under the plan	96,577,000
Reserved to provide at their maturity for an equal amount of bonds of the St. Paul and Northern Pacific Railroad Company	8,423,000
Estimated amount to be reserved for new construction, betterments, equipment, etc., under carefully guarded restrictions in the mortgage, and to the extent of not exceeding $1,500,000, per annum	25,000,000
Total authorized issue	130,000,000

Second. General lien 150 year 3 per cent gold bonds,[a] limited in amount to $60,000,000, in addition to a reserve for the
7094 100 year 4 per cent prior lien mortgage of $130,000,000.

These bonds are to be secured by a mortgage second in lien to the prior lien mortgage, and covering the same property.

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[a] Bonds will be issued in the following denominations: Coupon bonds of $500 and $1,000, with privilege of conversion into registered bonds of $1,000 and $10,000.

All interest will be payable quarterly, and both principal and interest will be payable in United States gold coin of the present standard of weight and fineness, without deduction for any taxes which the railroad company may be required to pay or retain therefrom.

They are to be appropriated approximately as follows: 7095

For the conversion of the general third mortgage bonds, dividend certificates, and the consolidated mortgage and branch line bonds under the plan	$56,000,000
Estimated amount to be reserved under carefully guarded restrictions in the mortgage, for new construction, betterments, equipment, etc	4,000,000
Total issue in excess of prior lien bonds	60,000,000
Reserved to provide for the prior lien bonds at their maturity in 100 years	130,000,000
Maximum amount of both mortgages	$190,000,000

7096

Third. Preferred stock, 4 per cent noncumulative, limited in amount, under this plan, to not exceeding $75,000,000, which amount can be increased only with the consent of the preferred and common stockholders, as hereinafter set forth. All the preferred stock will be in shares of $100 each, and will be registered and transferable, at the option of the holder, either in New York or at the Deutsche Bank, Berlin. Dividends upon stock registered in Berlin may be collected there at the rate of 4.20 marks per dollar.

Each share of this preferred stock will be entitled to non- 7097
cumulative dividends to the extent of four per cent per annum, payable quarterly out of surplus net earnings in each fiscal year before any dividends for such year shall be paid on the common stock, and without deduction for any United States, State, or municipal taxes that the railroad company may at any time be required to pay or retain therefrom.

In any fiscal year in which four per cent dividends shall have been declared on both preferred and common stock, all shares, whether preferred or common, shall participate equally in any further dividends for such year. 7098

Provision will be made that after the termination of the voting trust hereinafter provided for, the preferred stock is to have the right to elect a majority of the board of directors of the new company whenever for two successive quarterly periods the full and regular quarterly dividends upon the preferred stock, at the rate of four per cent per annum are not paid in cash.

The right will be reserved by the new company to retire this stock, in whole or in part, at par, from time to time, upon any first day of January during the next twenty years.

7099 The preferred stock will be appropriated approximately as follows:

For conversion and adjustment of various main line and branch line mortgage bonds and the defaulted interest thereon, and other purposes, as provided in the plan	$72,500,000
Estimated amount which may be used for reorganization purposes or may be available as a treasury asset of the new company	2,500,000
	$75,000,000

Fourth. Common stock to the amount of not exceeding
7100 $80,000,000, in shares of $100 each.

This stock will be appropriated approximately as follows:

For purposes of reorganization, as provided in the plan	$77,500,000
Estimated amount which may be used for reorganization purposes or may be available as a treasury asset of the new company	2,500,000
	$80,000,000

VOTING TRUST.

In furtherance of this independent reorganization and the administration of the property and of the securities, both classes
7101 of stock of the new company (except such number of shares as may be disposed of to qualify directors) are to be vested in the following five voting trustees: J. Pierpont Morgan, Georg Siemens, August Belmont, Johnston Livingston, and Charles Lanier.

In the event of the death of any person designated as a voting trustee, prior to the creation of the voting trust, the vacancy shall be filled as provided in the reorganization agreement hereunto annexed, and which is comprised in and forms part of this
7102 plan, with the same force and effect as though herein set forth at length. The stock shall be held by the voting trustees and their successors, jointly (under a trust agreement prescribing the powers and duties to be exercised by them, or by a majority of them, and the method of filling vacancies), for five years, although the voting trustees, in their discretion, may deliver the stock at any earlier date. Until delivery of stock is made by the voting trustees, they shall issue stock trust certificates entitling the registered holders to receive, at the time therein provided, stock certificates for the number of shares therein stated, and in the meanwhile to receive payments equal to the dividends

collected by the voting trustees upon a like number of shares, 7103
which shares, however, with the voting power thereon, shall be vested in the voting trustees until the stock shall become deliverable, as provided in such trust agreement and certificates of the voting trustees.

RESTRICTIONS AS TO ADDITIONAL MORTGAGE DEBT AND PREFERRED STOCK.

Provision is to be made that no additional mortgage shall be put upon the property to be acquired hereunder, nor the amount of the preferred stock authorized under this plan be increased, 7104
except, in each instance, after obtaining the consent of the holders of a majority of the whole amount of the preferred stock, given at a meeting of the stockholders called for that purpose, and the consent of the holders of a majority of such part of the common stock as shall be represented at such meeting, the holders of each class of stock voting separately. During the existence of the voting trust the consent of holders of like amounts of the respective classes of beneficial certificates shall also be necessary for the purposes indicated. 7105

Estimate of total new capitalization[a] *under the plan when fully carried out (exclusive of bonds and stock reserved for new construction, etc.).*

Securities.		Amount.	Annual interest and dividend.
Prior lien bonds[b]		$105,000,000	$4,372,660
General lien bonds		56,000,000	1,680,000
Total bonds		161,000,000	6,052,660
Preferred stock	$72,500,000		2,900,000
Common stock	77,500,000		
Total stock		150,000,000	
Total capitalization		311,000,000	7106
Total annual charges prior to the common stock			8,952,660

[a] These calculations are based upon 4,706.44 miles, and are consequently subject to variations according to the actual mileage finally embraced in the reorganization.
[b] Including $8,423,000 St. Paul and Northern Pacific bonds.

7107 *Estimate of amount and charges per mile.*[a]

Securities.		Amount per mile.	Interest and dividend per mile.
Prior lien bonds		$22,310	$929
General lien bonds		11,899	357
Total bonds, per mile		34,209	1,286
Preferred stock	$15,404		618
Common stock	16,467		
Total stock per mile		31,871	
Total capital per mile		66,080	
Annual charges per mile prior to common stock			1,902

7108

[a] These calculations are based upon 4,706.44 miles, and are consequently subject to variation according to the actual mileage finally embraced in the reorganization.

APPLICATION OF SECURITIES.

The following details show the disposition to be made under the plan of the securities of the new company:

As a consideration for the property and securities to be conveyed or delivered to the new company, or which, pursuant to the plan, the new company shall acquire, it is contemplated that the new company shall deliver the new bonds and stock,
7109 excepting the new bonds to be reserved to take up such of the existing securities as are not disturbed, and such final amounts as shall be reserved for the future use of the new company.

The requisite deliveries of the new securities to depositors and subscribers under the plan will thus be provided for.

GENERAL FIRST-MORTGAGE BONDS.

Privilege of conversion.

The present general first-mortgage bonds mature in 1921, but
7110 are redeemable by compulsory drawings at any time at 110 per cent from the proceeds of land sales or the fixed annual contribution by the company to the sinking fund.

These compulsory redemptions in the past have been a disturbing factor in all calculations for investment purposes, and the inauguration of a new and vigorous policy for the sale of the lands may be expected from this time forward greatly to increase the amount of such redemptions.

In some years these redemptions have required large contributions from the operating department, to the extent even of

the entire amount of the sinking fund, a sum which would pro- 7111
vide for the annual interest on about $19,000,000 of prior-lien bonds as now proposed. It is manifestly to the benefit of the holders of general first-mortgage bonds to secure an investment of longer continuance, and it is also to the benefit of all subsequent securities to diminish this unnecessarily large burden of annual fixed charge.

To relieve the bondholders from these calls for redemption, which prevent their bonds from reaching the high price they would otherwise command, and to relieve the company from the burden of the sinking-fund requirements and permit the 7112
use of a portion of the proceeds of land sales for the benefit of the property,

Holders of the general first-mortgage bonds are now offered the privilege of converting or exchanging their bonds for the new prior lien 100-year 4 per cent gold bonds at the rate of $1,000 old bonds (coupon or registered) for $1,350 of new bonds.

To avail of this offer, holders must deposit their bonds as provided on page 7 hereof.

Bonds deposited for conversion under this privilege will be 7113
entitled to receive on April 1st next a cash payment of $30 per $1,000 bond so deposited in lieu of the six months' interest that would mature July 1 next on such bond. The first coupon on the prior-lien bonds offered in exchange for general first-mortgage bonds will be payable October 1 next, and in case of any delay in the reorganization, payments equal to the amount of such new coupons will be made on that date and quarterly thereafter until the new bonds are delivered. These payments will, in the absence of other provision, be made by the syndicate, which will reimburse itself out of the present general first- 7114
mortgage coupons as collected.

The right is expressly reserved to modify these terms or to terminate the privilege at any time and without notice.

The old bonds now outstanding are at the rate of about $20,466 per mile. The prior-lien bonds, including those reserved for the St. Paul and Northern Pacific bonds (but not including those to be reserved for new construction, etc.), will, on the basis of 4,706 miles, amount to about $22,310 per mile,

7115 and will cover all the equipment and the branches and terminals as proposed under the plan.

It is not sought in any way to enforce a conversion of the present general first-mortgage bonds, and this offer is made solely upon the belief that on the terms proposed such conversion, while advantageous to the company, is also manifestly to the advantage of bondholders so converting.

The fixed charges for interest and sinking funds on the present general first and divisional mortgage bonds are at the rate of $1,618 per mile per annum, while it is estimated that they
7116 will amount to only $929 per mile per annum on the prior lien bonds.

The advantage is obvious of a mortgage resting upon a complete and entire system, including main line and all branches brought into the new company, together with terminals, land grant and equipment, and having over $200,000,000 of bond and share capital behind it, securing a gold bond running for one hundred years, as compared with a bond at all times liable to compulsory retirement, and secured by only part of the system.

7117

NORTHWEST EQUIPMENT COMPANY.

The shares deposited under the plan to be purchased at par flat as of June 1, 1896, payable with interest from that date at 6 per cent per annum, at any time, in the discretion of the managers, on or before completion of reorganization.

COLLATERAL TRUST NOTES.

Those deposited under the plan to receive—

3 per cent in cash May 1, 1896, and 4 per cent in cash
7118 January 1, 1897.

100 per cent in prior lien 4 per cent bonds.

20 per cent in preferred stock trust certificates.

GENERAL SECOND MORTGAGE BONDS.

Those deposited under the plan to receive—

4 per cent in cash within sixty days after the plan has been declared operative.

118½ per cent in prior lien 4 per cent bonds.

50 per cent in preferred stock trust certificates.

GENERAL THIRD MORTGAGE BONDS. 7119

Those deposited under the plan to receive—

3 per cent in cash within sixty days after the plan has been declared operative.

118½ per cent in general lien 3 per cent bonds.

50 per cent in preferred stock trust certificates.

DIVIDEND CERTIFICATES.

Those deposited under the plan to receive—

3 per cent in cash within sixty days after the plan has been declared operative. 7120

118 per cent in general lien 3 per cent bonds.

50 per cent in preferred stock trust certificates.

CONSOLIDATED MORTGAGE BONDS.

Those deposited under the plan to receive—

1½ per cent in cash within sixty days after the plan has been declared operative.

66½ per cent in general lien 3 per cent bonds.

62½ per cent in preferred stock trust certificates.

Except as collected out of the coupons, the managers will 7121 have a lien upon deposited securities for cash advanced as above provided, after the plan shall have been declared operative.

Interest on all new bonds to be delivered in exchange for old securities will, unless otherwise stated, accrue from January 1, 1897, and will be payable on or before completion of reorganization.

Equitable cash settlements will be made for fractional amounts of new bonds and stocks accruing to depositors.

BRANCH ROAD BONDS. 7122

Holders of the bonds issued by the following companies are requested to communicate with Messrs. J. P. Morgan & Co., New York, or with the Deutsche Bank, Berlin, giving the amount of their holdings, and stating whether held in bonds or certificates of deposit:

Central Washington Railroad Company.

Cœur d'Alene Railway and Navigation Company.

7123 Duluth and Manitoba Railroad Company (Minnesota division).
Duluth and Manitoba Railroad Company (Dakota division).
Helena and Red Mountain Railroad Company.
James River Valley Railroad Company.
Northern Pacific and Montana Railroad Company.
Northern Pacific and Manitoba Railway Company terminal bonds.
Seattle, Lake Shore and Eastern Railroad Company.
7124 Spokane and Palouse Railway Company.

None of these branch roads (Seattle, Lake Shore and Eastern alone excepted) owns any considerable amount of equipment; all require more or less expenditure for the restoration of their track, roadbed, stations, etc., to proper condition; all are deficient in their rights of way; some have general traffic all the year, while others are dependent mainly upon the special business of a few months annually; and some earn varying rates of interest upon their cost.

In order to deal equitably with the holders of these branch
7125 bonds, it is deemed necessary to consider each case separately, and upon its own individual merits.

After hearing from a large proportion of each class of these bondholders steps will be taken to arrive at some fair basis of adjustment, for which general lien 3 per cent bonds and new preferred stock trust certificates have been reserved under this plan.

PREFERRED STOCK.

Upon completion of the reorganization, the reorganization
7126 managers, in behalf of the syndicate, will deliver to each depositor of one share ($100) of preferred stock—

$50 in new preferred stock trust certificates and
50 in new common stock trust certificates,

in consideration of his payment therefor of $10 per share, as provided on page 7 of this plan.

COMMON STOCK.

Upon completion of the reorganization the reorganization managers, in behalf of the syndicate, will deliver to the depositor

of each share ($100) of old common stock one share ($100) of new common stock trust certificate, in consideration of his payment therefor of $15 per share, as provided on page 7 of this plan. 7127

In addition to the payment of all defaulted interest to January 1, 1897, in cash and new mortgage bonds, the holders of the three main line mortgage bonds in default will receive a considerable increase of principal with the following annual income:

Old securities.	Fixed interest.				Income contingent upon dividends on new 4% preferred stock.		Total income.		7128
	Prior lien 4% bonds.		General lien 3% bonds.						
	Amount.	Per cent.	Amount.	Per cent.	Amount.	Per cent.	Amount new securities.	Per cent on old securities.	
$100 seconds receive[a]	$100	4.00	.....	.....	$50.00	2.00	$150.00	6.00	
$100 thirds receive[a]	.....	.....	$100	3.00	50.00	2.00	150.00	5.00	
$100 consols receive[a]	.....	.....	50	1.50	62.50	2.50	112.50	4.00	

[a] In addition to amounts allowed for coupons.

The position of the holders of the common stock of the new company in relation to fixed annual charges for interest and sinking funds under the plan, as compared with the position of the holders of the common stock of the present company, is as follows: 7129

Fixed charges and preferred dividends.	Old company.	New company.	Reductions.	
			Amount.	Per cent.
Fixed annual charges prior to dividends upon preferred stocks	$10,905,690	$6,052,660	$4,853,030	44.50%
Required for annual dividends upon the preferred stocks	2,819,064	2,900,000	[a] 80,936	[a] 2.87%
Total fixed charges and dividends upon the preferred stocks, prior to dividends upon the common stocks.	13,724,754	8,952,660	4,772,094	34.77%

[a] Increase. 7130

The compensation to be paid to Messrs. J. P. Morgan & Co. and the Deutsche Bank for their respective services as managers and as depositaries of securities has been fixed at one-quarter (¼%) of one per cent upon the par value of the securities deposited under the plan and of the new securities issued in exchange therefor, but not, in any event, to exceed $1,000,000 in all for such compensation to both parties.

7131 SYNDICATE.

A syndicate has been formed by Messrs. J. P. Morgan & Co., of New York, and the Deutsche Bank, of Berlin, to the subscribed amount of $45,000,000, to provide the amounts of cash estimated as necessary (1) to carry out the terms of the plan of reorganization, and (2) to furnish the new company with cash working capital and with a sum estimated at $5,000,000 for early use in betterment and enlargement of its property.

NEW YORK, *March 16, 1896.*

7132 MILEAGE OF THE NORTHERN PACIFIC SYSTEM.

Main line	45.73%	2,152.35 miles.
Branches	54.27%	2,554.09 miles.
Owned	100.00%	4,706.44 miles.

First, second, and third mortgages:	Mileage.	Total.
Main line mileage	2,136.46	
Cokedale Spur	3.59	
Carlton to Duluth, one-half of 24.60	12.30	
		2,152.35

Consolidated mortgage:

7133 A fourth lien on the above mileage and a first lien on the following mileage through the ownership of bonds of the branch roads:

Little Falls and Dakota R. R	89.08
Northern Pacific, Fergus and Black Hills R. R	117.05
Fargo and Southwestern R. R	87.41
Sanborn, Cooperstown and Turtle Mountain R. R.	36.75
Jamestown and Northern R. R. Co	102.59
Northern Pacific, La Moure and Missouri River R. R.	21.30
Southeastern Dakota R. R	14.84
Jamestown and Northern Extension R. R	18.03
Helena and Jefferson County R. R. Co	20.58
Rocky Mountain R. R. of Montana	52.61
7134 Spokane Falls and Idaho R. R	14.39
Clealum R. R	5.30
Northern Pacific and Cascade R. R	17.37
Green River and Northern R. R	11.87
Tacoma, Orting and Southeastern R. R	7.65
Rocky Fork and Cooke City R. R	45.43
Northern Pacific and Puget Sound Shore R. R	43.08
Duluth, Crookston and Northern R. R	44.51
United Railroads of Washington	181.93
Northern Pacific and Manitoba R. R	263.54
Spokane and Palouse R. R., Idaho Division	61.61

A proportionate first lien on the following mileage, based on part ownership of the bonds outstanding:			7135
Central Washington R. R	108.54		
Northern Pacific and Montana R. R	354.38		
	462.92		
Proportion covered by consolidated mortgage	158.93		
Total mileage covered by consolidated mortgage		1,415.85	
Branch road bonds owned by public:			
A first lien on the following mileage:			
Proportion of—			
Central Washington R. R, Northern Pacific and Montana R. R, as above	303.99		7136
Spokane and Palouse R. R., in Washington	89.33		
Cœur d'Alene Railway and Navigation Co	49.59		
Helena and Red Mountain R. R	17.08		
James River Valley R. R	63.75		
Duluth and Manitoba R. R	205.77		
Seattle, Lake Shore and Eastern R. R. Co	227.03		
St. Paul and Northern Pacific R. R. Co	181.70		
		1,138.24	
Total mileage owned		4,706.44	
Mileage not owned:			7137
Operated by trackage rights—			
Carlton to Duluth	12.30		
Tracks and terminals rented:			
St. Paul Union Depot	.56		
Great Northern Railway	12.12		
Minneapolis Union Railway Co	2.60		
Minneapolis and St. Louis Railway Co	1.62		
Northern Pacific Terminal Co., of Oregon	1.32		
St. Paul and Superior Short Line	2.37		
Winnipeg Transfer	1.24		
		34.13	
Total miles operated		4,740.57	7138

7139 The above system of the Northern Pacific Railroad is located as follows:

State.	Miles of main line.	Miles of branches.	Total miles.
Wisconsin	78.63	.....	78.63
Minnesota	249.40	498.76	748.16
North Dakota	376.93	484.02	860.95
Montana	786.68	490.08	1,276.76
Idaho	84.06	105.64	189.70
Washington	537.97	712.05	1,250.02
Oregon	38.68	.....	38.68
Manitoba	.....	263.54	263.54
7140 Total miles	2,152.35	2,554.09	4,706.44

Bonds issued or guaranteed by the Northern Pacific Railroad Company, held by the public, January 1, 1896.

Title of bonds.	Rate of interest.	Principal due.	Amount outstanding.
Northern Pacific Railroad Company:			
Missouri division first mortgage	6%	1919	$1,815,500
Pend d'Oreille division first mortgage	6%	1919	357,000
General first mortgage	6%	1921	41,879,000
General second mortgage bonds	6%	1933	19,216,000
Receivers' certificates	6%	1897	4,900,000
General third mortgage bonds	6%	1937	11,426,000
Dividend certificates	6%	1907	519,500
7141 Consolidated mortgage bonds	5%	1989	45,520,000
Collateral trust notes	6%	1898	9,494,000
Northwest Equipment Company	7%	1898	3,000,000
Terminal bonds. Principal and interest guaranteed by the Northern Pacific Railroad Company:			
St Paul and Northern Pacific Railway—			
Prior lien bonds	7%	1907	420,000
General mortgage bonds	6%	1923	8,003,000
Northern Pacific Terminal Co. first mortgage bonds	6%	1933	[a] 1,440,000
Branch road bonds. Principal, interest, and sinking fund guaranteed by the Northern Pacific Railroad Company:			
Central Washington	6%	1938	1,750,000
Cœur d'Alene	6%	1938	1,238,000
Duluth and Manitoba (Minnesota)	6%	1936	1,650,000
Duluth and Manitoba (Dakota)	6%	1937	1,451,000
Helena and Red Mountain	6%	1937	400,000
James River Valley	6%	1936	963,000
7142 Northern Pacific and Montana	6%	1938	5,381,000
Northern Pacific and Manitoba Terminal	5%	1939	650,000
Spokane and Palouse	6%	1936	1,766,000
Seattle, Lake Shore and Eastern	6%	1931	5,558,000
Total	.....	.....	168,797,000

[a] 40% of $3,600,000 issued.

Corrected statement of income account and charges thereto for the five fiscal years ending June 30, 1895.

Fiscal years ending June 30.	1891.	1892.	1893.	1894.	1895.	Total, 5 years, 1891–95.	Annual average, 1891–95.
Mileage operated	4,222	4,412	4,443	4,468	4,469		4,403
Gross earnings:							
Freight, commercial	$16,910,160.19	$17,328,989.35	$16,982,891.57	$11,565,455.41	$13,210,698.86	$75,998,195.38	$15,199,639.08
Freight, construction	621,062.19	54,782.20	34,738.03	36.78		710,619.20	142,123.84
Passenger	6,680,491.37	6,296,284.96	5,917,054.22	4,136,332.10	3,350,491.53	26,380,654.18	5,276,130.83
Mail, express, and miscellaneous	939,830.34	981,400.98	985,424.86	845,385.22	873,790.41	4,625,831.81	925,166.36
Total gross earnings from traffic	25,151,544.09	24,661,457.49	23,920,108.68	16,547,209.51	17,434,980.80	107,715,300.57	21,543,060.11
Operating expenses:							
Per books	14,940,402.18	14,176,364.63	14,471,771.63	11,816,120.17	11,319,682.41	66,724,341.02	
Expenses charged to other accounts	429,889.62	355,472.58	45,939.82			831,302.02	
Total operating expenses	15,370,291.80	14,531,837.21	14,517,711.45	11,816,120.17	11,319,682.41	67,555,643.04	13,511,128.61
Net earnings	9,781,252.29	10,129,620.28	9,402,397.23	4,731,089.34	6,115,298.39	40,159,657.53	8,031,931.50
Operating charges:							
Taxes	460,594.44	400,985.09	462,340.26	465,825.06	501,715.91	2,291,460.76	458,292.15
Rentals of tracks and terminals	1,133,669.48	1,230,213.56	1,198,333.03	977,883.68	998,766.86	5,538,866.61	1,107,773.32
Other operating charges					96,562.56	96,562.56	19,312.51
Total operating charges	1,594,263.92	1,631,198.65	1,660,673.29	1,443,708.74	1,597,045.33	7,926,889.93	1,585,377.98
Net income from traffic	8,186,988.37	8,498,421.63	7,741,723.94	3,287,380.60	4,518,253.06	32,232,767.60	6,446,553.52
Miscellaneous income, exclusive of that from sales of land	1,078,528.12	874,099.49	1,222,795.36	497,308.52	616,229.43	4,288,955.92	857,791.18
Total net income of N. P. R. R. system considering the St. P. and N. P. R. R. as a leased line	9,265,516.49	9,372,521.12	8,964,519.30	3,784,684.12	5,134,482.49	36,521,723.52	7,304,344.70
Add:							
Rentals paid St. P. and N. P. R. R. included in operating charges as above	1,024,057.94	1,090,761.75	1,048,638.19	822,814.92	838,001.00	4,824,273.80	964,854.76
Total	10,289,574.43	10,463,282.87	10,013,157.49	4,607,499.04	5,972,483.49	41,345,997.32	8,269,199.46

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Corrected statement of income account and charges thereto for the five fiscal years ending June 30, 1895—Continued.

Fiscal years ending June 30.	1891.	1892.	1893.	1894.	1895.	Total, 5 years, 1891-95.	Annual average, 1891-95.
Deduct:							
Dividends paid by St. P. and N. P. R. R. Co. (Those received by N. P. R. R. Co. included in miscellaneous income account as above) ..	796,401.17	395,874.50	672,992.75	157,500.00	315,000.00	2,337,768.42	467,553.68
Total net income, including the St. P. and N. P. R. R. as part of the system.....	9,493,173.26	10,067,408.37	9,340,164.74	4,449,999.04	5,657,483.49	39,008,228.90	7,801,645.78

NOTE.—Losses for years 1891 to 1894, under leases of Wisconsin Central Co. (including Chicago and N. P. R. R.), Seattle, Lake Shore and Eastern R. R. Co., and Puget Sound and Alaska S. S. Co., are not deducted in this statement.

JOHN SCOTT, *Comptroller.*

NEW YORK, *March 7, 1896.*

STEPHEN LITTLE,
J. H. MCCLEMENT,
Auditors for Reorganization Committee.

Land department operations, five fiscal years.

MINNESOTA AND DAKOTA.

Fiscal year.	Acres.	Receipts.			Expenses.	Taxes.	Total.	Net receipts.
		Cash.	Preferred stock.	Total.				
1890–1	139,178	$116,530.08	$324,711.35	$441,241.43	$75,211.79	$41,884.91	$117,096.70	$324,144.73
1891–2	*322,676	1,413,123.27	94,362.40	1,507,485.67	397,688.39	45,004.72	442,693.11	1,064,792.56
1892–3	38,548	92,481.98	274,118.63	366,600.61	94,993.09	61,830.74	156,823.83	209,776.78
1893–4	16,732	58,122.01	290,284.56	348,406.57	35,535.31	41,216.42	76,751.73	271,654.84
1894–5	42,907	242,601.40	69,700.00	312,301.40	77,723.66	38,493.70	116,217.36	196,084.04
Total	560,041	1,922,858.74	1,053,176.94	2,976,035.68	681,152.24	228,430.49	909,582.73	2,066,452.95
Sp. M. & M. land, 1891–2	175,337	1,193,129.98		1,193,129.98				871,268.43
Int. chgd. by op. dept., 1891–2					321,861.55		321,861.55	
Normal, five years	384,704	729,728.76	1,053,176.94	1,782,905.70	359,290.69	228,430.49	587,721.18	1,195,184.52
Cash receipts in excess of expenses, exclusive of St. P. M., and M. lands, and int. charged by operating dept								$142,007.58

MISSOURI DIVISION.

1890–1	1,659	$11,629.38		$11,629.38	$12,677.13	$21,033.65	$33,710.78	*$22,081.40
1891–2	2,662	15,527.84		15,527.84	10,691.55	35,300.00	45,991.55	*30,463.71
1892–3	*14,211	19,105.60		19,105.60	12,425.19	23,638.92	36,064.11	*16,958.51
1893–4	*1,613	11,372.66		11,372.66	7,399.39	9,912.13	17,311.52	*5,938.86
1894–5	4,402	13,339.66		13,339.66	7,140.33	235.49	7,375.82	5,963.84
Total	*7,101	70,975.14		70,975.14	50,333.59	90,120.19	140,453.78	*69,478.64

PEND D'OREILLE DIVISION.

1890–1	65,979	$529,508.63		$529,508.63	$106,381.91	$45,403.94	$151,785.85	$377,722.78
1891–2	36,281	460,639.55		460,639.55	85,484.69	37,786.59	123,271.28	337,368.27
1892–3	*29,833	450,115.51		450,115.51	80,243.74	50,764.13	131,007.87	319,107.64
1893–4	*1,824	131,850.98		131,850.98	57,509.67	52,399.67	109,909.34	21,941.64
1894–5	*11,322	96,802.02		96,802.02	127,077.19	7,372.28	134,449.47	*37,647.45
Total	59,281	1,668,916.69		1,668,916.69	456,697.20	193,726.61	650,423.81	1,018,492.88

COMPLAINANT'S EXHIBIT Q.
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Land department operations, five fiscal years—Continued.

GENERAL FIRST MORTGAGE DIVISIONS.

Fiscal year.	Acres.	Receipts.			Expenses.	Taxes.	Total.	Net receipts.
		Cash.	Preferred stock.	Total.				
1890–1	159,336	$731,849.41		$731,849.41	$177,122.12	$75,814.45	$252,936.57	$478,912.84
1891–2	192,260	880,728.16		880,728.16	175,212.89	91,741.69	266,954.58	613,773.58
1892–3	84,651	824,402.94		824,402.94	141,872.70	111,875.31	253,748.01	570,654.93
1893–4	30,415	291,044.24		291,044.24	92,204.89	90,017.72	182,222.61	108,821.63
1894–5	*231	348,283.62		348,283.62	168,462.12	179,821.50	348,283.62	
Total	466,431	3,076,308.37		3,076,308.37	754,874.72	549,270.67	1,304,145.39	1,772,162.98

The net receipts of 1894–5 were set aside for a fund to meet taxes for 1894 and prior years, pending a judicial decision as to the liability of the land department therefor. This accounts for the large increase in the charge for taxes in that year.

SUMMARY OF LAND OPERATIONS, FIVE FISCAL YEARS. 1891 TO 1895, INCLUSIVE.

DIVISIONS.								
Gen. first mtge	466,431	$3,076,308.37		$3,076,308.37	$754,874.72	$549,270.67	$1,304,145.39	$1,772,162.98
Missouri div. mtge	a7,101	70,975.14		70,975.14	50,333.59	90,120.19	140,453.78	*69,478.64
Pend d'Oreille div. mtge	59,281	1,668,916.69		1,668,916.69	456,697.20	193,726.61	650,423.81	1,018,492.88
Applied to bonded debt	518,611	4,816,200.20		4,816,200.20	1,261,905.51	833,117.47	2,095,022.98	2,721,177.22
Minnesota and Dakota	384,704	729,728.76	$1,053,176.94	1,782,905.70	359,290.69	228,430.49	587,721.18	1,195,184.52
St. P., M., and M. lands, 1891–2	175,337	1,193,129.98		1,193,129.98				
Int. chgd. by op. dept., 1891–2					321,861.55		321,861.55	871,268.43
Applied to preferred stock	560,041	1,922,858.74	1,053,176.94	2,976,035.68	681,152.24	228,430.49	909,582.73	2,066,452.95
Grand total	1,078,652	6,739,058.94	1,053,176.94	7,792,235.88	1,943,057.75	1,061,547.96	3,004,605.71	4,787,630.17

a Deductions for cancellation of sales or losses in operations.

FEBRUARY 10, 1896.

JOHN SCOTT, *Comptroller.*

REORGANIZATION AGREEMENT, MARCH 16TH, 1896. 7147

An agreement made this 16th day of March, 1896, between Edward D. Adams, John C. Bullitt, Louis Fitzgerald, Charles H. Godfrey, John D. Probst, James Stillman, Ernst Thalmann (hereinafter called the Reorganization Committee), parties of the first part;

The Mercantile Trust Company, party of the second part;

J. P. Morgan & Co. (a copartnership), parties of the third part (hereinafter called the Managers);

Holders of mortgage bonds of the Northern Pacific Railroad 7148
Company (hereinafter called the Railroad Company), holders of certificates of the Mercantile Trust Company for general second, general third, and consolidated mortgage bonds, holders of collateral trust notes and dividend certificates of the railroad company, and the mortgage bonds of various branch railroads hitherto known as parts of the Northern Pacific Railroad System, and holders of the preferred and common stock of the Northern Pacific Railroad Company, who shall become parties to this agreement, of the fourth part (hereinafter called Depositors);

7149
The Deutsche Bank, of Berlin, in evidence of its active support of the reorganization and of its acceptance of appointment as depositary thereunder, party of the fifth part; and

August Belmont, Brayton Ives, George R. Sheldon, and Charlemagne Tower, jr., a committee in behalf of various interests in the Northern Pacific Railroad Company (hereinafter called the Protective Committee), in evidence of their active support of the reorganization thereof according to the plan provided herein, as parties of the sixth part;

Whereas by an agreement dated February 19, 1894, known 7150
as the Bondholders' Agreement, the parties of the first part were, by certain holders of the general second, general third, and consolidated mortgage bonds of the railroad company, appointed a committee for the reorganization of said company; and

Whereas the plan referred to in this agreement has been proposed by the reorganization committee for the reorganization of the railroad company;

7151 Now, therefore, it mutually is agreed by and between the respective parties hereto as follows:

First. A printed copy of this agreement, signed by a majority of the members of the reorganization committee and of the protective commitee, and by the parties of the second and third parts hereto, and by or for the party of the fifth part, shall be lodged with J. P. Morgan & Co., New York, and a duplicate, signed in like manner, shall be lodged with the Deutsche Bank, of Berlin. Each of said copies shall be taken as a complete and original instrument, but both shall constitute but one agreement.

7152 The foregoing plan is, and shall be, taken to be a part of this agreement, with the same effect as though each and every provision thereof had been embodied herein, and said plan and this agreement shall be read as parts of one and the same paper; but no estimate, statement, explanation or suggestion contained in the said plan or this agreement, or in any circular issued, or which may hereafter be issued, by the depositaries or by the committee or by the managers, is intended, or is to be accepted, as a representation or warranty, or as a condition of deposit or assent under the plan and this agreement, and no defect or error

7153 shall release any deposit under this plan and agreement, or affect or release any assent thereto, except by written consent of the managers.

Holders of the bonds, collateral trust notes, dividend certificates, and of the preferred and common stock of the railroad company, and of the stock of the Northwest Equipment Company and of the mortgage bonds of various branch railroads hitherto known as parts of the Northern Pacific Railroad system, or any of them, may become parties to this plan and agreement by depositing their securities with the depositaries upon the

7154 terms and conditions specified in the plan and this agreement, or hereafter defined, and within the periods which shall be fixed or limited by the managers.

Such holders must in all cases deposit the certificates for their stock, or their bonds, or other securities, with such transfers, assignments, and powers of attorney as may be required by the managers in order to vest in them, and to enable them to transfer, the complete and absolute title to such stocks or bonds or other securities; and the depositors agree respectively at any

time, on demand of the managers, to execute any and all other 7155
transfers, assignments, or writings required for vesting the complete ownership of the bonds and stock deposited hereunder in the managers, or their nominees.

All depositors of securities (excepting assenting certificate holders as hereinafter designated) shall receive certificates of deposit in form to be prescribed by the managers, specifying the respective bonds or stocks deposited, and the holders of such certificates of deposit shall be entitled (subject to any provisions contained in such certificates) to the rights and benefits, and only to the rights and benefits, specified in the plan and 7156
this agreement, as accruing to the holders of the bonds or stocks of the class represented by such certificates respectively, or granted by the managers, pursuant to the powers conferred upon them; and thereafter the holder of any such certificate, or of any certificate issued in lieu thereof or in exchange therefor, shall be subject to the plan and this agreement and entitled to have and exercise the rights of the original depositor under the certificate issued to him in respect of the securities therein mentioned.

The plan and this agreement prepared and adopted by the 7157
reorganization committee in exercise of the power, and in performance of the duty imposed upon said reorganization committee under the said bondholders' agreement of February 19, 1894, is in the form and contains the terms, powers, and conditions which to the committee seem equitable and fair; and, in accordance with the provisions of said bondholders' agreement, are now lodged at New York with the Farmers' Loan and Trust Company and The Mercantile Trust Company, at Berlin with the Deutsche Bank, and at London with the branch of the Deutsche Bank, which has been appointed by said reorganiza- 7158
tion committee as agent therefor, and also with said reorganization committee at its office, No. 15 Broad street, in the city of New York, at each of which places copies are left for distribution to bondholders; and a brief publication of the fact of the adoption and filing of such plan of reorganization will be made for at least two weeks in one or more daily newspapers published in the cities of New York, London, and Berlin, and in the absence of express dissent in writing, filed within twenty days after the expiration of such publication (in compliance

with the provisions of the second article of said bondholders' agreement), the assent to and ratification of the plan and this agreement shall be conclusively and finally assumed, conferred, and given by each and every certificate holder not so expressly dissenting herefrom. But, nevertheless, the managers, at their option, at any time, may by notice published in the manner hereinafter provided in article twelfth hereof, exclude from the operation of the plan and this agreement, and from any and all interest thereunder, any and all bonds represented by any such certificate issued under such bondholders' agreement, unless within the time and in the manner required in such public notice such certificate shall have been submitted to one of the depositaries hereunder for stamping, and by one of such depositaries shall have been stamped as expressly assenting to the plan and this agreement.

Holders of general second, general third, and consolidated mortgage bonds not already deposited under the bondholders' agreement of February 19, 1894, shall, by the delivery of their bonds to the depositaries, be deemed to have deposited their bonds under said bondholders' agreement, and for the bonds deposited will receive certificates of the Mercantile Trust Company of New York, issued under that agreement, which may be stamped by one of the depositaries as assenting to the plan and this agreement.

All bonds represented by any such certificate, the holder of which shall have acquiesced as above provided, unless stamping of such certificates shall be required by the managers, as above provided, and all bonds represented by any certificate stamped as aforesaid, shall be subject to, and included within, the provisions of this plan and agreement as fully and irrevocably as though directly deposited hereunder, and the managers shall irrevocably possess and from time to time may exercise all rights of the holders of bonds represented by such certificates, subject to the terms thereof, including the right to abandon or terminate the said former agreement and all further proceedings thereunder.

All such certificates so acquiescing or so stamped are herein designated "Assenting Certificates," and the holders thereof are designated "Assenting Certificate Holders."

Such certificates of deposit and such assenting certificates and

the interests represented thereby shall be transferable only sub- 7163
ject to the terms and conditions of the plan and this agreement, and in such manner as the managers shall approve; and upon such transfer, all rights of the deposit or in respect of the deposited bonds or stock represented by such certificates, together with all installments paid by the depositors of such stock, or their transferees, and all rights under the certificates of deposit or assenting certificates transferred, shall pass to the transferee, and the transferees and holders of such certificates of deposit or of such assenting certificate shall for all purposes be substituted in place of the prior holders, subject to this 7164
agreement. All such transferees, as well as the original holders of certificates of deposit or of assenting certificates, shall be embraced under the term "Depositors," whenever used herein. Each certificate of deposit or assenting certificate may be treated by the reorganization committee, by the managers, and by the depositaries as a negotiable instrument, and the holder for the time being may be deemed to be the absolute owner thereof, and of all rights of the original depositor of the bond or stock in respect of which the same was issued, and neither the depositaries nor the reorganization committee nor the managers shall 7165
be affected by any notice to the contrary. By accepting any such certificate, or by presenting any Mercantile Trust Company certificate to be stamped hereunder, every recipient or holder thereof shall thereby become party to the plan and this agreement with the same force and effect as though an actual subscriber hereto. The term depositor, as well as the term assenting certificate holder, whenever used herein, is intended, and shall be construed, to include not only persons acting in their own right, but also trustees, guardians, committees, agents, and all persons acting in a representative or fiduciary capacity, 7166
and those represented by or claiming under them, and partnerships, associations, joint-stock companies, and corporations. No rights hereunder shall accrue in respect of any securities hereinbefore mentioned unless, nor until, the same shall have been subjected to the control of the managers and to the operation of the plan and this agreement as herein provided.

The depositaries shall receive the deposited stocks and bonds, and shall deliver the same to one or more trust companies in the

city of New York, and the same shall be held by them, respectively, subject to the order and control of the managers.

The managers may, in their discretion, fix or limit the period or periods within which holders of bonds or stock, or other securities, or any class thereof, may deposit their securities, and within which they or holders of Mercantile Trust Company certificates may become parties to the plan and this agreement, and the periods within which the installments of cash payable by depositing holders of preferred and common stock must be paid, and, in their discretion, either generally or in special instances, may extend or renew the period or periods so fixed or limited, on such terms and conditions as they may see fit.

Holders of securities not deposited, or of the Mercantile Trust Company certificates, not becoming parties hereto, in the manner herein provided, by stamping, if so required, within the periods respectively fixed or limited therefor, will not be entitled to deposit the same or to become parties to this agreement, or to share in the benefits thereof, and shall acquire no rights thereunder, except upon obtaining the express consent of the managers, who may withhold or give such consent, in their absolute discretion, and such terms and conditions as they may see fit.

The several installments of cash, payable by depositing stockholders as provided in the plan and this agreement, must be paid to the respective depositaries, and must be receipted for by such depositaries on the respective certificates of deposit issued for such stock. The deposititing stockholders agree that all such installments of cash may be used, at any time, by the managers, for any of the purposes of the plan and this agreement. Depositors of stock and holders of certificates of deposit for deposited stock respectively agree that prompt payment of the several installments of cash payable by them, respectively, on the terms of the plan and this agreement is an essential condition to their acquisition of new stock by purchase under the plan and this agreement, and that any depositor or any holder of a certificate of deposit for stock who shall fail to make prompt payment of any installment of cash payable as provided in the plan within the periods fixed or limited by the managers for such payment, shall forthwith and without further or other notice or action cease to have any rights, or to be entitled to any benefits hereunder, and in every such case the deposited

stock and any cash paid as above provided, prior to the date of 7171
such default, shall vest in and belong to the managers, and may be used for any of the requirements of carrying out the plan and this agreement, and that no such defaulting depositor or certificate holder shall be entitled to the return or repayment thereof, or to have any further interest or rights in respect thereof. The managers, however, in their discretion, may waive any such default and accept payment of overdue installments due from any depositor at any time before final settlement of accounts with the syndicate.

The managers may, in their discretion, for the purpose of 7172
carrying out the plan and this agreement, call in for deposit any of the undisturbed main-line bonds mentioned in the plan, and may cause any mortgage securing the same to be foreclosed, and may cause other similar bonds having similar security, or the prior-lien bonds reserved therefor under the plan, to be issued in exchange for such bonds.

Second. The depositors and assenting certificate holders hereby irrevocably request the managers to endeavor to carry into practical operation the plan and this agreement, in its entirety or in part, to such extent and in such manner and with such addi- 7173
tions, exceptions, and modifications as the managers shall deem to be for the best interests of the depositors and assenting certificate holders, or of the properties finally embraced in the reorganization. Each and every depositor and assenting certificate holder, for himself and not for any other, does hereby sell, assign, transfer, and set over to the managers as copartners, and to the survivor and survivors of them, and to their successors, each and every bond, share of stock, security, or obligation, or evidence thereof deposited hereunder, or represented by an assenting certificate, and every depositor and assenting certifi- 7174
cate holder hereby agrees that the managers shall be, and they are hereby, vested with all the rights and powers of owners of the stock, bonds, securities, and obligations deposited hereunder, or represented by such assenting certificates, including the right to transfer the same into their own name, as a copartnership and as managers, or into the name of any other person or persons whom they may select; and (without limiting the foregoing provision) it is hereby declared that the managers shall be fully authorized to vote thereon at any meeting of stockholders or

bondholders or creditors; to use every such stock, bond, receipt security, or obligation as fully and to the same extent as the owner or holder thereof; to declare due the principal of any bond or other obligation deposited hereunder, and to revoke any such declaration whenever made; to call or attend, and, either in person or by proxy, to vote at any and all meetings of stockholders or bondholders or creditors of any corporation however convened; to terminate or to seek to dissolve or modify any trust, contract, or lease, in whole or in part; to apply for the determination of the validity thereof, or for the removal of any trustees or the substitution of other trustees, or to take any other steps in respect of any trust, contract, or lease, or under any provision thereof; to purchase at any time or times, at such prices as they shall deem proper, or to pay, compromise, or settle with the holders of any coupons, notes, or other indebtedness or obligations of any of the railroad companies, or any receiver's certificates or obligations issued, or which may be issued or incurred by the receivers thereof, and to apply for that purpose any moneys received from the sale of trust certificates for stock in the new company, or which may otherwise be received or raised by the reorganization committee or by them; to borrow money for any of the purposes of this agreement, and to charge or pledge any deposited securities, property purchased, or new securities to be issued, for the payment of any moneys borrowed; to give all bonds of indemnity or other bonds, and to charge therewith the securities deposited hereunder, or any part thereof; to institute or to become parties to any legal proceeding; to apply for receivers, or for the removal of receivers and the substitution of other receivers, or for the termination of any receivership and the delivery of any property to its owners; to settle any litigation now or at any time existing or threatened, in whole or in part, with plenary power to enter into arrangements for decrees, or for facilitating or hastening the course of litigation, or in any way to promote the consummation of the plan; to do whatever, in the judgment of the managers, may be necessary to promote or to procure the sale as an entirety, or the joint or separate sales of any lands, grants of lands, property, or franchise herein concerned, wherever situated; to adjourn any sale of any property or franchise, or of any portion or lot thereof, at discretion; to bid, or to refrain from bidding, at any sale,

either public or private, either in separate lots or as a whole, for 7179
any property or franchises, or any part thereof, whether or not owned, controlled, or covered by any deposited security, or by the bonds represented by any assenting certificate, including or excluding any particular rolling stock, or other property, real or personal, and at, before, or after any sale, to arrange and agree for the resale of any portion of the property which they may decide to sell rather than to retain; to hold any property or franchises purchased by them, either in their name or in the name of persons or corporations by them chosen for the purposes of this agreement, and to apply any security embraced 7180
hereunder in satisfaction of any bid, or toward obtaining funds for the satisfaction thereof; and the term property and franchise shall include any and all railroads, railroad and other transportation lines, branches, leaseholds, lands, rights in lands, mining rights, stocks, or other interests in corporations in which the railroad company has any interest of any kind whatever, direct or indirect. The amount to be bid or paid by the managers for any property or franchises shall be absolutely discretionary with them; and in case of the sale to others of any property or franchises, the managers may receive out of the proceeds of such 7181
sale, or otherwise, any dividend in any form accruing on any securities held by them.

Third. The managers may procure the organization of one or more new companies, or they may adopt or use any existing or future companies, and they may cause to be made such consolidations, leases, sales, or other arrangements, and may make or cause to be made such conveyances or transfers of any properties or securities acquired by them, and may take such other proceedings as they may deem proper for the purpose of creating the new securities provided for in this plan and agreement, 7182
and for carrying out all or any of the provisions thereof. Said managers shall further be authorized to receive and dispose of, in accordance with any of the provisions of this plan and agreement, the new securities to be created, and said managers may vote upon all the stock of such new corporation for all purposes in their judgment necessary to carry out the plan, until the same shall be transferred to the voting trustees, or to the depositors and assenting security holders, who shall be entitled to receive the same.

Fourth. The managers may construe the plan and this agreement; and their construction thereof or action thereunder, in good faith, shall be final and conclusive. They may supply any defect or omission, or reconcile any inconsistency in such manner and to such extent as shall be necessary to carry out the same properly and effectively, and they shall be the sole judge of such necessity. They shall be the sole and final judge as to when and whether the assent of enough parties interested in the railroad company shall have been obtained to warrant them in carrying the same, or any part, into effect, and they shall have power, whenever they shall deem proper, to abandon or to alter, modify, or depart from the plan of reorganization, or any part thereof. They may at any time or times, after any such partial abandonment, restore to the plan any abandoned part or parts thereof, and may seek to carry the same into effect as fully as if such part or parts had not been abandoned. They may also attempt to carry the plan into effect rather than abandon or modify the same, even though it be manifest that, as carried out, the plan must depart from the original plan, or from some part thereof. But in case of any intentional change or modification or departure from the plan which, in their judgment, shall materially affect any of the several classes of depositors, or their mutual relations, a statement of such proposed change, modification, or departure shall be filed with the depositaries, and notice of the fact of such filing shall be given as hereafter provided in article twelfth; and within two weeks after final publication all holders of the outstanding certificates for such particular class or classes of securities affected thereby may surrender their respective certificates therefor and withdraw securities of such particular class or classes, or the proceeds thereof, or substitutes therefor then under the control of the managers, to the amount indicated in such certificates, and all assenting certificate holders may require cancellation of their assent and release herefrom of the securities represented by their assenting certificates: *Provided, however,* That in every case of withdrawal or cancellation the certificate holders, or the assenting certificate holders, shall respectively make payment of their shares of the expenses of the reorganization committee and of the managers, as apportioned by the latter. Every depositor of securities not so surrendering and withdrawing, and every assenting certificate

holder not withdrawing his assent, within such two weeks after 7187
final publication, shall be deemed to have assented to the proposed changes or modifications, and whether or not otherwise objecting, shall be bound thereby as fully and effectively as if he had actually assented thereto. Any changes or modifications finally made by the managers shall be part of the plan and this agreement, and all provisions and references concerning the plan shall apply to the plan so changed or modified. In case the managers shall finally abandon the entire plan, the stocks and bonds deposited hereunder, or their proceeds, or any stocks, bonds, securities, or claims or representatives thereof, then under 7188
the control of the managers, shall be delivered to the several depositors in amounts representing their respective interests, upon surrender of their respective certificates and payment of such actual expenses as shall have been incurred by the reorganization committee and managers, which latter shall have power to determine and to apportion upon the several classes of securities deposited hereunder the share of expense to be borne by each security. In case of such abandonment, in like manner, and upon like payment of expenses, any assent of the assenting certificate holders shall be released by the managers, and until 7189
so released the general second, general third, and consolidated mortgage bonds represented by the assenting certificates shall be subject to their ratable share of such expense.

In any such case, any moneys paid by the depositing stockholders, or any coupons, receiver's certificates, or other obligations, claims, or property acquired therewith, or the proceeds thereof, when received, remaining after deducting therefrom the share of the expenses incurred by the managers under this agreement apportioned upon such depositing stockholders, shall be equitably distributed or adjusted among the respective holders 7190
of certificates of deposit therefor; but the depositing stockholders, or holders of such certificates of deposit, shall have no claim for the repayment of any such moneys, except to the extent of their ratable shares of such moneys, or their proceeds, remaining in the hands of the managers after payment of such expenses.

In every such case of withdrawal, any cash paid or advanced, as provided in the plan, to depositors of bonds, notes, or dividend certificates, or certificates of deposit therefor, or assenting

7191 certificates, and any interest paid or advanced to holders of certificates of deposit or assenting certificates in respect of deposited bonds, notes, or dividend certificates represented by such certificates of deposit or assenting certificates, or in respect of the new bonds to be issued in exchange therefor under the plan, must be repaid by the holders of such certificates before the deposited bonds, notes, or dividend certificates represented by such certificates of deposit or assenting certificates, shall be surrendered in exchange therefor; but any interest collected by the managers on deposited securities will in such case of withdrawal
7192 be accounted for by the managers to the holders of the certificates of deposit for such securities or of assenting certificates.

Fifth. The managers may proceed under the plan and this agreement, or any part thereof, with or without foreclosure, and in case of foreclosure may exercise any power, either before or after foreclosure sale; and in every case all the provisions of the plan and this agreement shall equally apply to and in respect of any physical properties embraced under the reorganization, and to and in respect of any securities representing any such property, it being intended that for all purposes thereunder any such
7193 property, and any security representing such property, may be treated or accepted by the managers as substantially identical. In case any separate plan shall, in the opinion of the managers, become necessary or expedient to effect the reorganization of any subordinate or other company, the managers may promote and participate in any such reorganization, and may deposit thereunder any secureties thereby affected.

In case of any claim, lien, or obligation not herein fully provided for and affecting the railroad company or any property or franchises thereof, the managers may, from time to time (sub-
7194 ject, however, to article sixth hereof), make such compromise in respect thereto or such provision therefor as they may deem suitable, using therefor any securities not expressly required for settlement with depositors, or not expressly reserved for liens or obligations specified in the plan, but the total amount of new securities to be created, as set forth in the plan, shall not be thereby increased.

Any action contemplated in the plan and this agreement to be performed on or after completion and reorganization, may be

taken by the managers at any time when they shall deem the 7195
reorganization advanced sufficiently to justify such course, and the managers, as they may deem necessary, may defer the performance of any provision of the plan and this agreement, or may commit such performance to the new company.

They may also in their discretion set apart and hold in trust, or place in trust with any trust company, any part of the new securities to be issued and cash which may be received from sales of new securities, or otherwise, as they may deem judicious for the purpose of securing the application thereof for any of the purposes of the plan and this agreement. 7196

Sixth. The managers may, from time to time, make contracts with any person, syndicate, or corporation for the purpose of carrying this agreement into effect, and by loan, guaranty, or by the sale of the new securities to be created, or otherwise, on such terms, conditions, and rates as said managers may deem proper; may obtain any moneys required to carry out the plan and this agreement, including such sums as the managers may deem expedient to provide for the uses of the new company; and for the performance of any contract said managers may charge the deposited securities and the new securities to be issued, and may 7197
pledge the same for the payment of any moneys borrowed and interest thereon, and other performance of any other obligations incurred under the powers herein conferred. The managers may employ counsel, agents, and all necessary assistance, and may incur and discharge any and all expenses by them deemed reasonable for the purposes of this agreement. They may prescribe the form of all securities and of all instruments at any time to be issued or entered into. They may create and provide for all necessary trusts and may nominate and appoint trustees thereunder, excepting that the reorganization committee 7198
shall make any appointment in lieu of or in succession to Georg Siemens, and that the protective committee shall make any appointment in lieu of, or in succession to, August Belmont, prior to the actual reception of stock by the voting trustees. They may, at public or private sale, or otherwise, dispose of any bonds and trust certificates for stock of the new company left in their hands because of any failure to make deposits hereunder. In so disposing of any such new securities thus left on their hands, they may use the same or the proceeds thereof for the purpose

of carrying out the reorganization in such manner as they may deem expedient and advisable. At the time of the creation of the new securities, or as soon thereafter as may be, the managers may take such action (either by creating lesser amounts of securities or otherwise) as they may deem necessary to guard against the issue of such particular securities in any manner or to any extent inconsistent with the purposes of the plan.

Seventh. Messrs. J. P. Morgan & Co., as managers, shall act as a copartnership, and in case of any change in said firm, the firm of J. P. Morgan & Co., as from time to time constituted, shall continue as managers, with all the powers, rights, and title vested in the managers hereunder. Neither the committees nor the managers nor the depositaries assume any personal responsibility for the execution of the plan, or of this agreement, or any part of either, nor for the result of any steps taken or acts done for the purposes thereof, the managers, however, undertaking in good faith to endeavor to execute the same. No member of the reorganization committee, nor any depositary, nor the managers shall be personally liable for any act or omission of any agent or employee selected in good faith, nor for any error of judgment or mistake of law, nor in any case except for his, its, or their own individual, willful malfeasance or neglect; and no member of the reorganization committee shall in any case be personally liable for the act or omission of any other member nor for the acts of any depositary or of the managers, nor shall any depositary or the managers be personally liable for the acts or defaults of the reorganization committee, or of any other depositary or of any trust company. The managers may act through any committees or agents and may delegate any authority as well as discretion to any such committee or agent, and the members of such committee or such agents may be allowed a reasonable compensation for their services hereunder, and the managers shall be entitled to the compensation stated in the plan. Any member of the managers or depositaries, or any member of either committee, at any time, may be a voting trustee and may be or become pecuniarily interested in any contracts, property, or matters which this agreement concerns, including participation in or under any syndicate agreement, whether or not mentioned in the plan. Any direction given by the managers shall be full and sufficient

authority for any action of the depositaries or of any trust com- 7203
pany or of any other custodian or of any committee or agent.

The reorganization committee shall be entitled to reasonable compensation. It may discharge any and all reasonable expenses by it incurred for any of the purposes of this agreement or of the agreement of February 19, 1894. Its accounts shall be filed with the board of directors of the new company, and the same as filed shall be final, binding, and conclusive upon all parties having any interest therein. The compensation of the said reorganization and the protective committee and their expenses shall be paid as part of the expenses of the reorgani- 7204
zation.

Eighth. The managers may negotiate and contract with any and all companies or persons for obtaining or granting running powers, terminal facilities, exchanges of property, or any other convenience which they may deem necessary or desirable to obtain or to grant, and may make contracts therefor binding upon such new company, and generally may ratify and make such purchases, contracts, stipulations, or arrangements as will, in their opinion, operate directly or indirectly to aid in the preservation, improvement, development, or protection of any prop- 7205
erty now constituting the Northern Pacific system, of which the railroad company or any subordinate company has contracted to acquire, or to prevent or avoid opposition to or interference with the successful execution hereof.

Ninth. The accounts of the managers shall be filed with the board of directors of the new company within one year after its organization shall have been completed, unless a longer time be granted by the said board. The accounts, when approved by such board of directors, shall be final, binding, and conclusive upon all parties having any interest therein, and thereupon the 7206
managers shall be discharged. The acceptance of new securities by any depositor or any assenting certificate holder shall estop such acceptor from questioning the conformity of such securities in any particular to any provisions of the plan; and the acceptance of new securities by the holders of a majority in amount of the certificates of deposit and assenting certificates for any class of securities shall in each case respectively estop all holders of certificates of deposit and assenting certificates for securities of that class.

7207 *Tenth.* The enumeration of specific powers hereby conferred shall not be construed to limit or to restrict general powers herein conferred or intended so to be; and it is hereby distinctly declared that it is intended to confer on the managers, and each depositor hereunder, and each assenting certificate holder hereby confers on the managers, in respect of all securities deposited or to be deposited, or securities represented by assenting certificates, and in all other respects any and all powers which the managers may deem necessary or expedient in or toward carrying out or promoting the purposes of the plan and
7208 this agreement in any respect, even though any such power be apparently of a character not now contemplated; and the managers may exercise any and every such power as fully and effectively as if the same were herein distinctly specified, and as often as, for any cause or reason, they may deem expedient. The methods to be adopted for or toward carrying out this agreement shall be entirely discretionary with the managers.

The bonds and other obligations deposited under the plan and this agreement, or represented by assenting certificates, and all receivers' certificates, coupons, and claims purchased or other-
7209 wise acquired under this agreement shall remain in full force and effect for all purposes, and shall not be deemed satisfied, released, or discharged by any delivery of new securities; and no legal right or lien shall be deemed released or waived, but said bonds and other claims, and any judgments upon any of such claims, including claims and judgments for deficiencies and all liens and equities shall remain unimpaired, and may be enforced by the managers or by the new company or by any or other assign of the managers until paid or satisfied in full or expressly released. Neither the managers nor any bondholders or creditors
7210 of the railroad company, by executing this agreement or by becoming parties thereto, release, surrender, or waive any lien, right, or claim in favor of any stockholders or other creditors of such company, and all such liens, rights, or claims shall vest unimpaired in the managers and in the new company or its assigns, severally and respectively; and any purchase or purchases by or on behalf of the managers or the new company, under any decree for the enforcement of any such lien, right, or claim, shall vest the property purchased in the managers or the new company, free from all interest or claim on the part of

any such stockholders, creditors, or other parties. No right is 7211
conferred, nor any trust, liability, or obligation (except the agreements herein contained in favor of the holders of certificates of deposit or assenting certificates hereunder) is created by the plan and this agreement, or is assumed hereunder or by or for any new company in favor of any bondholder or any other creditor, or of any holder of any claim whatsoever against the railroad company, nor in favor of any company now existing or to be formed hereafter (whether such claim be based on any bonds, stocks, securities, lease, guaranty, or otherwise), with respect to any securities deposited under this agreement or any 7212
moneys paid to or received by managers or by the committee or depositaries hereunder, or with respect to any property acquired by purchase at any foreclosure sale, or with respect to any new securities to be issued hereunder, or with respect to any other matter or thing.

Eleventh. All moneys paid under or with reference to the plan and this agreement shall be paid over by the depositaries to the managers, who shall, as bankers, hold the same subject to application for any of the purposes of the plan and this agreement, as may be most convenient, and as from time to time may be 7213
determined by the managers, whose determination as to the propriety and purpose of any such application shall be final, and nothing in the plan shall be understood as limiting or requiring the application of specific moneys to specific purposes. Any obligation in the nature of floating debt or otherwise against any company or property embraced in the plan, either as proposed or carried out, or any securities held as collateral for any such obligation, may be acquired or extinguished or held by the managers at such times, in such manner, and upon such terms as they may deem proper for the purposes of reorganization, but nothing in 7214
the plan and this agreement contained is intended to constitute, nor shall it constitute, any liability or trust in favor or in respect of any such obligation.

Twelfth. All calls for the presentation of certificates for stamping, for the deposit of bonds and stocks, for the payment to be made by depositing stockholders, or for the surrender of certificates; all notices fixing or limiting any period for the deposit of securities or for such payments, or for the presentation of certifi-

cates for stamping, and all other calls or notices hereunder, except when otherwise provided, shall be inserted in the New York Times and the New York Tribune, or in two other daily papers of general circulation published in the city of New York; in the London Times and News, or in two other daily papers of general circulation published in the city of London, and in two daily papers of general circulation published in the city of Berlin, twice in each week for two successive weeks, beginning on any day of the week. Any call or notice whatsoever, when so published by the managers or by the Deutsche Bank, shall be taken and considered as though personally served on all parties hereto, and upon all parties bound hereby, as of the respective dates of insertion thereof, and such publication shall be the only notice required to be given under any provision of this plan and agreement; and all German translations of the plan and this agreement and of any call or notice thereunder shall be made under the direction or with the approval of the Deutsche Bank, and when so made shall be sufficient for publication in Germany; but in case of any discrepancy between such translation and the English original, the latter shall control, and, notwithstanding such discrepancy, shall bind all parties in interest. When a call or notice shall have been advertised as above specified in New York, or in London, or in Berlin, publication shall be complete as regards all holders of certificates of deposit and assented receipts issued or stamped by the depositaries in the city in which such publication shall have been made, and no further publication shall be required in such city.

Thirteenth. The plan and this agreement shall bind and benefit the several parties, including the depositors hereunder, their and each of their survivors, heirs, executors, administrators, successors, and assigns.

Fourteenth. In order fully to subject to every provision of the plan and this agreement, all general second, general third, and consolidated mortgage bonds now or hereafter represented by assenting certificates of the Mercantile Trust Company, and to obtain therefor all benefits hereunder, the Mercantile Trust Company of New York becomes a party hereto, and each assenting certificate holder hereby confers upon it full power and authority, either with or without the termination of the said bondholders' agreement of February 19, 1894, to hold subject

to the plan and this agreement and to deliver to the managers 7219
or upon their order the bonds represented by any such assenting certificate, and full power and authority from time to time thereafter to make, execute, and perform (such power and authority by it to be exercised when requested by the managers) such further or other instruments, agreements, and transfers as may be required hereunder in respect of any bonds represented by any such assenting certificates.

IN WITNESS WHEREOF a majority of the reorganization committee, the managers, the Mercantile Trust Company of New York, the Deutsche Bank, and the protective committee have 7220
caused these presents to be duly executed, and all other parties hereto have deposited securities or, as above set forth, have assented hereto in respect of certificates of the Mercantile Trust Company.

EDWARD D. ADAMS.
JOHN C. BULLITT.
LOUIS FITZGERALD.
CHARLES H. GODFREY.
JOHN D. PROBST.
JAMES STILLMAN. 7221
ERNST THALMANN.
THE MERCANTILE TRUST COMPANY,
By LOUIS FITZGERALD, *President.*
J. P. MORGAN & CO.
DEUTSCHE BANK.
By EDWARD D. ADAMS.
AUGUST BELMONT.
BRAYTON IVES.
GEORGE R. SHELDON.
CHARLEMAGNE TOWER, Jr.

7222 SPECIAL EXAMINER'S RETURN, WITH REPORT.

In the circuit court of the United States for the district of Minnesota, third division.

UNITED STATES OF AMERICA, COMPLAINANT,
v.
NORTHERN SECURITIES COMPANY, THE GREAT Northern Railway Company, The Northern Pacific Railway Company, James J. Hill, William P. Clough, D. Willis James, John S.
7223 Kennedy, J. Pierpont Morgan, Robert Bacon, George F. Baker, and Daniel S. Lamont, defendants.

UNITED STATES OF AMERICA,
District of Minnesota, ss.

I, Frederick G. Ingersoll, the duly appointed special examiner to take and return the testimony in the case of United States of America, complainant, against the Northern Securities Company, the Great Northern Railway Company, the
7224 Northern Pacific Railway Company, James J. Hill, William P. Clough, D. Willis James, John S. Kennedy, J. Pierpont Morgan, Robert Bacon, George F. Baker, and Daniel S. Lamont, defendants, do hereby certify that, pursuant to the consent, agreement, and stipulation of the solicitors for the respective parties hereto, I appeared, on the 15th day of September, 1902, at the United States attorney's office in the post-office building in the city of New York, and was then and there attended by the solicitors for the respective parties to said cause, and did then and there at said time and place, and at certain other times
7225 and places in said report mentioned, take and report all the testimony of all the witnesses produced before me by all of the parties to this cause, as well as all proceedings connected therewith; that at all said times and places each of the several witnesses, being of lawful age, before testifying was by me duly cautioned and sworn to tell the truth, the whole truth, and nothing but the truth, relative to the matters in controversy in this cause.

That pursuant to the consent and agreement of the respective 7226
parties to this cause the testimony of the witnesses produced before me were, under my direction, taken down stenographically by Robert S. Taylor, a skillful stenographer, and by him reduced to writing. That the reading to each witness of his testimony, after such reduction to typewriting, by the undersigned, in the presence of the parties or counsel, was, by consent of all the parties to this cause, waived; each witness read his testimony, and after correcting the same to conform to the facts, thereafter signed and swore to the same in the presence of the examiner, save and except only the testimony of the 7227
witness William P. Clough, taken in the city of New York on the part of the complainant, on the 25th day of September, 1902; that the witness Clough read over such testimony when reduced to writing, but inadvertently neglected to sign the same, and that such omission by the witness was thereafter, by consent of all the parties to this cause, duly waived.

That the report to which this certificate is affixed contains a full, true, and complete record of all the testimony taken, exhibits introduced, and proceedings had at such times and places; that the exhibits offered by the solicitors for the complainant, as well as those offered by the solicitors for the de- 7228
fendants, are filed by me with this report in the office of the clerk of the United States circuit court for the district of Minnesota; that the exhibits introduced by the complainant were marked as follows: Complainant's Exhibit A, Complainant's Exhibit B, Complainant's Exhibit C, Complainant's Exhibit D, Complainant's Exhibit E, Complainant's Exhibit F, Complainant's Exhibit G, Complainant's Exhibit H, Complainant's Exhibit I, Complainant's Exhibit J, Complainant's Exhibit K, Complainant's Exhibit L, Complainant's Exhibit M, Com- 7229
plainant's Exhibit N, Complainant's Exhibit O, Complainant's Exhibit P, and Complainant's Exhibit Q; that the exhibits introduced by the defendants were marked by me Defendant's Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18A, 18B, 18C, 18D, 18E, 19, 20, 20A, 20B, 20C, 20D, 20E, 20F, 20G, 20H, 20I, 20J, 20K, 20L, 21, 22, 23, and 24; that there is no Exhibit 9 in the case.

7230 That whatever copies of originals appear among said exhibits it was expressly stipulated and agreed by the solicitors for the respective parties that such copies might stand for and be used as the originals thereof as fully and completely as if the originals were filed.

In witness whereof I have hereunto set my hand this ——— day of January, in the year of our Lord one thousand nine hundred and three.

Special Examiner.

CLERK OF COURT'S CERTIFICATE FOR PRINTED RECORD. 7231

In the circuit court of the United States for the district of Minnesota, third division.

UNITED STATES OF AMERICA, COMPLAINANT,
v.
NORTHERN SECURITIES COMPANY, THE GREAT NORTHERN RAILWAY COMPANY, THE NORTHERN PACIFIC RAILWAY COMPANY, JAMES J. HILL, WILLIAM P. CLOUGH, D. WILLIS JAMES, JOHN S. KENNEDY, J. PIERPONT MORGAN, ROBERT BACON, 7232
GEORGE F. BAKER, AND DANIEL S. LAMONT, DEFENDANTS.

UNITED STATES OF AMERICA,
District of Minnesota, ss.

I, Henry D. Lang, clerk of the circuit court of the United States, for the district of Minnesota, do hereby certify that I have carefully compared the foregoing paper writings, all as set forth in volumes 1 to 5 inclusive of this printed record, namely: Order appointing special examiner; Oath of special examiner; 7233
Stipulation for taking testimony; Stipulation appointing stenographer; Oath of stenographer; Proceedings before the examiner in the city of New York, September 15, 1902; Proceedings before the examiner in the city of New York, September 16, 1902; Proceedings before the examiner in the city of New York, September 25, 1902; Testimony of James J. Hill, Charles S. Mellen, John S. Kennedy, G. W. Perkins, W. P. Clough, Jacob H. Schiff, Charles Steele, J. P. Morgan, R. H. Relf, including the exhibits in the testimony of said Relf; complainant's Exhibits A, B, C, D, E, F, G, H, and I; the testimony 7234
of E. H. Harriman given in Chicago before the Interstate Commerce Commission; testimony of W. P. Clough given in the city of New York, September 25, 1902; complainant's Exhibits J, K, L, M, N, O, P, and Q; the testimony of James J. Hill, Frederick Weyerhaeuser, George B. Harris, W. P. Clough, Charles S. Mellen, and E. N. Saunders, all given at the city of St. Paul; the testimony of John P. Meany given at the city of New York; the testimony of E. H. Harriman and certain of

7235 the testimony of W. P. Clough, taken from the record in the case of the State of Minnesota *v.* The Northern Securities Company given by them in that case in the city of New York; defendants' Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18A, 18B, 18C, 18D, 18E, 19, 20, 20A, 20B, 20C, 20D, 20E, 20F, 20G, 20H, 20I, 20J, 20K, and 20L, with the originals thereof, which are in my custody as such clerk, and that such copies are true copies of the originals and of the whole thereof on file in this cause; that the same and all thereof correctly set forth all the proceedings in said cause before Frederick
7236 G. Ingersoll, special examiner herein, as shown by the report of said examiner on file in my office.

Clerk of the United States Circuit Court,
District of Minnesota.

[SEAL OF COURT.]

EXAMINER'S CERTIFICATE IN RE RECORD. 1693

SPECIAL EXAMINER'S CERTIFICATE FOR PRINTED RECORD. 7237

In the circuit court of the United States for the district of Minnesota, third division.

UNITED STATES OF AMERICA, COMPLAINANT,
v.
NORTHERN SECURITIES COMPANY, THE GREAT Northern Railway Company, The Northern Pacific Railway Company, James J. Hill, William P. Clough, D. Willis James, John S. Kennedy, J. Pierpont Morgan, Robert Bacon, George F. Baker, and Daniel S. Lamont, defendants. 7238

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I, Frederick G. Ingersoll, the duly appointed special examiner to take and return the testimony in the case of United States of America, complainant, against the Northern Securities Company, the Great Northern Railway Company, the Northern Pacific Railway Company, James J. Hill, William P. 7239
Clough, D. Willis James, John S. Kennedy, J. Pierpont Morgan, Robert Bacon, George F. Baker, and Daniel S. Lamont, defendants, do hereby certify that, pursuant to the consent, agreement, and stipulation of the solicitors for the respective parties hereto, I appeared, on the 15th day of September, 1902, at the United States attorney's office in the post-office building in the city of New York, and was then and there attended by the solicitors for the respective parties to said cause, and did then and there at said time and place and at certain other times and places in said report mentioned take and report all the tes- 7240
timony of all the witnesses produced before me by all of the parties to this cause, as well as all proceedings connected therewith. That at all said times and places each of the several witnesses, being of lawful age, before testifying was by me duly cautioned and sworn to tell the truth, the whole truth, and nothing but the truth relative to the matters in controversy in this cause.

That pursuant to the consent and agreement of the respective parties to this cause, the testimony of all the witnesses produced

7241 before me was, under my direction and with the approval of all the parties, taken down stenographically by Robert S. Taylor, a skillful stenographer, and was by him reduced to typewriting. That the reading to each witness of his testimony, after such reduction to typewriting, by the undersigned in the presence of the parties or counsel was, by consent of all the parties to this cause, waived; each witness read his testimony, and after correcting the same to conform to the facts, thereafter signed and swore to the same in the presence of the examiner—save and except only the testimony of the witness William P. Clough,
7242 taken in the city of New York on the part of the complainant on the 25th day of September, 1902; that the said witness Clough read over such testimony when reduced to writing, but inadvertently neglected to sign the same, and that such omission by the witness was thereafter, by consent of all the parties to this cause, duly waived.

That the report to which this certificate is affixed contains a full, true, and complete record of all the testimony taken, exhibits introduced, and proceedings had at such times and places; that the exhibits offered by the solicitors for the com-
7243 plainant, as well as those offered by the solicitors for the defendants, are filed by me with my report in the office of the clerk of the United States circuit court for the district of Minnesota; that the exhibits introduced by the complainant were marked as follows: Complainant's Exhibit A, Complainant's Exhibit B, Complainant's Exhibit C, Complainant's Exhibit D, Complainant's Exhibit E, Complainant's Exhibit F, Complainant's Exhibit G, Complainant's Exhibit H, Complainant's Exhibit I, Complainant's Exhibit J, Complainant's Exhibit K, Complainant's Exhibit L, Complainant's Exhibit M, Complainant's Ex-
7244 hibit N, Complainant's Exhibit O, Complainant's Exhibit P, and Complainant's Exhibit Q; that the exhibits introduced by the defendants were marked by me Defendants' Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18A, 18B, 18C, 18D, 18E, 19, 20, 20A, 20B, 20C, 20D, 20E, 20F, 20G, 20H, 20I, 20J, 20K, 20L, 21, 22, 23, and 24; that there is no Exhibit 9 in the case.

That whatever copies of originals appear among said exhibits, it was expressly stipulated and agreed by the solicitors for the respective parties that such copies might stand for and be used

as the originals thereof as fully and completely as if the orig- 7245
inals were filed.

I further certify that, as requested by all the parties to this cause, I have caused all the proceedings herein to be printed and bound, as provided by the rules of this court; that the printed record of such proceedings constitutes five volumes, which are numbered 1 to 5 inclusive. That for greater certainty, and at the request of said parties, I have prepared this original certificate and caused the same to be inserted at the close of volume 5 of said printed record.

I further certify that I have carefully compared all of the fore- 7246
going papers in this record, to wit: Order appointing the special examiner, oath of special examiner, stipulation for the taking of testimony, stipulation appointing the stenographer, oath of stenographer, proceedings before the examiner in the city of New York, September 15, 1902, proceedings before the examiner in the city of New York, September 16, 1902, proceedings before the examiner in the city of New York, September 25, 1902, the testimony of James J. Hill, and the testimony of Charles S. Mellen taken from volume 1 of the special examiner's transcript in the Peter Power case, the testimony of John S. Kennedy, 7247
G. W. Perkins, W. P. Clough, Jacob H. Schiff, Charles Steele, and J. P. Morgan taken from volume 2 of the special examiner's transcript in the Peter Power case, all as set forth in volume 1 of the printed record herein, with the originals thereof on file in the office of the clerk of this court, and that the same and all thereof are true and correct copies of said originals; also the testimony of R. H. Relf, with the exhibits pertaining thereto, taken from pages 1 to 88, both inclusive, of the record in the Peter Power case, together with complainant's Exhibits A, B, C, D, E, F, G, H, and I, and the testimony of E. H. Harriman, 7248
given in Chicago before the Interstate Commerce Commission as set forth on pages 78 to 115, inclusive, of the printed record of said proceedings of the Interstate Commerce Commission; the testimony of W. P. Clough given in the city of New York, September 25, 1902; all of which last-mentioned papers are set forth and are contained in volume 2 of the printed record herein, with the originals thereof, and that the same and all thereof are true and correct copies of said originals.

7249 That said complainant's Exhibit I is the map bound into the printed record at the end of said volume 2; that said exhibit has been erroneously marked by the printer as Exhibit 13.

Also that volume 5 of the printed record herein contains complainant's Exhibits J, K, L, M, N, O, P, and Q, and that I have compared said exhibits with the originals thereof, and that the same, as set forth in said printed record, are true and correct copies of said originals and the whole thereof.

That said volumes 1, 2, and 5 contain all of the complainant's testimony and exhibits herein.

7250 That volume 3 of the printed record herein contains the testimony of the witnesses James J. Hill, Frederick Weyerhauser, George B. Harris, W. P. Clough, Charles S. Mellen, E. N. Saunders, George P. Meany, E. H. Harriman, and defendant's Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 10, 17, 19, 21, 22, 23, and 24, together with all the proceedings before me in behalf of the defendants, save and except the exhibits hereinafter mentioned; that said volume 3 as printed is a true and correct copy of the originals of all the papers and proceedings in said volume set forth and of the whole thereof, and that the same and each
7251 thereof have been by me duly compared.

That volume 4 of said printed record contains the defendants' Exhibits 11, 12, 13, 14, 15, 16, 18A, 18B, 18C, 18D, 18E, 20, 20A, 20B, 20C, 20D, 20E, 20F, 20G, 20H, 20I, 20J, 20K, and 20L, and that the said exhibits as printed are true and correct copies of the originals and of the whole thereof.

That said printed volumes 1, 2, 3, 4, and 5 contain true and correct copies of all the proceedings in this case, together with a copy of my original report and return and the certificate of the clerk of the court as to the correctness thereof.

7252 In witness whereof, I have hereunto set my hand this —— day of January, A. D. 1903.

Special Examiner.

O

United States Circuit Court, District of Minnesota, Third Division.

UNITED STATES OF AMERICA, Complainant,
v.
NORTHERN SECURITIES COMPANY ET AL., Defendants. } No. 789. C. E.

To the clerk of said court:

I hereby certify that the above entitled cause, now pending in said court, is a suit in equity brought by the United States against the Northern Securities Company, and the above named defendants, under the act entitled "An act to protect trade and commerce against unlawful restraints and monopolies" approved July 2, 1890, and is in my opinion a case of general public importance.

I, therefore request that, complying with the provisions of the act entitled an act "To expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July 2, 1890, entitled, 'An act to protect trade and commerce against unlawful restraints and monopolies'" approved February 11, 1903, you will file this certificate among the records of the above entitled case, and immediately furnish a copy thereof to each of the circuit judges of the eighth circuit, to the end that said case shall be given precedence over other cases in said court, and be assigned for hearing at the earliest practicable day, before not less than three of the circuit judges of said circuit, as is provided by the said act of February 11, 1903.

P. C. KNOX,
Attorney General.

Washington, February 28, 1903.

(Endorsed:) Certificate of the Attorney General under act of Febuary 11, 1903. Filed March 2nd, 1903. Henry D. Lang, clerk.

United States Circuit Court, District of Minnesota, Third Division.

UNITED STATES OF AMERICA, Complainant,
vs.
NORTHERN SECURITIES COMPANY ET AL., Defendants. } No. 789. C. Equity.

DISTRICT OF MINNESOTA, *ss:*

I, Henry D. Lang, clerk of the United States circuit court for the district of Minnesota, do hereby certify that I furnished to each of the circuit judges of the eighth circuit, which is the circuit wherein the case above entitled is pending, a copy of the certificate this day

filed by the Attorney General of the United States in said cause under the act of February 11th, 1903, by enclosing to each of the judges of said circuit, to-wit:

Hon. Henry C. Caldwell, U. S. circuit judge, St. Louis, Missouri.
Hon. Walter H. Sanborn, U. S. circuit judge, St. Paul, Minnesota,
Hon. Amos M. Thayer, U. S. circuit judge, St. Louis, Missouri, and
Hon. Willis Van Devanter, U. S. circuit judge, care Interior Department Washington, D. C., and depositing the same in the post office at St. Paul, Minnesota, on the 2nd day of March A. D. 1903.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this 2nd day of March A. D. 1903.

(Seal of Court.)

HENRY D. LANG, *Clerk.*

(Endorsed:) Certificate of clerk of furnishing U. S. circuit judges with copy of Attorney General's certificate under act of February 11th, 1903. Filed March 2nd, 1903. Henry D. Lang, clerk.

United States Circuit Court of Appeals, Eighth Circuit.

Hon. David J. Brewer, circuit justice, Washington, D. C.; Hon. Henry C. Caldwell, Little Rock, Ark.; Hon. Walter H. Sanborn, St. Paul, Minn.; Hon. Amos M. Thayer, St. Louis, Mo., circuit judges.

ST. LOUIS, MO., *March* 6, 1903.

Henry D. Lang, clerk U. S. circuit court, St. Paul, Minn.

SIR: The case of The United States *v.* The Northern Securities Co. *et al.* will be heard before the United States circuit judges in the United States court room in the city of St. Louis, on Wednesday the 18th day of March, instant, at which time and place you will be present with the complete record in said cause; by which I mean all the pleadings and depositions and certified copies of such entries as may have been made in the cause in the circuit court.

Respectfully,

HENRY C. CALDWELL,
Senior U. S. Circuit Judge, 8th Judicial Circuit.

(Endorsed:) Notice from the senior U. S. circuit judge of the time and place of hearing of cause. Filed March 7th, 1903. Henry D. Lang, clerk.

United States Circuit Court for the District of Minnesota.

Term Minutes, January Term, A. D. 1903—March 18th, 1903.

WEDNESDAY MORNING, ST. LOUIS, MISSOURI.

UNITED STATES OF AMERICA:

Circuit Court, Eighth Circuit, District of Minnesota, Third Division.

At a session of the third division of the circuit court of the United States of America for the district of Minnesota, held at the city of St. Louis, Missouri.

Court opened pursuant to adjournment.

Present: Hon. Henry C. Caldwell, circuit judge; Hon. Walter H. Sanborn, circuit judge; Hon. Amos M. Thayer, circuit judge; Hon. Willis Van Devanter, circuit judge; Henry D. Lang, clerk.

THE UNITED STATES OF AMERICA *vs.* NORTHERN SECURITIES COMPANY, THE GREAT Northern Railway Company, The Northern Pacific Railway Company, James J. Hill, William P. Clough, D. Willis James, John S. Kennedy, J. Pierpont Morgan, Robert Bacon, George F. Baker, and Daniel Lamont.	C. Equity. No. 789.

This cause having been heretofore regularly set for hearing at this time and place, the parties appear by their respective solicitors, Messrs. James M. Beck, William A. Day and D. T. Watson, appearing on behalf of the complainant, and Messrs. John W. Griggs and George B. Young, appearing on behalf of the defendants The Northern Securities Company, James J. Hill, William P. Clough, D. Willis James, John S. Kennedy and George F. Baker, Mr. M. D. Grover appearing on behalf of the defendant The Great Northern Railway Company, Mr. C. W. Bunn, appearing on behalf of the defendant The Northern Pacific Railway Company, and Messrs. Francis Lynde Stetson and David Willcox filed a brief on behalf of the defendants J. Pierpont Morgan, Robert Bacon and Daniel S. Lamont, but did not personally appear.

Whereupon the said cause coming on for final hearing in equity upon the pleadings, proofs, exhibits and records for hearing in equity, duly filed herein, Mr. James M. Beck opens, states and argues the cause to the court on behalf of the complainant.

And here the court takes a recess until two o'clock p. m.

The court resumes proceedings at two o'clock p. m.

Mr. James M. Beck resumes and concludes his argument on behalf of the complainant.

Mr. George B. Young opens, states and argues the cause to the court on behalf of the defendants.

And the trial of said cause not being concluded at the hour of adjournment, it is by the court ordered that further proceedings herein be and the same hereby are postponed and continued until tomorrow morning at ten o'clock.

A true record,

Attest: HENRY D. LANG, *Clerk.*

United States Circuit Court for the District of Minnesota.

Term Minutes, January Term, A. D. 1903—March 19th, 1903.

THURSDAY MORNING, ST. LOUIS, MISSOURI.

UNITED STATES OF AMERICA:

Circuit Court, Eighth Circuit, District of Minnesota, Third Division.

At a session of the third division of the circuit court of the United States of America for the district of Minnesota, held at the city of St. Louis, Missouri.

Court opened pursuant to adjournment.

Present: Hon. Henry C. Caldwell, circuit judge; Hon. Walter H. Sanborn, circuit judge; Hon. Amos M. Thayer, circuit judge; Hon. Willis Van Devanter, circuit judge; Henry D. Lang, clerk.

UNITED STATES OF AMERICA
vs.
NORTHERN SECURITIES COMPANY ET AL. } C. Equity. No. 789.

This day come again the parties to this cause by their respective solicitors, and the hearing and argument thereof is resumed and continued as follows, towit:

Mr. George B. Young resumes and continues his statements and arguments of the cause on behalf of the defendants.

And here the court takes a recess until two o'clock p. m.

The court resumes proceedings at two o'clock p. m.

Mr. George B. Young resumes and concludes his statements and arguments of the cause on behalf of the defendants.

And the hearing of said cause not being concluded at the hour of adjournment, it is by the court ordered that further proceedings herein be and the same hereby are postponed and continued until tomorrow morning at ten o'clock.

A true record.

Attest: HENRY D. LANG, *Clerk.*

United States Circuit Court for the District of Minnesota.

Term Minutes, January Term, A. D. 1903—March 20th, 1903.

FRIDAY MORNING, ST. LOUIS, MISSOURI.

UNITED STATES OF AMERICA:

Circuit Court, Eighth Circuit, District of Minnesota, Third Division.

At a session of the third division of the United States circuit court for the district of Minnesota, held at the city of St. Louis, Missouri.

Court opened pursuant to adjournment.

Present: Hon. Henry C. Caldwell, circuit judge; Hon. Walter H. Sanborn, circuit judge; Hon. Amos M. Thayer, circuit judge; Hon. Willis Van Devanter, circuit judge; Henry D. Lang, clerk.

UNITED STATES OF AMERICA
vs.
NORTHERN SECURITIES COMPANY ET AL. } C. Equity. No. 789.

This day come again the parties to this cause by their respective solicitors and the hearing thereof is resumed and continued as follows, to wit:

Mr. C. W. Bunn argues said cause to the court on behalf of the defendants.

Mr. John W. Griggs argues the cause to the court on behalf of the defendants.

And here the court takes a recess until two o'clock.

The court resumes proceedings at two o'clock p. m.

Mr. John W. Griggs resumes and concludes his argument of the cause to the court on behalf of the defendants.

Mr. David T. Watson argues said cause in reply on behalf of the complainant.

And the hearing of said cause not being concluded at the hour of adjournment, it is by the court ordered that further proceedings herein be and the same hereby are postponed and continued until tomorrow morning at ten o'clock.

Ordered that this court do now adjourn until tomorrow morning at ten o'clock.

A true record,
Attest:

HENRY D. LANG, *Clerk.*

United States Circuit Court for the District of Minnesota.

Term Minutes, January Term, A. D. 1903—March 21st, 1903.

SATURDAY MORNING, ST. LOUIS, MISSOURI.

UNITED STATES OF AMERICA:

Circuit Court, Eighth Circuit, District of Minnesota, Third Division.

At a session of the third division of the circuit court of the United States of America for the district of Minnesota, held at the city of St. Louis, Missouri.

Court opened pursuant to adjournment.

Present: Hon. Henry C. Caldwell, circuit judge; Hon. Walter H. Sanborn, circuit judge; Hon. Amos M. Thayer, circuit judge; Hon. Willis Van Devanter, circuit judge; Henry D. Lang, clerk.

THE UNITED STATES OF AMERICA
vs.
NORTHERN SECURITIES COMPANY ET AL. } C. Equity. No. 789.

This day come again the parties to this cause by their respective solicitors and the hearing thereof is resumed and continued as follows, to-wit:

Mr. James M. Beck one of the solicitors for the complainant moves the court for further time within which to file briefs herein on behalf of the complainant, whereupon after due consideration, it is by the court ordered, that the complainant herein have not to exceed three days from this date within to file the briefs of Messrs. James M. Beck and David T. Watson two of the solicitors for the complainant herein, on behalf of the complainant. Upon the agreement and consent of the solicitors for the respective parties hereto, it is by the court ordered that a copy of the Wall Street Journal of Saturday, June 1st, 1901, may be and the same hereby is permitted to be offered in evidence as an additional exhibit on behalf of the complainant, the same to be filed herein and printed as a part of the complainant's record for hearing in equity in this cause.

Mr. David T. Watson thereupon resumes and concludes his argument of this cause to the court in reply on behalf of the complainant.

And after hearing the arguments and statements of the solicitors for the respective parties and being fully advised in the premises, the said cause is duly submitted to, and by the court taken under advisement.

Ordered that this court do now adjourn until Monday morning at ten o'clock.

A true record,
Attest: HENRY D. LANG, *Clerk.*

Supreme Court of the United States, October Term, 1903.

THE NORTHERN SECURITIES COMPANY, THE GREAT Northern Railway Company, The Northern Pacific Railway Company, James J. Hill, William P. Clough, D. Willis James, John S. Kennedy, J. Pierpont Morgan, Robert Bacon, George F. Baker, and Daniel S. Lamont, Appellants,
vs.
THE UNITED STATES.

No. 277.

It is hereby stipulated and agreed by and between the parties to the above entitled cause by their respective solicitors, that the record in said cause may be amended and corrected by inserting therein between pages 1702 and 1703, copies of the printed slip hereto attached, which were prepared by the special examiner, pursuant to the agreement between said parties, as shown on page 1702 of the record, and which were inadvertently omitted in making up the record on appeal to the Supreme Court.

GEO. B. YOUNG,
Solicitor for Northern Securities Company.
M. D. GROVER,
Solicitor for Great Northern Railway Company.
C. W. BUNN,
Solicitor for Northern Pacific Railway Company.
FRANCIS LYNDE STETSON,
By C. W. BUNN,
Solicitor for J. Pierpont Morgan and Robert Bacon.
—— ——,
Solicitor for Daniel Lamont.
GEO. B. YOUNG,
Solicitor for J. J. Hill, Wm. P. Clough, D. W. James, John S. Kennedy, George F. Baker.
HENRY M. HOYT,
Solicitor General, Solicitor for Defendant.

Insertion—Page 341, *Volume* I.

The following article appeared in "The Wall Street Summary," a newspaper published in the city of New York, in the issue of June 1, 1901. By agreement of the parties to this action, this is inserted in connection with Mr. Morgan's testimony on page 341, volume I. Mr. Steele, at page 287, volume I, also refers to the same article.

"It is officially announced that an understanding has been reached between Northern Pacific and Union Pacific interests, under which the composition of the Northern Pacific board will be left in the

hands of J. P. Morgan. Certain names have already been suggested, not now to be made public, which will especially be recognized as representative of the common interests. It is asserted that complete and permanent harmony will result under the plan adopted between all interests involved."

[Endorsed:] File No. 18,924. Supreme Court U. S., October term, 1903. Term No. 277. The Northern Securities Co. *et al.* appellants, *vs.* The United States. Stipulation and addition to record Filed Oct. 24", 1903.

"In the Circuit Court of the United States for the District of Minnesota, Third Division.

"UNITED STATES OF AMERICA, Complainant,
vs.
"THE NORTHERN SECURITIES COMPANY, THE NORTHERN PACIFIC Railway Company, The Great Northern Railway Company, James J. Hill, William P. Clough, D. Willis James, John S. Kennedy, J. Pierpont Morgan, Robert Bacon, George F. Baker, and Daniel Lamont, Defendants.

"Mr. Philander C. Knox, Attorney General, D. T. Watson, special counsel, Mr. James M. Beck and Mr. W. A. Day, Assistant Attorneys General, and Mr. John M. Freeman, for the United States.

"Mr. George B. Young and Hon. John W. Griggs, for the Northern Securities Company. Mr. George B. Young, for James J. Hill, William P. Clough, D. Willis James, John S. Kennedy and George F. Baker.

"Mr. M. D. Grover, for the Great Northern Railway Company.

"Mr. C. W. Bunn, for the Northern Pacific Railway Company.

"Mr. Francis Lynde Stetson and Mr. David Willcox, for defendants Morgan, Bacon and Lamont.

"Before Caldwell, Sanborn, Thayer and Devanter, circuit judges.

"THAYER, circuit judge, stated the conclusions of the court:

"This is a bill, exhibited by the United States, to restrain the violation of an act of Congress approved July 2, 1890 (26 St. 209, c. 647), entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' which is commonly termed the Sherman anti-trust act. The case was heard before a circuit court composed of the four circuit judges of the eighth circuit, pursuant to the provisions of a recent act of Congress approved Feb. 11, 1903, which requires such cases to be heard 'before not less than three of the circuit judges' of the circuit where the suit is brought, when the Attorney General files with the clerk of the court wherein the case is pending, a certificate that it is one of '*general public importance.*' Such a certificate has been filed and in accordance with the mandate of the statute the case 'has been given precedence over others and in every way expedited.'

"From admissions made by the pleadings as well as from much oral testimony, we reach the following conclusions as respects matters of fact:

"Two of the defendants, namely, The Northern Pacific Railway Company and The Great Northern Railway Company, are the owners respectively of lines of railroad which extend from the cities of Du-

luth, St. Paul and Minneapolis in the State of Minnesota, thence across the continent to Puget sound. These roads *are* and in public estimation have ever been regarded as, parallel and competing lines. For some years at least after they were built, they competed with each other actively for transcontinental and interstate traffic.

"In the spring of the year 1901 they united in purchasing about 98 per cent. of the entire capital stock of the Chicago, Burlington & Quincy Railway Company, and became joint sureties for the payment of bonds of the last named company, whereby the purchase was accomplished, which were to run twenty years and bear 4 per cent. interest per annum. The amount of stock so acquired was of the par value of about $107,000,000 and as it was purchased at the rate of $200 per share, the bonded indebtedness of the two companies was thus increased to the extent of $200,000,000.

"Subsequent to the acquisition of the stock of the Burlington Company and in the summer of the year 1901, certain large and influential stockholders of the Northern Pacific and Great Northern Companies, who had practical control of the two roads and who have been made parties defendant to the present bill, acting in concert with each other, conceived the design of placing a very large majority of the stock of both of the last named companies in the hands of a single owner. To this end these stockholders arranged and agreed with each other to procure and cause the formation of a corporation under the laws of the State of New Jersey, which latter company, when organized, should buy all or at least the greater part of the stock of the Northern Pacific and Great Northern Companies. The individuals who conceived and promoted this plan agreed with each other to exchange their respective holdings of stock in the last named railroad companies for the stock of the New Jersey company, when the same should be fully organized, and to use their influence to induce other stockholders in their respective companies to do likewise, to the end that the New Jersey company might become the sole owner of the whole or at least a major portion of the stock of both railroad companies.

"In accordance with this plan the defendant, The Northern Securities Company (hereafter termed the securities company), was organized under the laws of the State of New Jersey on Nov. 13, 1901, with a capital stock of $400,000,000, that sum being the exact amount required to purchase the total stock of the two railroad companies at the price agreed to be paid therefor. When the securities company was organized, it assented to and became a party to the scheme that had been devised by its promoters before it became a legal entity.

"Very shortly after its organization the securities company acquired a large majority of all the stock of the Northern Pacific Company at the rate of $115 per share, paying therefor in its own stock

at par. At the same time it acquired about 300,000 shares of the stock of the Great Northern Company from those stockholders of that company who had been instrumental in organizing the securities company, paying therefor at the rate of $180 per share and using its own stock at par to make the purchase.

"The securities company subsequently made further purchases of stock of the Great Northern Company, at the same rate, and in about three months had acquired stock of the latter company amounting at par to about $95,000,000, using for that purpose its own stock to the amount of about $171,000,000. The securities company was enabled to make the subsequent purchase of stock from stockholders of the Great Northern Company not immediately concerned in the organization of the securities company, by the advice, procurement and persuasion of those stockholders of the Great Northern Company who had been instrumental in organizing the securities company and had exchanged their own stock for stock in that company shortly after its organization. At the present time the securities company is the owner of about 96 per cent. of all the stock of the Northern Pacific Company and the owner of about 76 per cent. of all the stock of the Great Northern Company.

"The scheme which was thus devised and consummated led inevitably to the following results: first, it placed the control of the two roads in the hands of a single person, to-wit, the securities company, by virtue of its ownership of a large majority of the stock of both companies; second, it destroyed every motive for competition between two roads engaged in interstate traffic which were natural competitors for business, by pooling the earnings of the two roads for the common benefit of the stockholders of both companies; and, according to the familiar rule that every one is presumed to intend what is the necessary consequence of his own acts when done willfully and deliberately, we must conclude that those who conceived and executed the plan aforesaid intended, among other things, to accomplish these objects.

"The general question of law arising upon this state of facts is whether such a combination of interests as that above described falls within the inhibition of the anti-trust act or is beyond its reach. The act brands as *illegal* 'every contract, combination in the form of trust *or otherwise*, or conspiracy in restraint of trade or commerce among the several States or with foreign nations.'

"Learned counsel on both sides have commented on the general language of the act, doing so, of course, for a different purpose, and the generality of the language employed is, in our judgment, of great significance. It indicates, we think, that Congress, being unable to foresee and describe all the plans that might be formed and all the expedients that might be resorted to, to place restraints on interstate trade or commerce, deliberately employed words of such

general import as, in its opinion, would comprehend every scheme that might be devised to accomplish that end.

"What is commonly termed a '*trust*' was a species of combination organized by individuals or corporations for the purpose of monopolizing the manufacture of, or traffic in, various articles and commodities which was well known and fully understood when the anti-trust act was approved. Combinations in that form were accordingly prohibited; but Congress, evidently anticipating that a combination might be otherwise formed, was careful to declare that a combination in any form, if in restraint of interstate trade or commerce, that is, if it directly occasioned or effected such restraint, should likewise be deemed illegal.

"Moreover, in cases arising under the act, it has been held by the highest judicial authority in the nation, and its opinion has been reiterated in no uncertain tone, that the act applies to interstate carriers of freight and passengers as well as to all other persons, natural or artificial; that the words 'in restraint of trade or commerce' do *not* mean in unreasonable or partial restraint of trade or commerce but *any* direct restraint thereof; that an agreement between competing railroads which requires them to act in concert in fixing the rate for the carriage of passengers or freight over their respective lines from one State to another, and which, by that means, restricts temporarily the right of any one of such carriers to name such rates for the carriage of such freight or passengers over its road, *as it pleases*, is a contract in direct restraint of commerce within the meaning of the act, in that it tends to prevent competition; that it matters not whether, while acting under such a contract, the rate fixed is reasonable or unreasonable, the vice of such a contract or combination being that it confers the power to establish unreasonable rates and directly restrains commerce by placing obstacles in the way of free and unrestricted competition between carriers who are natural rivals for patronage; and finally, that Congress has the power under the grant of authority contained in the Federal Constitution to regulate commerce, to say that no contract or combination shall be legal which shall restrain interstate trade or commerce by shutting off the operation of the general law of competition. United States *vs.* Trans-Missouri Freight Ass'n, 166 U. S. 290; United States *vs.* Joint Traffic Ass'n, 171 U. S. 505; Addyston Pipe & Steel Co. *vs.* United States, 175 U. S. 211.

"Taking the foregoing propositions for granted because they have been decided by a court whose authority is controlling, it is almost too plain for argument that the defendants would have violated the anti-trust act if they had done, through the agency of natural persons, what they have accomplished through an artificial person of their own creation. That is to say, if the same individuals who promoted the securities company, in pursuance of a previous under-

standing or agreement so to do, had transferred their stock in the two railroad companies to a third party or parties and had agreed to induce other shareholders to do likewise, until a majority of the stock of both companies had been vested in a single individual or association of individuals, and had empowered the holder or holders to vote the stock as their own, receive all the dividends thereon, and prorate or divide them among all the shareholders of the two companies who had transferred their stock—the result would have been a combination in direct restraint of interstate commerce because it would have placed in the hands of a small coterie of men the power to suppress competition between two competing interstate carriers whose lines are practically parallel.

"It will not do to say that so long as each railroad company has its own board of directors they operate independently and are not controlled by the owner of the majority of their stock. It is the common experience of mankind that the acts of corporations are dictated and that their policy is controlled by those who own the majority of their stock. Indeed, one of the favorite methods in these days, and about the only method, of obtaining control of a corporation is to purchase the greater part of its stock. It was the method pursued by the Northern Pacific and Great Northern Companies to obtain control of the Chicago, Burlington & Quincy railroad; and so long as directors are chosen by stockholders, the latter will necessarily dominate the former and in a real sense determine all important corporate acts.

"The fact that the ownership of a majority of the capital stock of a corporation gives one the mastery and control of the corporation was distinctly recognized and declared in Pearsall *vs.* Great Northern Railway, 161 U. S. 646, 671. The same fact has been recognized and declared by other courts. Pennsylvania R. Co. *vs.* Commonwealth, 7 Atl. (Pa.), 368, 371; Farmers Loan & Trust Co. *vs.* New York & Northern Railway Co., 150 N. Y., 410, 425; People *ex rel. vs.* Chicago Gas Trust Co., 130, *111*, 268, 22 N. E. Rep., 798, 802. In opposition to this view counsel cite Pullman Car Co. *vs.* Missouri Pacific Co., 115 U. S., 587, 596, but in that case the meaning of the word *controlled*, as used in a private contract, was the point under consideration, and what was said on the subject cannot be held applicable to cases arising under the anti-trust act when the point involved is whether the ownership of all the stock of two competing and parallel railroads vests the owner thereof with the power to suppress competition between such roads. We entertain no doubt that it does. Indeed, we regard suppression of competition, and to that extent a restraint of commerce, as the natural and inevitable result of such ownership.

"What has been done through the organization of the securities company accomplishes the object, which Congress has denounced as

illegal, more effectually perhaps than such a combination as is last supposed. That is to say, by what has been done the power has been acquired (and provision made for maintaining it) to suppress competition between two interstate carriers who own and operate competing and parallel lines of railroad. Competition, we think, would not be more effectually restrained than it now is under and by force of the existing arrangement, if the two railroad companies were consolidated under a single charter.

"It is manifest, therefore, that the New Jersey charter is about the only shield which the defendants can interpose between themselves and the law. The reasoning which led to the acquisition of that charter would seem to have been that while as individuals the promoters could not, by agreement between themselves, place the majority of the stock of the two competing and parallel railroads in the hands of a single person or a few persons, giving him or them the power to operate the roads in harmony and stifle competition, yet that the same persons *might* create a purely fictitious person termed a corporation, which could neither think nor act except as they directed, and by placing the same stock in the name of such artificial being, accomplish the same purpose. The manifest unreasonableness of such a proposition and the grave consequences sure to follow from its approval, compel us to assume that it must be unsound, especially when we reflect that the law as administered by courts of equity, looks always at the substance of things—at the object accomplished, whether it be lawful or unlawful—rather than upon the particular devices or means by which it has been accomplished.

"So far as the New Jersey charter is concerned, the question, broadly stated, which the court has to determine, is whether a charter granted by a State can be used to defeat the will of the national legislature as expressed in a law relating to interstate trade and commerce over which Congress has absolute control. Presumptively, at least, no charter granted by a State is intended by the State to have that effect or to be for such a purpose; and in the present instance it is clear that the State of New Jersey did not intend to grant a charter under cover of which an object denounced by Congress as unlawful, namely, a combination conferring the power to restrain interstate commerce, might be formed and maintained because the enabling act under which the securities company was organized, expressly declares that three or more persons may avail themselves of the provisions of the act and '*become a corporation for any lawful purpose.*' Laws of New Jersey, 1899, p. 473. This language is not merely perfunctory; it means, obviously, that whatever powers the incorporators saw fit to assume they must hold and exercise for the accomplishment of lawful objects. The words in question operate, therefore, as a limitation upon all the powers enumerated in the articles of association which were filed by the promoters of the securi-

ties company, so that however extensive and comprehensive these powers may seem to be, the State of New Jersey has said, you shall not exercise them so as to set at defiance any statute lawfully enacted by the Congress of the United States or any statute lawfully enacted by any State wherein you see fit to exercise your powers.

"But aside from this view of the subject, if the State of New Jersey had undertaken to invest the incorporators of the securities company with the power to do acts in the corporate name which would operate to restrain interstate commerce, and for that reason could not be done by them acting as an association of individuals—then we have no doubt that such a grant would have been void under the provisions of the anti-trust act or at least that the charter could not be permitted to stand in the way of the enforcement of that act.

"The power of Congress over interstate commerce is supreme, far-reaching, and acknowledges no limitations other than such as are prescribed in the Constitution itself. Gibbons *vs.* Ogden, 9 Wheat. 1, 197; County of Mobile *vs.* Kimball, 102 U. S. 691, 696, 697; Champion *vs.* Ames, — U. S. — (decided Feb. 23, 1903). No legislation on the part of a State can curtail or interfere with its exercise; and in view of re*g*eated decisions, no one can deny that it is a legitimate exercise of the power in question for Congress to say that neither natural nor artificial persons shall combine or conspire in any form whatever to place restraints on interstate trade or commerce. United States *vs.* Transmissouri Freight Association, 166 U. S. 290; United States *vs.* Joint Traffic Association, 171 U. S. 505; Addyston Pipe & Steel Co. *vs.* United States, 175 U. S. 211.

"It is urged, however, that such a combination of adverse interests as was formed, and has been heretofore described, was lawful and not prohibited by the anti-trust act because such restraint upon interstate trade or commerce, if any, as it imposes, is indirect, collateral and remote and hence that the combination is not one of that character which the Congress of the United States can lawfully forbid. The following cases are relied upon to sustain the contention: United States *vs.* E. C. Knight Co., 156 U. S. 1; Hopkins *vs.* United States, 171 U. S. 578; Anderson *vs.* United States, 171 U. S. 604.

"It is pertinent, therefore, to inquire in what way the existing combination that has been formed does affect interstate commerce. It affects it, we think, by giving to a single corporate entity, or more accurately, to a few men acting in concert and in its name and under cover of its charter, the power to control *all the means of transportation* that are owned by two competing and parallel railroads engaged in interstate commerce; in other words, the power to dictate every important act which the two companies may do; to compel them to act in harmony in establishing interstate rates for the carriage of freight and passengers; and generally to prescribe the policy which they shall pursue. It matters not, we think, through how many hands

the orders come by which these aims are accomplished or through what channels; the power was not only acquired by the combination but it is effectually exercised and it operates directly on interstate commerce, notwithstanding the manner of its exercise, by controlling the means of transportation, to wit, the cars, engines and railroads by which persons and commodities are carried, as well as by fixing the price to be charged for such carriage.

"The cases cited above and on which reliance is placed to sustain the view that the restraint imposed is merely indirect, remote, incidental or collateral, are not relevant for, as was fully explained in Addyston Pipe & Steel Co. *vs.* United States, 175 U. S. 211, 238, 240, 243, one of these cases (United States *vs.* E. C. Knight Company) dealt only with a combination within a State to obtain a practical monopoly of the manufacture of sugar and it was held that the combination only related to manufacture and not to commerce among the States or with foreign nations; that the fact that an article was manufactured for export to another State, did not make it an article of interstate commerce before transportation had begun or necesarily subject it to Federal control; and that the effect of the combination then under consideration, on interstate commerce, was at most only incidental and collateral. But while commenting on its previous decision in United States *vs.* E. C. Knight Co., the court took occasion to say, in Addyston Pipe & Steel Co. *vs.* United States, 175 U. S. 246, that when a contract is made for the sale and delivery of an article in another State, the transaction is one of interstate commerce although the vendor has also agreed to *manufacture* the article so sold; and that combinations to control or monopolize such transactions would be in restraint of interstate commerce.

"In the other cases (Hopkins *vs.* United States and Anderson *vs.* United States) it was held that the business of the members of the Kansas City live stock exchange, which was under consideration by the court, was not interstate commerce and that the act did not affect them and that even if they were so affected, the particular agreement which was involved did not operate as a restraint of interstate commerce.

"We fail to find, in either of these cases, any suggestion that a combination such as the one in hand, the object and necessary effect of which is to give to a single person or to a coterie of persons full control of all means of transportation owned by two competing and parallel lines of road engaged in interstate commerce, as well as the power to fix the rate for the transportation of persons and property, does not directly and immediately affect interstate commerce. No combination, as it would seem, could more immediately affect it.

"Again, it is urged, tentatively, that if the existing combination which the Government seeks to have dissolved, is held to be one in violation of the anti-trust act and unlawful, then the act unduly re-

stricts the right of the individual to make contracts, buy and sell property, and is invalid for that reason. With reference to this contention it might be suggested (as it has been by the Government) that as the *situs* of the stock which the securities company has bought is in the States of Wisconsin and Minnesota, which respectively chartered the Northern Pacific and Great Northern Companies, and as the stock owes its being to the laws of those States, and as each State has forbidden the consolidation of competing and parallel lines of railroad therein and has likewise prohibited any consolidation of the 'stock and franchises' of such roads—the contention last mentioned is entitled to little consideration in the case at bar.

"But waiving and ignoring this suggestion, the arguments advanced in behalf of the defendants is met and answered, so far as this court is concerned, by the decision in Addyston Pipe & Steel Co. *vs.* United States, 175 U. S. 228–229, where it is said *inter alia:*

"Under this grant of power to Congress (the power to regulate commerce between the several States and with foreign nations) that body, in our judgment, may enact such legislation as shall declare void and prohibit the performance of any contract between individuals or corporations where the natural and direct effect of such a contract will be, when carried out, to directly, and not as a mere incident to other and innocent purposes, regulate, to any substantial extent, interstate commerce. * * * We do not assent to the correctness of the proposition that the constitutional guaranty of liberty to the individual to enter into private contracts, limits the power of Congress and prevents it from legislating on the subject of contracts of the class mentioned. * * * It has been held that the word 'liberty' as used in the Constitution was not to be confined to the mere liberty of persons but included, among others, a right to enter into certain classes of contracts for the purpose of enabling the citizen to carry on his business; * * * But it has never been, and in our opinion ought not to be held, that the word included the right to enter into private contracts upon all subjects no matter what their nature and wholly irrespective, among other things, of the fact that they would, if performed, result in the regulation of interstate commerce, and in violation of an act of Congress upon that subject. The provision of the Constitution does not, as we believe, exclude Congress from legislating with regard to contracts of the above nature while in the exercise of its constitutional right to regulate commerce among the States. On the contrary, we think the provision regarding the liberty of the citizen is to some extent limited by the commerce clause of the Constitution and that the power of Congress to regulate interstate commerce comprises the right to enact a law prohibiting the citizen from entering into those private contracts which directly, and substantially, and not merely indirectly, remotely, incidentally and collaterally, regulate to a greater or less degree com-

merce among the States. We cannot so enlarge the scope of the language of the Constitution regarding the liberty of the citizen as to hold that it includes or that it was intended to include a right to make a contract which in fact restrained and regulated interstate commerce notwithstanding Congress, proceeding under the constitutional provision giving to it the power to regulate that commerce, had prohibited such contracts.

"These observations, as a matter of course, preclude further controversy over the power of Congress to limit to some extent the right to make contracts when enacting laws for the regulation of commerce between the States.

"Learned counsel for the defendant further contend as follows: That the anti-trust act was not intended to include or prohibit combinations looking to the virtual consolidation of parallel and competing lines of railroad although such a combination operates to stifle competition; that no relief can be granted to the Government in this instance because the combination or conspiracy of which it complains has accomplished its purpose, to-wit, the organization of the securities company and the lodgment of the majority of the stock of the two railroads in its hands *before the bill was filed;* and finally that the combination proven was one 'formed in aid of commerce and not to restrain it,' in other words, that it was formed to enlarge the volume of interstate traffic and thus benefit the public.

"The court cannot assent to either of these propositions.

"The first, we think, is clearly untenable for the reasons already stated and fully disclosed in the decisions heretofore cited.

"Concerning the second contention, we observe that it would be a novel, not to say absurd, interpretation of the anti-trust act to hold that after an unlawful combination is formed and has acquired the power which it had no right to acquire, namely, to restrain commerce by suppressing competition and is proceeding to use it and execute the purpose for which the combination was formed, it must be left in possession of the power that it has acquired, with full freedom to exercise it. Obviously the act, when fairly interpreted, will bear no such construction. Congress aimed to destroy the power to place any direct restraint on interstate trade or commerce, when by any combination or conspiracy, formed by either natural or artificial persons, such a power had been acquired; and the Government may intervene and demand relief as well after the combination is fully organized as while it is in process of formation. In this instance, as we have already said, the securities company made itself a party to a combination in restraint of interstate commerce, that antedated its organization, as soon as it came into existence, doing so of course under the direction of the very individuals who promoted it.

"Relative to the third contention, which has been pressed with

great zeal and ability, this may be said: It may be that such a virtual consolidation of parallel and competing lines of railroad as has been effected, taking a broad view of the situation, is beneficial to the public rather than harmful. It may be that the motives which inspired the combination by which this end was accomplished were wholly laudable and unselfish; that the combination was formed by the individual defendants to protect great interests which had been committed to their charge; or it may be that the combination was the initial and a necessary step in the accomplishment of great designs which if carried out as they were conceived would prove to be of inestimable value to the communities which these roads serve and to the country at large.

"We shall neither affirm nor deny either of these propositions because they present issues which we are not called upon to determine, and some of them involve questions which are not within the province of any court to decide, involving as they do, questions of public policy which Congress must determine. It is our duty to ascertain whether the proof discloses a combination in direct restraint of interstate commerce—that is to say, a combination whereby the power has been acquired to suppress competition between two or more competing and parallel lines of railroad engaged in interstate commerce. If it does disclose such a combination, and we have little hesitation in answering this question in the affirmative, then the anti-trust act, as it has been heretofore interpreted by the court of last resort, has been violated and the Government is entitled to a decree.

"A decree in favor of the United States will accordingly be entered to the following effect: Adjudging that the stock of the Northern Pacific and Great Northern Companies, now held by the securities company, was acquired in virtue of a combination among the defendants, in restraint of trade and commerce among the several States, such as the anti-trust act denounces as illegal; enjoining the securities company from acquiring or attempting to acquire further stock of either of said companies; also enjoining it from voting such stock at any meeting of the stockholders of either of said railroad companies or exercising or attempting to exercise any control, direction, or supervision or influence over the act of said companies or either of them by virtue of its holding such stock; enjoining the Northern Pacific and Great Northern Companies respectively, their officers, directors and agents, from permitting such stock to be voted by the Northern Securities Company or any of its agents or attorneys on its behalf, at any corporate election for directors or officers of either of said companies and likewise enjoining them from paying any dividends to the securities company on account of said stock or permitting or suffering the securities company to exercise any control whatsoever over the corporate acts of said companies or to direct the policy of either; and finally, permitting

the securities company to return and transfer to the stockholders of the Northern Pacific and Great Northern Companies, any and all shares of stock of those companies which it may have received from such stockholders in exchange for its own stock, or to make such transfer and assignment to such person or persons as are now the holders and owners of its own stock originally issued in exchange for the stock of said companies."

(Endorsed:) Decision ordering decree for complain-t. Filed April 9th, 1903. Henry D. Lang, clerk.

In the Circuit Court of the United States for the District of Minnesota, Third Division.

UNITED STATES OF AMERICA, Complainant, *vs.* THE NORTHERN SECURITIES COMPANY, The Northern Pacific Railway Company, The Great Northern Railway Company, James J. Hill, William P. Clough, D. Willis James, John S. Kennedy, J. Pierpont Morgan, Robert Bacon, George F. Baker, and Daniel Lamont, Defendants.	In Equity.	No. 789.

Decree.

This cause came on to be heard at this term and was argued by counsel (Hon. Philander C. Knox, the Attorney General, Mr. D. T. Watson, special counsel, Mr. James M. Beck and Mr. W. A. Day, Assistant Attorneys General and Mr. John M. Freeman, appearing for the United States, and Mr. George B. Young, Mr. John W. Griggs, Mr. M. D. Grover, Mr. C. W. Bunn, Mr. Francis Lynde Stetson and Mr. David Willcox, appearing for the defendants); and thereupon, upon consideration of the evidence and the arguments,

"It was ordered, adjudged and decreed as follows, to wit:

"That the defendants above named have heretofore entered into a combination or conspiracy in restraint of trade and commerce among the several States, such as an act of Congress, approved July 2, 1890, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies' denounces as illegal.

"That all the stocks of the Northern Pacific Railway Company and all the stock of the Great Northern Railway Company, now claimed to be owned and held by the defendant, The Northern Securities Company, was acquired and is now held by it in virtue of

such combination or conspiracy in restraint of trade and commerce among the several States.

"That the Northern Securities Company, its officers, agents, servants and employés be and they are hereby enjoined from acquiring, or attempting to acquire further stock of either of the aforesaid railway companies;

"that the Northern Securities Company be enjoined from voting the aforesaid stock which it now holds or may acquire and from attempting to vote it, at any meeting of the stockholders of either of the aforesaid railway companies and from exercising or attempting to exercise any control, direction, supervision or influence whatsoever over the acts and doings of said railway companies or either of them by virtue of its holding such stock therein.

"That the Northern Pacific Railway Company and the Great Northern Railway Company, their officers, directors, servants and agents be and they are hereby respectively and collectively enjoined from permitting the stock aforesaid to be voted by the Northern Securities Company, or in its behalf, by its attorneys or agents at any corporate election for directors or officers of either of the aforesaid railway companies,

"and that they, together with their officers, directors, servants and agents, be likewise enjoined and respectively restrained from paying any dividends to the Northern Securities Company on account of stock in either of the aforesaid railway companies which it now claims to own and hold;

"and that the aforesaid railway companies, their officers, directors, servants and agents, be enjoined from permitting or suffering the Northern Securities Companies or any of its officers or agents, as such officers or agents, to exercise any control whatsoever over the corporate acts of either of the aforesaid railway companies.

"But nothing herein contained shall be construed as prohibiting the Northern Securities Company from returning and transferring to the Northern Pacific Railway Company and the Great Northern Railway Company, respectively, any and all shares of stock in either of said railway companies which said, The Northern Securities Company, may have heretofore received from such stockholders in exchange for its own stock; and nothing herein contained shall be construed as prohibiting the Northern Securities Company from making such transfer and assignments of the stock aforesaid to such person or persons as may now be the holders and owners of its own stock originally issued in exchange or in payment for the stock claimed to have been acquired by it in the aforesaid railway companies.

"It is further ordered and adjudged that the United States recover from the defendants its costs herein expended, the same to be taxed by the clerk of this court, and have execution therefor.

"HENRY C. CALDWELL,
"*Presiding Judge.*
"WALTER H. SANBORN,
"AMOS *N.* THAYER,
"*Circuit Judges.*"

(Endorsed:) Decree Filed April 9th 1903, Henry D. Lang, clerk.

Circuit Court of the United States, District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Petitioners,
vs.
NORTHERN SECURITIES COMPANY, THE GREAT NORTHERN RAILway Company, The Northern Pacific Railway Company, James J. Hill, William P. Clough, D. Willis James, John S. Kennedy, J. Pierpont Morgan, Robert Bacon, George F. Baker, and Daniel Lamont, Defendants.

To the Honorable Walter H. Sanborn, one of the judges of said court:

Your petitioners, being all the defendants in the cause entitled, do hereby appeal to the Supreme Court of the United States, from the decree of your honorable court, entered against them in said cause on the 9th day of April A. D. 1903, and they pray that this their appeal may be allowed and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

And they further pray that at the time of allowance of said appeal a further order be made suspending during the pendency of such appeal, the injunction contained in said decree against the pay-

ment of dividends by the defendant railway companies to the Northern Securities Company.

Dated April 20th, 1903.

NORTHERN SECURITIES COMPANY,
By JOHN W. GRIGGS,
GEO. B. YOUNG,
Solicitors and Counsel.
GREAT NORTHERN RAILWAY COMPANY,
By M. D. GROVER,
Solicitor and Counsel.
NORTHERN PACIFIC RAILWAY COMPANY,
By C. W. BUNN, *Solicitor and Counsel.*
JAMES J. HILL,
WILLIAM P. CLOUGH,
D. WILLIS JAMES,
JOHN S. KENNEDY,
GEORGE F. BAKER,
By GEORGE B. YOUNG,
Their Solicitor and Counsel.
J. PIERPONT MORGAN,
ROBERT BACON,
DANIEL S. LAMONT,
By FRANCIS LYNDE STETSON AND DAVID WILLCOX,
Their Solicitors and Counsel.

(Endorsed:) Petition for suspension of injunction & for allowance of appeal. Filed April 20th, 1903. Henry D. Lang, clerk, by Louise B. Trott, deputy.

United States Circuit Court for the District of Minnesota.

Term Minutes, January Term, A. D. 1903—April 20th, 1903.

MONDAY MORNING.

Court opened pursuant to adjournment.

Present: Hon. Walter H. Sanborn, U. S. circuit judge; Hon. Charles C. Houpt, U. S. district attorney; Hon. William H. Grimshaw, U. S. marshal; Henry D. Lang, clerk, by Louise B. Trott, deputy.

THE UNITED STATES OF AMERICA
vs.
NORTHERN SECURITIES COMPANY, THE GREAT Northern Railway Company, The Northern Pacific Railway Company, James J. Hill, William P. Clough, D. Willis James, John S. Kennedy, J. Pierpont Morgan, Robert Bacon, George F. Baker, and Daniel Lamont. } C. Equity. No. 789.

Defendants' application for suspension of injunction and allowance of appeal in the above entitled cause now coming on to be heard the complainant appears by its solicitor, Mr. Charles C. Houpt, United States district attorney for the district of Minnesota, the defendant Northern Securities Company appears by its solicitor Mr. George B. Young, the defendant Great Northern Railway Company appears by its solicitor Mr. M. D. Grover, the defendant The Northern Pacific Railway Company appears by its solicitor Mr. C. W. Bunn.

Thereupon Mr. Charles C. Houpt argues in opposition to and resistance of said application on behalf of the United States.

Mr. George B. Young argues in support of said application on behalf of the Northern Securities Company.

Mr. C. W. Bunn argues in support of said application on behalf of the Northern Pacific Railway Company.

Mr. Charles C. Houpt argues in reply and conclusion on behalf of said United States, and here the court takes a recess until 12 o'clock noon.

The court convenes at 12 o'clock noon.

And after hearing the arguments and statements of the solicitors for the respective parties and being fully advised in the premises, and upon due consideration thereof, the court files its written opinion granting said application and allowing an appeal upon the defendants' filing a bond in the sum of twenty-thousand dollars with

sufficient surety conditioned as required for a supersedeas bond to be approved by the court.

A true record,
Attest:

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

United States Circuit Court, District of Minnesota.

UNITED STATES
v.
NORTHERN SECURITIES COMPANY ET AL.

On application for allowance of appeal and supersedeas.

SANBORN, *Circuit Judge:*

"The defendants in this case have the right under the acts of Congress to appeal from the decree of the circuit court to the Supreme Court. They have claimed that right. Ordinarily those who have the right to review a judgment or decree of the circuit court also have the right upon giving a proper bond to supersede the effect of the judgment or decree during the pendency of the appeal. But where, as in the case at bar, the decree awards an injunction the ordinary supersedeas stays proceedings, but does not raise the injunction.

"To enable the courts to prevent unnecessary loss or injury to the parties to litigation in such cases the Supreme Court provided by rule 93 that when an appeal is allowed from a final decree granting an injunction a judge who took part in the decision may make an order suspending the injunction during the pendency of the appeal upon such terms as to bond or otherwise as he may consider proper for the security of the opposite party. It is the customary practice for the courts to exercise this power whenever their action will not injuriously affect the rights of the party who has secured the injunction. In this case that party is the United States. The main purpose and effect of the decree are to prevent the Northern Securities Company from controlling and operating the Great Northern and Northern Pacific railroads, and to accomplish this end it enjoins that company from exercising any control over their operation and from acquiring or voting any of the stock of the railroad companies, and it also enjoins the railroad companies from paying to the Northern Securities Company any dividends on their stock. This is not an application to suspend this injunction. The defendants ask only that the part of the injunction which forbids the payment of the dividends be suspended during the pendency of the appeal.

"These dividends do not belong, and cannot in any event be paid to the United States. It does not claim to have, and it has not any

pecuniary interest in them. Its purpose in prosecuting this suit and its interest in this injunction are only thereby to enforce the law against illegal combinations in restraint of trade and to prevent the Northern Securities Company from controlling, directing, owning, operating or interfering with the competing railroads. This interest, it will be noticed, is protected by that portion of the injunction which forbids the management or control of these railroads by the Northern Securities Company, and forbids it from voting or acquiring any stock of these railroad companies. This portion of the injunction, indeed every part of the decree and of the injunction, is in force and will continue in force during the pendency of this appeal in any event. During this time the United States has and will have under this portion of the decree, which will not be modified or suspended, a complete remedy for any violation of the Sherman anti-trust act, should it occur, both by proceedings for contempt under this injunction and by proceedings under the penal clause of the Sherman anti-trust act.

"The appeal in this case will probably be determined by the Supreme Court about November, 1903. It is not perceived how the payment or the retention of these dividends during the pendency of this appeal can injuriously affect any right of the United States in this litigation, and the only question here is whether these dividends shall be piled up in the treasuries of the railway companies or paid to the stockholders, to whom they legally belong, and who must ultimately receive them whichever way the final decision in this case may be.

"These dividends will ultimately go to the stockholders of the Northern Securities Company whether paid as they are earned or after the final decision. If the railroad companies are permitted to pay their dividends to the securities company, that company will pay them over to its stockholders. The decree permits the stockholders of the securities company to exchange their stock for the stock of the railroad companies for which it was issued. If the Supreme Court affirms this decree, the stockholders of the Northern Securities Company can exchange their stock for the stock of the railroad companies and can draw these dividends upon the latter. If the Supreme Court reverses the decree, the same parties can draw these dividends upon their Northern Securities stock. The retention of the dividends by the railroad companies, while the appeal is pending, would not enhance or speed the enforcement of any legal right of the United States, while it might inflict unnecessary loss and injury upon the stockholders who are justly entitled to receive these dividends as soon as they are earned.

"The order of the court will accordingly be that the operation of that portion of the decree which enjoins the railway companies from paying the dividends upon their stock which is held by the North-

ern Securities Company be suspended during the pendency of the appeal upon the giving of an approved band in the sum of $50,000 by or on behalf of the defendants, conditioned that they will prosecute their appeal with effect, and will pay all damages that shall result to the United States by reason of the order."

(Endorsed:) Opinion on application to suspend portion of injunction. Filed April 20th, 1903. Henry D. Lang, clerk, by Louise B. Trott, deputy.

United States Circuit Court, District of Minnesota.

UNITED STATES
vs.
NORTHERN SECURITIES COMPANY ET AL.

Mr. C. A. Houpt, district attorney, for the United States.
Mr. George B. Young, Mr. C. W. Bunn and Mr. M. D. Grover for the defendants.

It is ordered, that upon the giving of an approved bond to the United States by or on behalf of the defendants in the sum of fifty thousand dollars conditioned to prosecute their appeal with effect and to pay all damages which may result to the United States from this order, that portion of the injunction contained in the final decree herein which forbids the Northern Pacific Railway Company and the Great Northern Railway Company, their officers, directors, servants and agents from paying dividends to the Northern Securities Company on account of stock in either of the railway companies which the securities company claims to own and hold is suspended during the pendency of the appeal allowed herein this day. All other portions of the decree and of the injunction it contains remain in force and are unaffected by this order.

St. Paul, April 20, 1903.

WALTER H. SANBORN,
Circuit Judge.

(Endorsed:) Order suspending portion of injunction. Filed April 20th, 1903. Henry D. Lang, clerk. By Louise B. Trott, deputy.

Circuit Court of the United States, District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Petitioners,
vs.
NORTHERN SECURITIES COMPANY, THE GREAT NORTHERN RAILway Company, The Northern Pacific Railway Company, James J. Hill, William P. Clough, D. Willis James, John S. Kennedy, J. Pierpont Morgan, Robert Bacon, George F. Baker, and Daniel Lamont, Defendants.

The defendants in the above entitled cause having prayed an appeal to the Supreme Court of the United States from the decree entered therein on the ninth day of April A. D. 1903, and having filed a bond in the sum of twenty thousand dollars, with sufficient surety, conditioned as required for a supersedeas bond, and approved by me, the said appeal is hereby allowed.

Dated April 20, A. D. 1903.

WALTER H. SANBORN,
Circuit Judge.

(Endorsed:) Order allowing appeal. Filed April 20th, 1903. Henry D. Lang, clerk, by Louise B. Trott, deputy.

Circuit Court of the United States, District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Petitioner,
vs.
NORTHERN SECURITIES COMPANY, THE GREAT NORTHERN RAILway Company, The Northern Pacific Railway Company, James J. Hill, William P. Clough, D. Willis James, John S. Kennedy, J. Pierpont Morgan, Robert Bacon, George F. Baker, and Daniel Lamont, Defendants.

Now comes the defendants above named and allege that in the proceedings of the circuit court of the United States for the district of Minnesota, third division, in this cause, and in the decree of said court entered therein on the 9th day of April, A. D. 1903, the said court did err in the particulars following:

First.

The court erred in finding and deciding that in the summer of 1901 certain large and influential stockholders of the defendant railway companies conceived the design of placing a very large majority

of the stock of both of said companies in the hands of a single owner. And erred in finding and deciding that the stockholders thus described had practical control of the roads of the two defendant railway companies.

Second.

The court erred in finding and deciding that said above described shareholders arranged and agreed with each other that a corporation to be formed by them under the laws of New Jersey should buy all, or at least the greater part, of the stock of each of the defendant railway companies.

Third.

The court erred in finding and deciding that the above described stockholders agreed with each other to exchange their respective holdings of stock in the two defendant railway companies for the stock of such New Jersey company.

Fourth.

The court erred in finding and deciding that the above described stockholders agreed with each other to use their influence to induce other stockholders in their respective companies to exchange their respective holdings of stock in said railway companies for the stock of such New Jersey company, and in deciding that this was to the end that the New Jersey company might become the sole owner of the whole or at least a major portion of the stock of both of said railway companies.

Fifth.

The court erred in finding and deciding that the Northern Securities Company was organized under the plan mentioned in the foregoing assignments, and in finding and deciding that the capital stock of $400,000,000, with which the Northern Securities Company was organized, was the exact amount required to purchase the total stock of the two defendant railway companies at the price agreed to be paid therefor.

Sixth.

The court erred in finding and deciding that when the Northern Securities Company was organized it assented to and became a party to the above mentioned scheme so found by the court as aforesaid to have been devised by its promoters.

Seventh.

The court erred in finding and deciding that the Northern Securities Company was enabled to make purchases of stock of the Great Northern Railway Company from holders thereof not immediately concerned in the organization of the Northern Securities Company, by the advice, procurement and persuasion of those stockholders of said railway company who had been instrumental in organizing the Northern Securities Company.

Eighth.

The court erred in finding and deciding that the scheme so as aforesaid erroneously found by it to have been devised and consummated, placed the control of the railways of said two railway companies in the hands of the Northern Securities Company, and destroyed every motive for competition between said two railway companies by pooling their earnings for the common benefit of the stockholders of both railway companies; and erred in finding and deciding that any such, or any pooling of earnings, was ever contemplated or has ever been made.

Ninth.

The court erred in holding and deciding that all contracts and combinations which merely tend to restrain interstate commerce, whether by suppression of competition or otherwise, are in themselves, and although such tendency does not result in any such restraint, violations of the act of Congress of July 2, 1890, known as the anti-trust act.

Tenth.

The court erred in holding and deciding that all contracts and combinations which merely confer the power to restrain interstate commerce, whether by suppression of competition or otherwise, are in themselves contracts or combinations in restraint of such commerce and declared illegal by the anti-trust act, though such power is not and is not intended to be exercised.

Eleventh.

The court erred in holding and deciding that every combination whereby the power is acquired to suppress competition between two parallel and competing lines of railway operating under State charters and engaged in interstate commerce, is a combination in violation of said anti-trust act whether such power is exercised or intended to be exercised, or not.

Twelfth.

The court erred in holding and deciding that it would have been a violation of said anti-trust act had the individual defendants, in pursuance of a previous agreement so to do, sold their shares of stock in the defendant railway companies to a natural person, and had induced their fellow-shar-holders to do the same with the resulting acquisition, by such individual, of a majority of the stock of each railway company.

Thirteenth.

The court erred in holding and deciding that the interstate commerce of each defendant railway company is controlled by its shareholders and not by its board of directors.

Fourteenth.

The court erred in holding and deciding that the Northern Securities Company directly controls the commerce of both of the defendant railway companies, though by the charter of each company the management of its business is vested in its board of directors, and the companies have and must have separate and distinct boards of directors.

Fifteenth.

The court erred in holding that the ownership of a majority of the shares of each of two competing railway companies gives to the owner of such shares a control over each of such companies and its commerce, which the holder of a majority of the shares of a single railway company was held, in Pullman's Palace Car Company *vs.* Missouri Pacific Railway Company, 115 U. S. 587, not to possess over such single railway company or its commerce.

Sixteenth.

The court erred in holding and deciding that the constitution and composition of railway companies chartered by States or organized under State laws, but carrying on interstate commerce, are themselves matters of interstate commerce, and, as such, subject to regulation by Congress. And in holding and deciding that under the commerce clause of the Constitution Congress has power to prescribe who may and who shall not be shareholders in such companies, and how much stock any one stockholder or combination of stockholders may own in any such company, and to authorize and forbid the consolidation of such corporati-ns or any of them.

And erred in holding and deciding that the acquisition and holding of stock in such railway companies, and all matters of their internal constitution and composition, are not matters over which the State incorporating such company has exclusive power of regulation. And erred in holding that the authorizing or forbidding of the consolidation of any two such railway companies is not within the exclusive power of the State or States by or under whose laws they have been incorporated.

Seventeenth.

The court erred in holding that consolidations of railway companies created by or under State laws and competitors in interstate commerce, are effectual restraints upon such commerce, and that such consolidations, though expressly authorized by State charter, are violations of said anti-trust act and illegal.

Eighteenth.

The court erred in holding and deciding that any of the defendants have ever attempted to interpose the New Jersey charter of the Northern Securities Company as a shield between themselves and the law, and that such charter is about the only shield that can be so interposed.

Nineteenth.

The court erred in finding and deciding that "the reasoning which led to the acquisition of that (the said New Jersey) charter" was "that while as individuals the promoters could not, by agreement among themselves, place the majority of the stock of the two competing and parallel railroads in the hands of a single person or a few persons, giving him or them the power to operate the roads in harmony and stifle competition, yet that the same persons might create a purely fictitious person termed a corporation, which could neither think nor act except as they directed, and by placing the same stock in the name of such artificial being, accomplish the same purpose."

Twentieth.

The court erred in holding and deciding that the shares of the two defendant railway companies held by the Northern Securities Company have merely been placed in its name by the former holders thereof, and that it is not the absolute owner of the same in its own sole right.

Twenty-first.

The court erred in holding and deciding that, "so far as the New Jersey charter is concerned, the question which the court has to determine is whether a c-arter granted by a State can be used to defeat the will of the national legislature as expressed in a law relating to interstate trade and commerce over which Congress has absolute control."

Twenty-second.

The court erred in holding and deciding that the existing combination gives to a few men acting in concert and in the name of the Northern Securities Company and under cover of its charter the power to control all the means of transportation of the defendant railway companies, and to directly control said companies and all their commerce.

Twenty-third.

The court erred in finding and deciding that "the object and necessary effect" of the combination found by it to exist in this case, "is to give to a single person or to a coterie of persons full control of all the means of transportation owned by two parallel and competing lines of railroad engaged in interstate commerce, as well as the power to fix the rate for the transportation of persons and property."

Twenty-fourth.

The court erred in holding and deciding that the said anti-trust act, if construed as forbidding or restricting the shareholders of the two defendant railway companies from selling their shares to the Northern Securities Company, or exchanging them for shares of that company, or as forbidding or restraining that company from making such purchases or exchanges and holding the railway shares thus acquired as its own, is a valid law and not in conflict with the fifth amendment of the Constitution of the United States.

Twenty-fifth.

The court erred in holding that the said anti-trust act was intended, and was and is effectual, to include and prohibit "virtual consolidations" of parallel and competing railway companies chartered by the several States, and combinations looking to such "virtual consolidations."

Twenty-sixth.

The court erred in holding and deciding that this proceeding can be maintained under section one of said anti-trust act, although it is alleged in the petition itself, and appears by the proofs, that whatever the combination or conspiracy complained of was formed to do had been fully and completely done and effected before this proceeding was begun.

Twenty-seventh.

The court erred in disregarding as immaterial the averments of the answers and the proofs in support thereof, showing that the combination in question was not a combination in restraint of commerce; that its purpose was and its effect has been to very largely build up, increase and protect the interstate and foreign commerce of the two railway companies. And erred in considering not *all* the effects of said combination upon such commerce, but only its possible effect in restraining a minute portion of such commerce—an effect at the most incidental—and in unduly magnifying the extent and importance of such incidental restraint, and holding the same to be the principal, if not the only purpose and effect of such combination.

Twenty-eighth.

The court erred in holding that the proofs disclosed any contract, combination or conspiracy in restraint of interstate or foreign commerce, or any other combination than one to build up and enlarge interstate and foreign commerce without any restraining of either.

Twenty-ninth.

The court erred in deciding and decreeing "that the defendants have heretofore entered into a combination or conspiracy in restraint of trade or commerce among the several States, such as an act of Congress, approved July 2, 1890, * * * denounces as illegal."

Thirtieth.

The court erred in deciding and decreeing that all of the stock of either of the defendant railway companies, claimed to be held and owned by the defendant Northern Securities Company, was acquired and is now held by the Northern Securities Company in virtue of the combination or conspiracy mentioned in the last preceding assignment, and erred in decreeing that any of said stock was acquired or is held in virtue of any such combination or conspiracy.

Thirty-first.

The court erred in decreeing that the Northern Securities Company be enjoined, and in enjoining it, from acquiring or attempting to acquire any further stock of either of the defendant railway companies, and from voting any stock at any stockholders' meeting of either railway company, and from exercising or attempting to exercise any control, direction, supervision or influence whatever over the acts of either railway company by virtue of its holding of stock therein.

Thirty-second.

The court erred in decreeing that each defendant railway company, and its directors, officers, agents and servants be enjoined, and in enjoining them, from permitting the shares thereof held by the Northern Securities Company to be voted at any corporate election of such railway company; and from paying to that company any dividend on the stock of such railway company which it now claims to own and hold; and from permitting or suffering that company or any of its officers or agents to exercise any control whatsoever over any of the corporate acts of such railway company.

Thirty-third.

The court erred in deciding and decreeing that the Northern Securities Company does not and cannot lawfully hold shares in *even one* of the defendant railway companies, and has not and cannot enjoy or exercise the rights and powers incident to such ownership; and in decreeing injunctions depriving it of all rights of a stockholder in either one of the two railway companies.

Thirty-fourth.

The court erred in rendering any decree save a decree for a dismissal of the petition and proceeding.

And the defendants pray that for the errors aforesaid, the said decree may be in all things reversed, and that said circuit court be directed to decree a dismissal of said petition and proceeding.

Dated April 17th, 1903.

GEORGE B. YOUNG,
JOHN W. GRIGGS,
M. D. GROVER,
C. W. BUNN,
FRANCIS LYNDE STETSON,
DAVID WILLCOX,
Solicitors and Counsel for all the Defendants.

(Endorsed:) Assignment of errors, Filed April 20th, 1903. Henry D. Lang, clerk. By Louise B. Trott, deputy.

Circuit Court of the United States, District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Petitioners,
vs.
NORTHERN SECURITIES COMPANY, THE GREAT NORTHERN RAILway Company, The Northern Pacific Railway Company, James J. Hill, William P. Clough, D. Willis James, John S. Kennedy, J. Pierpont Morgan, Robert Bacon, George F. Baker, and Daniel Lamont, Defendants.

Know all men by these presents, that the, *the* National Surety Company, a corporation duly organized and existing under the laws of the State of New York, and with full power to execute this obligation, is held and firmly bound to the United States of America, in the full sum of twenty thousand dollars, for which payment well and truly to be made the said National Surety Company does bind itself and its successors firmly by these presents.

Whereas, in the above entitled cause an final decree was rendered and entered in said circuit court on the ninth day of April, A. D. 1903, in favor of the United States and against said defendants, and the above named defendants having prayed an appeal therefrom to the Supreme Court of the United States,

Now, therefore, the condition of this obligation is such that if the said defendants shall prosecute their appeal to effect and answer all damages and costs if they fail to make their plea good, then this obligation to be void; otherwise to remain in full force and effect.

In witness whereof, the said National Surety Company has caused this obligation to be signed by its resident vice president and its resident assistant secretary, in that behalf severally duly authorized, and its corporate seal to be hereto affixed, this twentieth day of April A. D. 1903.

NATIONAL SURETY COMPANY,
By JAMES W. LUSK, [SEAL.]
Resident Vice President.
WILLIAM B. JOYCE, [SEAL.]
Resident Assistant Secretary.

[Corporate Seal of Nat'l Surety Co.]

In presence of—
CLARENCE A. STORMS.
WILLIAM G. LUND.
ADELE H. MARTIN.

Affidavit, Acknowledgement, and Justification by Guarantee or Surety Company.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

On this twentieth day of April one thousand nine hundred and three before me personally came William B. Joyce, known to me to be the resident assistant secretary of the National Surety Company, the corporation described in and which executed the within and foregoing bond of Northern Securities Company as a surety thereon, and who, being by me duly sworn, did depose and say that he resides in the city of Saint Paul, State of Minnesota; that he is the resident assistant secretary of said company, and knows the corporate seal there-; that the said National Surety Company is duly and legally incorporated under the laws of the State of New York; that said company has complied with the provisions of the act of Congress of August 13th, 1894; that the seal affixed to the within bond of Northern Securities Company, is the corporate seal of said company, and was thereto affixed by order and authority of the board of directors of said company, and that he signed his name thereto by like order and authority as resident assistant secretary of said company, and that he is acquainted with James W. Lusk and knows him to be the resident vice president of said company; and that the signature of said James W. Lusk subscribed to said bond is the genuine handwriting of said James W. Lusk, and was thereto subscribed by order and authority of said board of directors, and in the presence of said deponent; and that the assets of said company, unincumbered and liable to execution exceed its claims, debts and liabilities of every nature whatsoever, by more than the sum of one million dollars.

George C. Power is our agent to acknowledge service in the judicial district wherein this bond is given.

WILLIAM B. JOYCE,
Deponent's Signature.

Sworn to, acknowledged before me, and subscribed in my presence this 20th, day of April 1903.

[Notarial Seal].

W. C. McCURDY,
Notary Public, Ramsey County, Minnesota.

The within bond and the security furnished thereby are hereby approved this 20th day of April, A. D. 1903.

WALTER H. SANBORN,
Circuit Judge.

(Endorsed:) Cost bond Filed April 20th, 1903. Henry D. Lang, clerk. By Louise B. Trott, deputy.

Circuit Court of the United States, District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Petitioners,
vs.
NORTHERN SECURITIES COMPANY, THE GREAT NORTHERN RAILway Company, The Northern Pacific Railway Company, James J. Hill, William P. Clough, D. Willis James, John S. Kennedy, J. Pierpont Morgan, Robert Bacon, George F. Baker, and Daniel Lamont, Defendants.

Know all men by these presents: that the National Surety Company, a corporation duly organized and existing under the laws of the State of New York, and duly authorized by law to enter into this obligation, is held and firmly bound to the United States of America in the sum of fifty thousand dollars, for which payment well and surely to be made the said National Surety Company does bind itself, and its successors firmly by these presents.

Whereas, in the above entitled cause a final decree was rendered by said court in favor of the United States of America and against the defendants above named, on the ninth day of April A. D. 1903, and the said defendants have prayed an appeal from said decree to the Supreme Court of the United States, and have also applied for an order suspending during the pendency of the appeal the operation of so much of said decree as enjoins each of the above named railway companies from paying any dividends to the Northern Securities Company on the stock owned by said Northern Securities Company in said railway companies respectively, and the said order having been made:

Now, therefore, the condition of this obligation is such that if the said defendants shall prosecute their said appeal with effect and shall well and truly pay to the United States of America all damages and costs which the said United States may suffer or incur by reason of the making of said order suspending said injunction during the pendency of said appeal, then this obligation to be void; otherwise to remain in full force and effect.

In witness whereof, the said National Surety Company has caused this obligation to be signed by its resident vice-president and its

resident assistant secretary, in that behalf severally duly authorized, and its corporate seal to be hereby affixed this twentieth day of April A. D. 1903.

NATIONAL SURETY COMPANY,
By JAMES W. LUSK, [SEAL.]
Resident Vice President.
WILLIAM B. JOYCE, [SEAL.]
Resident Assistant Secretary.

[Corporate Seal of Nat'l Surety Co.]

In presence of
WILLIAM G. LUND.
CLARENCE A. STORMS.
JOHN J. NEALY.

Affidavit, Acknowledgement, and Justification by Guarantee or Surety Company.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

On this twentieth day of April one thousand nine hundred and three before me personally cane William B. Joyce, known to me to be the resident assistant secretary of the National Surety Company, the corporation described in and which executed the within and foregoing bond of Northern Securities Company as a surety thereon, and who, being by me duly sworn, did depose and say that he resides in the city of Saint Paul, State of Minnesota; that he is the resident assistant secretary of said company, and knows the corporate seal there-; that the said National Surety Company is duly and legally incorporated under the laws of the State of New York; that said company has complied with the provisions of the act of Congress of August 13th, 1894; that the seal affixed to the within bond of Northern Securities Company, is the corporate seal of said company, and was thereto affixed by order and authority of the board of directors of said company, and that he signed his name thereto by like order and authority as resident assistant secretary of said company, and that he is acquainted with James W. Lusk and knows him to be the resident vice president of said company; and that the signature of said James W. Lusk subscribed to said bond is the genuine hand writing of said James W. Lusk, and was thereto subscribed by order and authority of said board of directors, and in the presence of said deponent; and that the assets of said company, unincumbered and liable to execution exceed its claims, debts and liabilities of every nature whatsoever, by more than the sum of one million dollars.

George C. Power is our agent to acknowledge service in the judi cial district wherein this bond is given.

WILLIAM B. JOYCE,
Deponent's Signature.

Sworn to, acknowledged before me, and subscribed in my presence this 20th day of April 1903.

W. C. McCURDY,
[NOTARIAL SEAL.] *Notary Public, Ramsey County, Minnesota.*

The within bond and the security furnished thereby are hereby approved this 20th day of April, A. D. 1903.

WALTER H. SANBORN,
Circuit Judge.

(Endorsed:) Supersedeas bond Filed April 20th, 1903. Henry D. Lang, clerk. By Louise B. Trott, deputy.

UNITED STATES OF AMERICA, *ss:*

To the United States of America:

You are hereby cited and admonished to appear at the Supreme Court of the United States at the city of Washington in the District of Columbia on the nineteenth day of May A. D. 1903, pursuant to an appeal allowed and filed in the office of the clerk of the circuit court of the United States for the district of Minnesota, third division, wherein The Northern Securities Company, The Great Northern Railway Company, The Northern Pacific Railway Company, James J. Hill, William P. Clough, D. Willis James, John S. Kennedy, J. Pierpont Morgan, Robert Bacon, George F. Baker and Daniel Lamont are appellants and The United States of America are appellees, to show cause, if any there be, why the decree of said circuit court entered therein on the 9th day of April, 1903, and in said appeal mentioned and from which said appeal is taken, should not be corrected, and why speedy justice should not be done in the premises.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 20th day of April in the year of our Lord one thousand nine hundred and three.

WALTER H. SANBORN,
Circuit Judge.

[Endorsed:] Entered 789 C. Equity. Filed May 7th 1903 Henry D. Lang, clerk, by Louise B. Trott, deputy. Citation Due service of the within citation on this 20th day of April 1903 is admitted Chas. C. Houpt United States district attorney.

UNITED STATES OF AMERICA:

Circuit Court of the United States, District of Minnesota, Third Division.

I, Henry D. Lang, clerk of said circuit court, do hereby certify and return to the honorable, the Supreme Court of the United States, that the foregoing, consisting of — pages, numbered consecutively from 1 to — inclusive, is a true and complete transcript of the records, process, pleadings, orders, final decree and all other proceedings in said cause and of the whole thereof, as appears from the original records and files of said court; and I do further certify and return, that I have annexed to said transcript, and included within said paging, the original citation, together with the proof of service thereof.

In witness whereof, I have hereunto set my hand, and affixed the seal of said court, at Saint Paul in the district of Minnesota, this 7th day of May A. D. 1903.

[Seal U. S. Circuit Court, Dist. of Minnesota, Third Division.]

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

Endorsed on cover: File No. 18,924. Minnesota C. C. U. S. Term No. 277. The Northern Securities Company, The Great Northern Railway Company, *et al.*, appellants, *vs.* The United States. Filed May 11th, 1903.

A Table of Contents is at the end of the brief.

Supreme Court of the United States.

OCTOBER TERM, 1903. No. 277.

NORTHERN SECURITIES COMPANY, THE GREAT NORTHERN RAILWAY COMPANY, THE NORTHERN PACIFIC RAILWAY COMPANY, JAMES J. HILL, WILLIAM P. CLOUGH, D. WILLIS JAMES, JOHN S. KENNEDY, J. PIERPONT MORGAN, ROBERT BACON, GEORGE F. BAKER AND DANIEL LAMONT,

Appellants,

vs.

THE UNITED STATES OF AMERICA,

Appellees.

Brief for the appellants, THE NORTHERN SECURITIES COMPANY (herein styled the Securities Co.), JAMES J. HILL, WILLIAM P. CLOUGH, D. WILLIS JAMES, JOHN S. KENNEDY and GEORGE F. BAKER.

[*Note*—The Roman numerals indicate the volumes, and the Arabic the pages, of the Record.]

This is a suit in equity, brought by the United States, under the Act of Congress, of July 2, 1890, known as the Anti-Trust Act, or Sherman Act.

The Petition.

The petition charges that the defendant J. Pierpont Morgan and others, styled his associates, and the defendant James J. Hill, and others, styled his associates, owning or controlling a majority of the stock of the two defendant railway companies, (which will in this brief be called the Great Northern Co. and the Northern Pacific Co., respectively), combined and conspired together on November 13, 1901, to effect a "virtual consolidation" of the two railway companies, and to monopolize and restrain their competitive interstate and foreign commerce "through the instrumentality and means following" (*and no others*), viz., by forming the Northern Securities Co., a corporation under the laws of New Jersey, and transferring to it the stock (being a majority or controlling interest) held by them in the two railway companies. That such transfer would give the Securities Co. the monopoly complained of, because effecting a "virtual consolidation" of the two railway companies and their systems, and a "practical pooling" of their earnings in the hands of the Securities Co., (since that company would receive from each railway company the dividends payable on the shares of such company held by it), and would vest in the Securities Co. the selection of the directors and officers of both railway companies, "with not only the power, but the *duty*" (i. e. on the part of such directors and officers) "to pursue a policy which would promote, *not* the interests of one sys-

tem at the expense of the other, but of both at the expense of the public."

It is suggested rather than alleged that the conspirators had been brooding over their conspiracy ever since 1896, when a contract involving (as this Court held) the acquisition of Northern Pacific stock by the Great Northern Co., and not by its stockholders, was held, in Pearsall v. Great Northern Ry. Co., 161 U. S. 646, to violate a statute of Minnesota.

And the petition also charges that a purchase of substantially all the shares of the Chicago, Burlington & Quincy Rd. Co., made by the Great Northern Co. and Northern Pacific Co. in April, 1901, at a cost of over $200,000,000, was merely a step toward placing the shares of the two last-named companies under a common source of control.

The petition charges that the conspiracy was carried out, and that the Securities Co. acquired the shares of the conspirators and also additional shares in both railway companies, so that it now (i. e. at the beginning of this suit) holds "as owner and proprietor" substantially all the capital stock of the Northern Pacific Co., and a controlling interest if not a majority of that of the Great Northern Co., and that the "virtual consolidation," monopolizing, suppression of competition, etc., which were the objects of the conspiracy, have been fully effected.

It is charged in the petition that the Securities Co. "was not organized in good faith to purchase and pay for the stocks of" the two railway companies, and that it never had money enough to do so; and that the only consideration for the transfer to it of

the shares of the two railway companies was the issue and delivery of its own shares in exchange therefor.

The petition, in paragraph VI, says that the purpose of the conspirators was that the Securities Co. should become the *absolute owner* of the shares transferred to it, and the interest of the transferrors "was to terminate" and they "were to be eliminated." In paragraph VII, it is said that the Securities Co. is now holding all such shares "as owner and proprietor." But in paragraph XI it is alleged, with equal positiveness, that the Securities Co. "is a mere depository, custodian, holder and trustee" of the same shares. Of course the earlier statements prevail against the pleader, especially as the Securities Co. could not at the same time fill all the positions assigned to it in paragraph XI in respect to *all* the shares held by it.

The relief demanded (*inter alia*) is that each railway company be enjoined from permitting the Securities Co. to vote or receive dividends on the shares of such company held by it; that the Securities Co. be enjoined from voting or receiving dividends on such stock; and that the Securities Co. be compelled to recall and cancel all certificates of stock issued by it in purchase of or exchange for the shares of either railway company, and to surrender in return therefor the certificates of the railway shares in lieu of which they were issued.

(It will be observed that the claim of the government is that the Securities Co. has no right to retain its holding of shares in even *one* of the two railway companies).

THE ANSWER.

The answer puts in issue every one of the foregoing statements of the petition, except the actual formation of the Securities Co. and its purchase of shares of the two railway companies, in exchange for its own shares.

It says (Par. II.) that at and before the date of organization of that company, the Great Northern stockholders numbered 1800 and the Northern Pacific stockholders 3500. And that the persons named in the petition as owning or controlling a majority of the Great Northern stock, never owned or controlled as much as one-third of that stock. And the persons named as owning or controlling a majority of Northern Pacific stock never owned or controlled as much as one-third of that stock.

It denies (Par. VI.) the making of the combination or conspiracy charged in paragraph VI of the petition, and denies all the purposes therein imputed to the organizers of the Securities Co.

It denies (Par. VIII.) that any change has taken place in the directorate or management of either railway company since the organization of the Securities Co., or that any of the things done by any of the defendants, their promoters, directors, officers, or stockholders, were done in pursuance of the pretended conspiracy alleged in the petition, and denies that any virtual or other consolidation of the railway companies or their business has been effected or attempted, and denies any conspiracy or intention to restrain trade or commerce, etc.

It says (Par. XI.) that in every one of its acquisitions of shares of either railway company, the Securities Co. has dealt solely with the owner of such shares individually and separately, and that the transfers to it have been absolute and without reserve. Besides payments made by it in its own stock, the Securities Co. has expended upwards of $40,000,000 in cash, in the purchase of the shares held by it. Those shares it holds, and, so long as they remain its property, it will continue to hold, in its own right free from any agreement or understanding that in any manner restricts its right and power of immediate sale, or its right to make any use of them that other owners of such stocks might make.

In the second half of the answer, is stated in detail (in Par. I.) the origin and progress of an enterprise of the two defendant railway companies to build up a great interstate and oriental commerce; the necessity of the fullest access to the territory traversed by the Burlington lines as a market for their east-bound and a source of supply of west-bound traffic; the purchase of the Burlington shares to supply that need, and for no other purpose, and with no purpose to lessen competition of the defendant railways with the Burlington lines or with each other.

In Par. II, the answer states the origin and history of the project of an investment company, which finally developed into the Securities Co.; states the attempt of persons hostile to the development of the enterprise and the business of the defendant railway companies to obtain control of the Northern Pacific

Co.; that such attempt was narrowly defeated and might at any time be renewed, and, if successful, would destroy the interstate and oriental commerce the companies were building up, and would defeat the purposes for which the Burlington shares had been bought; and that as a necessary means of protecting and defending the interstate and foreign commerce of the two railway companies, including their competitive commerce here in question, and the interest of their stockholders therein, the Securities Co. was formed. There has been no agreement among the stockholders of the Securities Co., (who are more than 1300 in number) or between them and any person or corporation as to how they should use or vote their stock. The persons concerned in the formation of the Securities Co. have never held, owned, or controlled an amount of its stock equal to so much as one-third of the amount of it now outstanding.

The Securities Co. was not formed as a scheme or device to evade the Anti-trust Act, and none of those who formed it or sold their shares of stock to it, had any purpose to restrain commerce or lessen competition or monopolize traffic. Since its formation rates on both lines have been voluntarily reduced so as to decrease their annual net earnings by upwards of $1,000,000. The competitive interstate traffic of the two railways, for which the two railway companies have power to fix rates independently of the action of other carriers, does not exceed three per cent of their total interstate traffic. (Par. III.)

The sale and transfer of property, whether in the

form of corporate stock or otherwise, is not in violation of the Anti-trust Act. The Securities Co. is not a railway company, has no power to operate railways, or control rates, or monopolize or restrain traffic of any kind.

The Securities Co. was not organized for the purpose of acquiring a majority of the stock of either railway company, but merely to purchase the stock of those who wished to sell. The transactions complained of have consisted in the organization of a lawful corporation and the purchase of property by it, have been expressly authorized by law, and have had no effect whatever to restrain interstate or foreign commerce. If they should hereafter have any such effect (which is denied) that effect will be merely indirect, remote, and incidental and collateral and not intended, and as nothing compared with the great expansion of the volume of interstate and international commerce which was intended, and, it is believed, is destined to result from the enterprise of the two railway companies which culminated in the purchase of the Burlington stock.

The Anti-trust Act was not intended to prevent or defeat an enterprise in aid of a great competitive interstate and international commerce, merely because such enterprise may carry with it the possibility of incidental restraint upon some commerce trifling both as respects territory and volume.

Nor was the act intended to limit the powers of the several states to create corporations, define their purposes, fix the amount of their capital, and determine who may buy, own and sell their stock. Such

a construction would make it unconstitutional (1) because the power to regulate commerce among the States does not include the power to regulate matters above mentioned in reference to State corporations; and, (2) because it is depriving persons of their property without due process of law to take from them the right to sell it as their interest may suggest.

The answer also pleads a defect of necessary parties defendant. The persons who sold railway stock to the Securities Co. were 1300 or more in number, only a few of whom had any connection with the planning or forming of the Securities Co., and, in their absence from this litigation, no decree can be made affecting their rights.

The Decision.

The cause was heard before the four Circuit Judges of the Eighth Circuit in accordance with the Act of Congress for expediting causes of this nature.

The decision was for the government, and was based on the following findings of fact:

1. That certain large and influential stockholders of the two defendant railway companies, "who have been made parties defendant to the present bill," having "practical control of the two roads," and "acting in concert with each other, conceived the design of placing a very large majority of the stock of *both* of the last named companies in the hands of a *single owner.*"

[The errors in this statement are the subject of the first assignment of error].

2. To this end these stockholders arranged and agreed with each other to cause the formation of a New Jersey corporation which, when organized, "should buy *all* or at least *the greater part* of the stock of the Northern Pacific and Great Northern companies."

[The error in this statement is the subject of the second assignment of error.]

3. "The individuals who conceived and promoted this plan" (i. e. the individual defendants), "agreed with each other to exchange their respective holdings of stock in the railroad companies for the stock of the New Jersey company when the same should be fully organized, and to use their influence to induce other stockholders to do likewise, to the end that the New Jersey company might become the sole owner of the whole or at least a major portion of the stock of both railroad companies."

[The error in this finding is the subject of the third and fourth assignments of error].

4. "In accordance with this plan the Securities Co. was organized on November 13, 1901, under the laws of New Jersey, with a capital stock of $400,000,000, that sum being the exact amount required to purchase the total stock of the two railroad companies at the price agreed to be paid therefor."

[The error in this finding is the subject of the fifth assignment of error].

5. "When the Securities Co. was organized it assented to and became a party to the scheme which had

been devised by its promoters before it became a legal entity."

[The error in this finding is the subject of the sixth assignment of error].

6. Very shortly after its organization the Securities Co. acquired a large majority of all the stock of the Northern Pacific Co. at the rate of $115 per share, paying therefor in its own stock at par.

7. At the same time it acquired about 300,000 shares of the Great Northern Co. from its promoters, at $180 per share, paying in its own stock at par.

8. The Securities Co. subsequently made further purchases of Great Northern stock at the same price, until in about three months, it had acquired about $95,000,000 (of the total $125,000,000) stock of that company, using $171,000,000 of its own stock in payment.

"The Securities Company was enabled to make the subsequent purchases of stock from stockholders of the Great Northern Co. not immediately concerned in the organization of the Securities Co., by the advice, procurement and persuasion of those stockholders of the Great Northern Co. who had been instrumental in organizing the Securities Co. and had exchanged their own stock for the stock of that company shortly after its organization"—that is these individual defendants.

[The error in this finding is the subject of the seventh assignment of error].

9. At the date of the decision "the Securities Co. is the owner of about 96 per cent of all the stock of the Northern Pacific Co., and the owner of about 76 per cent of all the stock of the Great Northern Co."

10. "The scheme which was thus devised and consummated led inevitably to the following results:

"(1) It placed the control of the two roads in the hands of a single person, to-wit: the Securities Co., by virtue of its ownership of a large majority of the stock of both companies.

"(2) It destroyed every motive for competition between two roads engaged in interstate traffic, which were natural competitors for business, by pooling the earnings of the two roads for the common benefit of the stockholders of both companies.

"And, according to the familiar rule that every one is presumed to intend what is the necessary consequence of his own acts when done wilfully and deliberately, we must conclude that those who conceived and executed the plan aforesaid intended, among other things, to accomplish these objects."

[The error in this finding is the subject of the eighth assignment of error].

To the facts thus stated by it the court applies the following legal propositions:

1. All contracts or combinations which merely tend to restrain interstate commerce or merely confer the power to restrain such commerce, whether by suppression of competition or otherwise, are, in themselves, and although such tendency is never realized

nor such power exercised, or intended to be exercised, violations of the Anti-trust Act—and this though the commerce is that of railway companies operating under state charters.

[These rulings form the subject of the 9th, 10th and 11th assignments of error].

2. The individual defendants would have violated the Anti-trust Act if, in pursuance of a previous understanding or agreement so to do, they "had transferred their stock in the two railroad companies to a third party or parties, and had agreed to induce other shareholders to do likewise, until a majority of the stock of both companies had been vested in a single individual or association of individuals, and had empowered the holder or holders to vote the stock as their own, receive all the dividends thereon and pro rate or divide them among all shareholders of the two companies who had transferred their stock. The result would have been a combination in direct restraint of interstate commerce because it would have placed in the hands of a small coterie of men the power to suppress competition between two competing interstate carriers whose lines are practically parallel."

[The court in the foregoing paragraph (which forms the subject of the 12th assignment of error) is assuming a case very different from the present one. Here the Securities Co. is absolute owner of its shares. Its power over the shares and their income, and its power to suppress competition (so far as it may possess any such power), are alike incidents of

its ownership—its absolute ownership—of the stock. They rest on that ownership alone, and are not conferred on it by any agreement.

But in the case supposed by the Court, the transferree is not absolute owner. He is a mere nominal holder of the stock. The transferrors "empower" him to receive all dividends on it, and pro rate or divide them among all the transferrors. The transferree derives his power (if any) to suppress competition from his transferrors, and does not possess it as an incident of absolute ownership of the stock. He is not such absolute owner, and the case imagined by the Court is what is commonly called a "Trust," and is entirely different from that of the Securities Co., and no inference can be drawn from the former to the latter.]

3. Though each railroad company has its own board of directors, still they do not operate independently, but are controlled by those who own the majority of the stock.

The case of *Pullman Car Co. v. Missouri Pacific R. Co.*, 115 U. S. 587, 596, was a case of private contract, and the decision that the directors and not the stockholders control the corporation,

"Cannot be held applicable to cases arising under the Anti-trust Act, where the point involved is whether the ownership of all the stock of two competing and parallel railroads vests the owner thereof with the power to suppress competition between such roads. We entertain no doubt that it does. Indeed we regard suppression of competition, and to that

extent a restraint of commerce, as the natural and inevitable result of such ownership."

[In this paragraph (which forms the subject of the 13th and 14th assignments of error) the Northern Securities Co. appears as owner of the stock, and the power to suppress competition as an incident of such ownership, and its suppression as the result of such ownership not as the exercise of a power to suppress conferred on it by others.

The Court seems to have overlooked the wide difference between a suppression of competition which is incident to ownership of property (as when one of two competing tradesmen buys out the other) and a suppression effected by means of a contract, as when two competing tradesmen agree not to sell below a named price].

4. "By what has been done the power has been acquired (and provision made for maintaining it) to suppress competition between two interstate carriers who own and operate competing and parallel lines of railroad. Competition, we think, would not be more effectually restrained than it now is under and by force of the existing arrangement if the two railroad companies were consolidated under a single charter."

[That is, a consolidation of two railway companies doing an interstate business, though expressly authorized by the state or states of their creation, suppresses competition and so restrains interstate commerce and violates the Anti-trust law and is illegal, and the charter provisions authorizing it are of

course unconstitutional, the consolidation of corporations doing an interstate business being a matter of interstate commerce which congress alone can regulate. And this although the suppression of competition is simply an incident of the ownership by one company of what formerly belonged to two, such single ownership being the result of the consolidation. The foregoing is the subject of the 16th and 17th assignments of error].

5. The Court, having thus shown that as the promoters of the Securities Co. could not lawfully transfer a majority of shares of the two railroad companies to one or a few persons giving them power to operate the roads in harmony and stifle competition, concludes that "it is manifest therefore, that the New Jersey charter is about the only shield which the defendants can interpose between themselves and the law," and gives to the promoters of the Securities Co. credit for the astute idea that what they could not lawfully do themselves could lawfully be done for them by a corporation created for the purpose—and this even though the Anti-trust act declares that the word person shall include corporation. The foregoing forms the subject of the 18th and 19th assignments of error.

[It is needless to say that we claim no power for the Securities Co. that could not be held and exercised by an individual or partnership. If they could not lawfully buy and hold these stocks, the Securities Co. cannot. If they could lawfully do so then the Securities Co. can, and it can buy and hold the stocks

precisely because an individual or firm might do so].

The court assumes that the shares held by the Securities Co. have merely been "placed in its name," and that it is not the owner thereof.

[This error is the subject of the 20th assignment of error].

The court holds that the New Jersey charter presents a question for the court to decide "whether a charter granted by a state can be used to defeat the will of the National Legislature," etc.

[This passage forms the subject of the 21st assignment of error].

6. Answering the objection that any restraint of commerce exercised by the Securities Co. is merely indirect, the court says:

"It is pertinent, therefore, to inquire in what way the existing combination that has been formed does affect interstate commerce. It affects it, we think, by giving to a single corporate entity, or, more accurately, to a few men acting in concert and in its name and under cover of its charter, the power to control all the means of transportation that are owned by two competing and parallel railroads engaged in interstate commerce; in other words, the power to dictate every important act which the two companies may do."

[This forms the subject of the 22nd assignment of error].

The court cites and distinguishes the various cases under the Anti-trust Act in this court, and fails to find in them "any suggestion that a combination such

as the one in hand, the object and necessary effect of which is to give to a single person or to a coterie of persons full control of all the means of transportation owned by two competing and parallel lines of road engaged in interstate commerce, as well as the power to fix the rate for the transportation of persons and property, does not directly and immediately affect interstate commerce."

[The foregoing forms the subject of the 23rd assignment of error].

7. After disposing of the point that the Anti-trust law, if applied to this case, is invalid as depriving citizens of liberty of contract (its conclusion forming the subject of the 24th assignment of error), and overruling the point that the Anti-trust Act was not intended to include or prohibit combinations looking to the virtual consolidation of parallel and competing lines of railroad chartered by the several states (see the 25th assignment of error), the court takes up the contention that the conspiracy charged in the bill had done its work and come to an end before suit brought, and so there is nothing to restrain or prevent; and the act gives the court no jurisdiction to undo what has been done.

It meets this by repeating the statement that "the Securities Co. made itself a party to a combination in restraint of commerce that antedated its organization, as soon as it came into existence, doing so of course, under the direction of the very individuals who promoted it."

[This forms the subject of the 26th assignment of

error. The bill nowhere alleges any such addition to the "combination," nor is there a scintilla of evidence of it. The bill charges that the combination or conspiracy was formed to organize the Securities Co. and transfer to it a majority of the shares of the two railway companies, and that this has all been done. And even if the Securities Co. joined the combination as soon as born, the conspiracy was equally at an end, for there is no pretense that its terms were changed on the accession of the Securities Co.]

8. A point considered important was made by the defendants, as it will be made on this appeal, to the effect that even though the formation and stock purchases of the Securities Co., taken by themselves, might operate to restrain commerce, yet, taking the transaction as a whole of which these matters formed a part, the whole transaction so far from restraining even the three per cent competitive traffic of the railways, was necessary to protect and did and does in fact protect the interstate commerce of both roads, and operates to preserve and enlarge that commerce and not to restrain it.

The Court, however, regards this as merely an argument that an admitted restraint of trade is beneficial to the public and hence not unlawful, and disallows it.

[This ruling forms the subject of the 27th and 28th assignments of error].

THE DECREE.

The Court accordingly prepared and entered a decree—

1. Adjudging that the stock of the two railway companies now claimed to be held and owned by the Securities Co. was acquired and is now held in virtue of a combination or conspiracy theretofore entered into by the defendants in restraint of trade and commerce among the several states such as the Anti-trust Act denounces as illegal.

[This forms the subject of the 29th and 30th assignments of error].

2. Enjoining the Securities Co., its officers, etc.

(a) From acquiring or attempting to acquire any more of such stock.

(b) From voting any such stock at any meeting of stockholders of either railway company.

(c) From exercising or attempting to exercise any control, direction, supervision, or influence on the acts of either railway company by virtue of its holding of stock therein.

[The foregoing forms the subject of the 31st and 33rd assignments of error).

3. Enjoining each railway company, its officers, etc.

(a) From allowing the Securities Co. or its attorneys or agents to vote the stock held by it.

(b) From paying any dividends on such stock to the Securities Co.

(c) From permitting the Securities Co., or its officers, etc., to exercise any control over the corporate acts of such railway companies.

[The foregoing is the subject of the 32nd assignment of error].

The decree further provides that it shall not be construed as preventing a re-exchange between the Securities Co. and those to whom it has issued its own shares in exchange for those of either railway company.

By order of Judge Sanborn, the injunction against payment of dividends was suspended pending this appeal.

STATEMENT OF THE FACTS.

The court refused altogether to consider the position of defendants (or the evidence sustaining it) that the formation of the Securities Co. and its stock purchases, were not to gain control of the two railroad companies, but were made (as stated in the answer) to defend, and were necessary to defend, from destruction an enterprise of the defendant railway companies for the creation and development of a great volume of interstate and oriental commerce, and properly became part of that enterprise and must be considered in connection with that interest, to determine their character as restraints of commerce or otherwise.

It therefore becomes necessary to set forth at some length both the evidence as well as the facts on this branch of the case, as well as on those points immediately connected with the formation of the Securities Co. as to which the Court has fallen into serious errors of fact and of law.

(1) The Enterprise of Creating a Great Oriental as well as Interstate Commerce.

(2) Methods adopted. Progress of the Enterprise down to the purchase of the Burlington Shares.

(3) Effect of want of Permanent Connection with Markets and Sources of Traffic in this Country.

(1) Mr. Hill, I, 665-670; 680-683.
(2) Mr. Hill, I, 668-670; 681-2.
(3) Mr. Hill, I, 680-1, 694, 695.
(4) Mr. Hill, I, 677-9; 731-2; 733-5; 738-9.
Mr. Weyerhaeuser, I, 746-7.
Mr. Harris, I, 753, 766-7, 771.
Mr. Saunders, I, 870.

(1) The Great Northern Co. was chartered by Minnesota, the Northern Pacific Co. by Wisconsin. Each has eastern termini at St. Paul and at Lake Superior, and its western terminus at Puget Sound. They are to a certain extent competing lines for interstate traffic. The main line of the Great Northern Co. was mostly built by the St. Paul, Minneapolis & Manitoba Co., a corporation organized by Mr. Hill and others in 1879, and of which he was president until, in February, 1890, all the lines of the Manitoba Co., constructed and to be constructed, were leased for 999 years to the Great Northern Co., of which company he became and has ever since been president. The policy of these companies of which he was president has largely if not entirely been on the lines recommended by Mr. Hill, not because of any stock control, for he and his immediate associates never held more than 30 per cent of the stock (I, 698), but because of the confidence which the remarkable ability and success of his policy and management inspired in *all* the shareholders.

In 1887, the line of the Manitoba Co. had been completed to Helena, Montana. In 1889, that company began an extension of its line to Puget Sound, which was opened for travel in 1893.

Before beginning this extension the company thoroughly investigated the resources of the country that the railway would traverse, and the kind and quantity of traffic it would be likely to obtain. The country was sparsely populated and could furnish little freight except its natural products, such as lumber and minerals, etc.

Whatever commodities the region might furnish for carriage would be raw material of great weight and bulk in proportion to its value, which would not bear transportation to a market except at extremely low mileage rates, such as could be made possible only by a great volume of traffic in both directions and every practicable reduction in the cost of transportation.

In Washington and Oregon are the largest and finest bodies of standing timber in the United States, the best market for which is in the prairie States between the Mississippi River and the Rocky Mountains; but the lumber and shingles from the Pacific Coast would not bear the cost of transportation to those states if the cars carrying them had to be hauled back empty, or nearly so, for a distance of from 1,500 to 2,000 miles. "Any rate that would pay the cost of moving a car from the eastern terminal to the coast empty, to bring eastward a carload of lumber, would be prohibitory." (Mr. Hill, I, 667). And the same is true of the other products. On the other hand, the unoccupied or sparsely populated country along the line, or reached by it, could not furnish a market for commodities enough to load the returning cars—at least when the lumber traffic should have grown to any magnitude; the result being that unless the company could secure traffic for carriage beyond the Pacific Coast no great commerce either way could exist or be created.

(2) To meet the conditions under which it must create the traffic necessary to its own successful operation, the company went to great additional expense in the location and construction of its road to obtain gradients lower than those of any ine to the Pacific Coast. It spent over $800,000.00 in explorations and surveys before any construction work was done, and Mr. Hill personally took part in these explorations, and examined the soil, water and climate of the country (I, 665). It also made strenuous efforts to create an eastern demand for the lumber of the coast—to create a market for it which did not before exist, in territory where there was little knowledge of it, for the rate on lumber eastward had been 90 cents per hundred, which was prohibitory. To stimulate eastern shipments, Mr. Hill met the representative lumber manufacturers. They thought a rate of 65 cents would enable them to ship their lumber East. Mr. Hill thought otherwise and that they could not pay over 50 cents. And so the company made a rate of 40 cents, and thus began a traffic, which though still in its infancy "has been very largely developed." (Mr. Hill, I, 667).

In the first years of the operation of the road, and before the lumber trade had attained large proportions, the west-bound traffic was more than sufficient to fill the returning cars, the Alaska trade furnishing a large west-bound movement. But as the lumber traffic increased, it became apparent that the east-bound would ere long exceed the west-bound traffic, and "that carried us to investigating the different markets to which we could send any-

thing that was made in the East." (I, 669). For this purpose men were sent to China and Japan, one of them was kept there over a year. "His business was to get a manifest of every vessel that entered or left a Chinese or Japanese port as far as he could; to find what the exports and the imports of those countries consisted of and where they went." (I, 668).

How a Japanese company put on a line of steamships connecting at Seattle with the Great Northern line, and how the first shipments of rails and cotton to Japan were procured, is thus stated by Mr. Hill, (I, 669-670):

> "In 1896, in the fall, we had just closed an agreement with the Japanese General Steamship Company to put on a line of through steamers running to our terminal at Seattle, in connection with our road; and the conditions of the contract were such as to enable us to make a rate from the East to the Orient. I remember when those men were present with us. Some of them were interested in securing rails for their railways. I asked them where they were going to get their rails. Well, they thought they would either get Belgian rails or English rails. The Belgian rails would come from Antwerp, the English rails from Middlesboro. I asked them, as they were going to stay here for a day or two, to let me see what could be done for American rails. I immediately cabled to my friends in London and got quotations for Antwerp and Middlesboro rails, and the best charters to Yokohama. I remember that the rails could be laid down at about $29, the English or Belgian rails. I telegraphed to Chicago. The time was rather a quiet one in American manufactures, especially with the rail-mills, (the Joliet and one or two others were about closing down), three or four weeks before election, and possibly they were a little anxious to

keep their mill running. I told them if they would make a rate of $19.50, we would give them a rate of eight dollars a ton—of 40 cents a hundred—from Chicago to Yokohama, which would be $1.50 a ton lower than the English or Belgian quotations. After some hesitation they made the rate and got the contract for 15,000 tons. That is one case. The cotton business: Some Japanese were passing through. The men I had out there reported the amount of cotton spun in Japan and the fact that the cotton came—the raw cotton came—mainly from India; a short staple cotton, which made an inferior yarn and sold at a low price. I got these gentlemen to try a small shipment of American cotton, with the guaranty, if it did not prove profitable to mix our long staple with their short staple of India, that I would pay for the cotton. The result of that was very satisfactory. The cotton trade has grown very fast, both raw and manufactured, but especially raw cotton."

The growth of this commerce is thus stated by Mr. Hill, (I, 682):

"In 1901 the amount of cotton piece goods was 13,070 bales; 1902, 64,542 bales. Raw cotton in 1901 was 13,230,000 pounds against 41,230,000 pounds the next year."

"Outside of cotton—take nails, wire, articles of that kind—that business has grown to be of very large dimensions, but our rate is a very low one. From Lake Erie to Hong Kong it is 45 cents a hundred, $9 a ton, on those commodities. But the demand for American steel at home makes it almost a matter of indifference whether they send it or not, and we have to look not only to cotton, but to anything that will furnish us business going to the west." (I, 678).

Prior to 1900 the company became unable to get tonnage sufficient for its oriental traffic, and started

to build two ships of its own, of 28,000 tons each, the largest carrying capacity of anything afloat. When Mr. Hill was examined, these were nearly ready for launching (I, 681-2). One has since been launched and is nearly ready for sea. The object of so great tonnage was to be able to make low rates. (I, 683).

(3) In the interstate and international commerce which the Great Northern Co. has thus labored to create and extend, it competes both in this country and on the high sea with the other transcontinental lines, including the Canadian Pacific railway.

But this competition "is a small matter." (Mr. Hill, I, 736). The important competition is "with the Suez canal, * * * with anything that floats on the high seas, * * * with markets, with goods. * * * The competition extends all the way through from the production—the transportation, the cost of laying them down," at oriental ports. (I, 680). And again: "We are not competing with them," (the other transcontinental lines). "We are competing with the conditions that are made applicable through the Suez canal, and through any possible route to get it to the Orient. We have to meet whatever the conditions are or else not do it" —i. e., not carry the traffic (I, 681).

In short this competition in the Orient is a competition with the manufacturers and the commerce of the world, and the rates must be made in com-

petition with the markets of Europe and with the rates of Ocean carriers, whether by way of either Cape or by the Suez Canal.

The policy thus followed by the Great Northern Co. in building up an international, and thereby an interstate commerce, has been followed by the Northern Pacific Co. since its reorganization in 1896. In that year the lines of the Northern Pacific Rail*road* Company (chartered by Congress in 1864) were bought at a foreclosure sale by the present Northern Pacific Co., a corporation chartered some years before by the State of Wisconsin. The purchase was for the benefit of the holders of the securities of the Northern Pacific Rail*road* Co., who became entitled to shares of the purchasing company. The capital of the latter—the Northern Pacific Co., defendant in this cause—was fixed at 155 millions, divided into 80 millions of common and 75 millions of preferred stock. The latter was meant to have but a temporary existence, the company having the right to pay it off at par and cancel it on January 1st of any year until 1917. (I, 374-5, 381). In accordance with the reorganization agreement all the shares, both of preferred and common stock, were vested in and held by J. Pierpont Morgan and four others as "voting trustees," with sole power of voting thereon. This trust was to continue five years unless sooner terminated by the trustees (II, 1654). It was terminated January 1, 1901.

Prior to that date it was considered that it would be desirable to retire the preferred stock in the near future, but action was deferred in order that the

question might be acted upon by a board of directors chosen directly by the shareholders, rather than by a board chosen by the voting trust. (Mr. Steele, I, 283; Mr. Morgan, I, 323).

That the board of directors had power to retire the preferred stock and thus make the common stock the only stock of the company, and this independently of the shareholders, was an important, if not the most important, factor in the defeat of an effort by a hostile interest to acquire a stock control of the Northern Pacific Co.—an attack which will be described later, and which was the immediate cause of the formation of the Securities Co.

(4) In creating and maintaining this competitive interstate and international commerce, both the Great Northern Co. and the Northern Pacific Co. were hampered and placed at a disadvantage with European competitors by want of a sufficiently close and permanent connection with the territory offering the best markets for the products of the country along their lines, and with the places of production and great centers of distribution from which their west-bound traffic must be supplied. Mere joint-tariff arrangements with connecting lines did not ensure such stability of rates or permanent conditions of any kind as were essential to secure the establishment of industrial enterprises along their lines, nor did they allow of a car-service sufficient and certain enough to meet the requirements of producers, ship-

pers and consumers. This is clearly pointed out by Mr. Hill (I, 670-1, 677-9, 738-9); Mr. Weyerhaeuser, (I, 746-7); Mr. Harris, (I, 750-1, 767-771); Mr. Saunders (I, 870-1).

As Mr. Hill says, there needed to be—

> "More than a joint tariff, which might be withdrawn at any time. We could not build up a great permanent business, extending across the continent and even across the ocean, on the basis that tomorrow the rate might be changed, or the party with whom we were working to reach the different points of production or consumption had some other interest or some greater interest elsewhere." (I, 670-1).

And that in case of mere joint tariffs with other lines, he says, on cross-examination (I, 738-9):

> "Any of those lines, or all of them, could at any moment withdraw their joint tariff from us. We could not control the business a day longer than they were willing we should, and we could not undertake to build up a great, permanent interstate and international business on any such basis. I think it would be ridiculous, the statement of it."

And he cites instances where joint rates have been refused his road by other companies.

Mr. Harris says (I, 750-1) that a joint tariff

> "May be cut off by anybody's volition from day to day, and they say, 'That door has got to be closed.' But ownership, common ownership, provides an open door and the means of access, ingress and egress, and people take advantage of it."

THE PURCHASE OF THE BURLINGTON SHARES.

(1) The Burlington Road needed for the Enterprise, and to secure a Coal supply for Minnesota and States Westward. Its Advantages as furnishing Markets, etc.

(2) The Making and Terms of the Purchase.

(3) Not made because the Burlington was a Competitor or to head off any extension of it.

(4) Not made with a view of placing Great Northern and Northern Pacific under a Common Control.

(1) Mr. Steele, I, 279.
Mr. Morgan, I, 328-337.
Mr. Hill, I, 670-1, 671-2, 673-7, 678, 733
Mr. Weyerhaeuser, I, 745, 746-7.
Mr. Harris, I, 749-754, 757-8, 771.
Mr. Saunders, I, 868-871.

(2) Mr. Hill, I, 26-31, 41-45, 148-150.
Mr. Mellen, I, 159-162.
Mr. Steele, I, 277-280.
Mr. Morgan, I, 332.

(3) Mr. Hill, I, 138; I, 686, 687.
Mr. Harris, I, 759-762.

(4) Mr. Morgan, I, 334, 344-5.
Mr. Hill, I, 686.

(1 & 2) Some years before 1901, Mr. Hill had contemplated a joint purchase by the Great Northern Co. and the Northern Pacific Co., of the Burlington road or the stock of that company, as a means

of securing the best market in the country for their east-bound shipments, the best source of supply for their west-bound interstate and foreign commerce, and the only available source for supplying fuel to the country along their lines east of the Missouri River, and for their own needs. But in the then conditions, and the Northern Pacific Co. having not yet reached a point where its shares were worth par, that company was not able to join in a purchase which it was not thought advisable for the Great Northern to undertake alone. (Mr. Hill, I, 685). But in the year 1900, the Northern Pacific Co.'s financial position had become so well established that it had been determined to dissolve the voting trust on the 1st of January, 1901, and about this time Mr. Morgan (whose firm had conducted the reorganization of the Northern Pacific Co., and had ever since been its bankers and fiscal agents) thought that the time had arrived when the two companies might join in obtaining an extension eastward, and he and Mr. Hill conferred on the matter. Mr. Morgan was principally concerned with obtaining a line to Chicago, so as to make that city the terminus; and considered that, of the available lines, the St. Paul was preferable, because, if purchasable at all, it could be bought cheaper than the Burlington. The latter was Mr. Hill's choice, his views embracing much more than a mere eastern terminus; but he yielded to Mr. Morgan's wish, and a negotiation for purchase of the St. Paul was opened, but came to nothing. It was then agreed that Mr. Hill should open negotiations for purchase of the Burlington

shares through that company's board of directors—the only way in which they could be obtained. This was done and a price arrived at which the directors would recommend their shareholders to accept. In April, 1901, a proposal to the Burlington shareholders at that price was made by the boards of directors of the Great Northern Co. and Northern Pacific Co. and accepted by nearly all the shareholders, and those companies thereby became purchasers each of about one-half of the $108,000,000 capital stock of the Burlington Co., at the price of $200 per share, or about $216,000,000 in all, payable in the joint 4 per cent long-time bonds of the two companies.

The Circuit Court, in its opinion, following too closely the brief for the Government, says that the Burlington shareholders were paid for their shares in their own company's bonds, guaranteed by the Northern Pacific Co. and the Great Northern Co. A mere glance at the form of bond and the trust deed, (introduced by the Government, I, 508, 510) shows that no such "high finance" was practised.

The peculiar advantages of the Burlington system (comprising 8,000 miles of road) which made it so essential to the success of the enterprise that had been undertaken, were these:

Its lines traverse the treeless States of Illinois, Iowa, Missouri, Nebraska, Wyoming, Kansas and Colorado, which afford the best markets for the lumber of the Pacific Coast. They reach Denver, Kansas City, Omaha and Aurora, where are located the principal smelters of silver-lead ores, such as are

mined near the lines of the defendant railway companies.

They reach Omaha, Kansas City and Chicago, where are the great packing-houses and the great markets for the cattle and sheep of the ranges of North Dakota, Montana, Wyoming, Idaho, Oregon and Washington.

They reach St. Louis and Kansas City, connecting there with lines traversing the Cotton States, from which come the raw and partly-manufactured cotton required for shipment to China and Japan.

At Chicago and St. Louis they connect with the lines which reach the points of supply of manufactured iron, steel, machinery and other manufactured articles that find a market in Japan and China.

(Mr. Hill, I, 671-2; Mr. Weyerhaeuser, I, 746; Mr. Harris, I, 750-752, 757-8).

The Burlington line southward from Minneapolis and St. Paul along the Mississippi River reaches the great coal deposits of Southern Illinois, the largest west of Pennsylvania and West Virginia; and its light gradients and consequent great capacity and low cost of transportation make it possible to supply such coal to points on the lines of each defendant railway company east of the Missouri River, relieving the people and the railways of that territory from entire dependence upon the Pennsylvania and West Virginia mines, the supply from which is yearly becoming more costly and less certain. (Mr. Hill, I, 673-7; Mr. Harris, I, 752-3; Mr. Saunders, I, 868-870).

And the low grade of this line also allows the hauling of return loads of iron ore from the mines in Minnesota to the smelters at St. Louis, thus reducing the cost of transporting coal. This ore traffic, which could not exist before the purchase of the Burlington shares, has already become important. (Mr. Hill, I, 677, 685; Mr. Harris, I, 756-7, 777).

That the time was near at hand when St. Paul and Minneapolis and the country to the westward could no longer depend on Pennsylvania and West Virginia for a supply of the fuel which (since the almost total destruction of the forests) has become absolutely necessary to make the country habitable, and that this need could only be supplied from the Illinois coal fields, and that the same condition confronted the two railway companies—all this was foreseen by Mr. Hill and was an additional inducement to the Burlington purchase. (Mr. Hill, I, 673-4).

Mr. Hill's anticipations have already been justified.

That the Burlington could not be utilized to advantage to supply the fuel needs of the Northwest under any joint-tariff agreement is pointed out by Mr. Hill, Mr. Harris and Mr. Saunders. While, as Mr. Saunders says (I, 871), the Burlington purchase will save the people in the territory served by these railways, 25 per cent on the cost of their fuel, yet this is not the greatest advantage. The main point is that it enables them to get fuel at all, and to get a cerain supply. (Id.)

The price paid for the Burlington stock was lower per mile of main track covered by the stock than that

for which the stock of any other large and well-established system, in the same general territory, could have been bought. (Mr. Hill, I, 148).

The purchase of the Burlington stock by the Northern Pacific and Great Northern Companies in equal parts would serve each company as well as if it were the sole owner of such stock, while such purchase might have been beyond the financial means of either company by itself.

The evidence is therefore uncontradicted and conclusive that the Great Northern and Northern Pacific Companies each purchased an equal number of shares of the Burlington stock as the best means and for the sole purpose of reaching the best markets for the products of the territory along their lines, and of securing connections which would furnish the largest amount of traffic for their respective roads, increase the trade and interchange of commodities between the regions traversed by the Burlington lines and their connections and the regions traversed or reached by the Great Northern and Northern Pacific lines, and by their connecting lines of shipping on the Pacific Ocean, and as the best, if not the only means of furnishing an indispensable supply of fuel for their own use and for the inhabitants of the country traversed by their lines. These connections and the interchange of traffic thereby secured were deemed to be and are indispensable to the maintenance of their business, local as well as interstate, and to the development of the country served by their respective lines, and of like advantage to the Burlington lines and the country served by them, and strengthen each

company in its competition with European carriers, for the trade and commerce of the Orient.

(3) In such purchase there was no purpose to lessen any competition of the Burlington lines with those of either of the purchasers, for they are not competitive, (Mr. Hill, I, 737; Mr. Harris, I, 759-762); or to lessen any competition between the purchasers. Such purchase was not intended to have, and it cannot have, any such effect.

In the Peter Power Case (from which much of the Government case is taken) an unsuccessful attempt was made to show that at the time of the purchase, the Burlington Co. was projecting extensions to the coast. And this testimony is adopted by the government in this case, (I. 137-9), and a further attempt is made to show the same thing by cross-examination of Mr. Harris, a witness for defendants (I, 759-762). Although no such charge is made in the petition, this cross-examination of Mr. Harris (having no relation to anything in the direct examination of the witness) was evidently an attempt to get material for a charge, afterwards made at the hearing below, that the purchase of the Burlington shares was made as a means of heading off extensions of that road into the territory of the purchasers—a charge insinuated, if not directly made, in at least one speech of a high officer of the Government during a recent political campaign, in which much space is devoted to this litigation, and it is positively stated that at the time of the purchase, the Burlington

system "was gradually pushing its rails northwesterly into the territory occupied by the purchasers, and westwardly to the Pacific Ocean." The total want of foundation for this statement is found in the very evidence introduced by the Government itself.

(4) It is charged in the petition (Par. V) that the purchase was made with a view of placing the Great Northern and Northern Pacific systems under a common source of control—that is, in view of the conspiracy therein set forth. But the testimony above referred to is conclusive against that charge. And it is directly refuted by Mr. Morgan in testimony introduced by the Government. He says (I, 334), "So far as the Northern Pacific Co. was concerned, nobody thought of the Northern Securities Co. at that time or dreamed of it." And later in the course of the same testimony he says that the thought of transferring the Northern Pacific shares to a stockholding company came to him after the raid of May, 1901, and in consequence of that raid. (I, 344-5). And Mr. Hill says that "the question of the Northern Pacific and the Great Northern ever being put into a common ownership was not thought of in that connection nor until long afterwards." (I, 686).

And it appears that after the purchase of the Burlington shares and as late as May 2, 1901, the treasurer of one of the Northern Pacific subsidiary companies sold a block of 13,000 shares of Northern Pacific stock—and not to these conspirators. (Mr. Hill and Mr. Mellen, I, 63).

And on this point Mr. Hill further says (I, 687) that at the directors' meeting at which the Burlington purchase was authorized a member of the board pointed out that as the Great Northern Co. would incur a joint and several liability on the bonds for the entire purchase price, it was a matter of consequence for it to know that the Northern Pacific would not pass into the hands of people who might be interested in other directions, in developing other sections of the country. Mr. Hill answered, referring to the holdings of Mr. Morgan and himself and their friends of Northern Pacific Stock, and he says:

> "I did not think at the time that it was at all likely that anybody would undertake to buy in the market the control of 155 millions of stock."

RESULTS OF THE BURLINGTON PURCHASE.

(1) Great Increase of Interstate and especially Asiatic Commerce and Consequent Reduction of Rates.

(2) That Commerce not Diverted from other Lines, but Created. Benefits to Shippers and Consumers in the Territory of all three Railroads. Sole Protection against Fuel Famine.

(1) Mr. Hill, I, 677, 682, 683-5, 715, 720-6, 730-1, 735-7.
Mr. Harris, I, 748-754, 757-8, 767-8, 773, 776-7.
Mr. Mellen, I, 864-5.

(2) Mr. Hill, I, 735-6.
Mr. Mellen, I, 862-3.
Mr. Hill, I, 676, 678, 684-5, 731-4.
Mr. Weyerhaeuser, I, 746-7.
Mr. Harris, I, 750-1, 753-4, 765, 774, 777.
Mr. Saunders, I, 867-872.

(1) It would not have been singular if the period between the acquisition of the Burlington shares (the bargain for which was made in April, and the title finally acquired upon payment in the joint bonds in September, 1901), and the taking of defendants' evidence in October, 1902, had shown no marked growth in the commerce of the purchasers. A new channel opened for commerce cannot be filled at once, especially if that commerce has to be in

great part created. The absence of any such increase would not have been surprising, even if no unusual obstructions had been interposed. But, as already pointed out, the certainty of the duration of the connections and facilities—the permanence of the conditions—created by the purchase lie at the basis of every considerable undertaking of miner, manufacturer or other shipper whose business would be served by these lines. And ever since the bargain in April, 1901, that certainty has been brought in question. At the outset came the acquisition of a majority of the Northern Pacific shares by interests hostile to the use for which the Burlington shares were purchased. The defeat of this attempt had hardly become known to the public when individuals, principalities and powers, from the Peter Power syndicate to the Government of the United States, commenced a succession of suits in which not only was the Securities Co. attacked as the fruit of a conspiracy in restraint of commerce both local and interstate, and as itself a combination to restrain and monopolize such commerce, but the Burlington purchase was assailed as made with a view to carrying out such conspiracy, a step in carrying it out. And during all that period, the same charges have been reiterated in a considerable portion of the press and on political platforms. In view of these concerted and persistent and widespread attacks, which could not fail to throw doubts on the permanence and stability of the relations between the lines of the purchasing companies and those of the Burlington, there would be slight cause for surprise if during

this period there had been little or no increase of traffic as a result of the purchase.

But even in the face of all these opposing influences, the evidence shows a very marked, and in respect to some commodities, a marvellous increase of commerce. Without quoting all that is said by the witnesses in the passages cited above, it is enough to refer to one or two items. Between June 30, 1900, and June 30, 1901, the Great Northern shipments of cotton piece goods was 13,070 bales; of raw cotton 13,230,000 pounds. In the year ending June 30, 1902, the shipments were: piece goods, 64,542 bales; raw cotton 41,243,000 pounds (Mr. Hill, I, 682). And the general increase of that company's traffic has been 33 per cent and its foreign commerce has more than doubled (I, 736). The coal traffic between the Illinois mines and points on the Great Northern and Northern Pacific railways has grown from small dimensions to a great business, and as a result, large shipments of iron ore from Minnesota to St. Louis in the returning coal cars have been made possible, have begun and are increasing. Seventy to one hundred thousand tons were engaged for shipment in the last winter, with the prospect of an increase to 300,000 tons before spring. (Mr. Hill, I, 677; Mr. Harris, I, 777).

(2) That this increase of traffic is not by diversion from other roads, but is commerce that has been created, is the statement of each of the witnesses cited.

In Mr. Hill's cross-examination, a good deal of ingenuity was wasted (I, 735-6) in the attempt to make it appear that the Burlington purchase had not resulted in creating traffic, but merely in diverting it from other roads. But Mr. Hill says (I, 736): "It has *created* traffic," and goes on to state to what extent. Mr. Mellen's testimony is to the same effect (I, 862-3).

Mr. Harris, while he cannot speak as to details, is confident that on the Burlington lines traffic has increased in consequence of the purchase. (I, 775), although as yet (i. e. at the date of his testifying, October, 1902), the advantages of the purchase have accrued in but a small degree compared with what will come "when the question as to whether things that have done and put together are going to stay together or be torn asunder," is settled (I, 773). He mentions the preparations being made by the Burlington, by various improvements in its road, to provide for the great increase of traffic which that company, at least, looks forward to as a consequence of the purchase. (I, 765, 768).

As to the effect of the purchase on the general prosperity of the country along the Burlington lines, he makes this striking observation—and of his capacity to form an opinion there can be no question:

> "I think that was the very best disposition that could have been made of the property for the interests of the merchants and the manufacturers and the industrial population and the agriculturai population along the Burlington road. I think it gives them additional resources, aids in the development of latent resources, and represses none." (I, 774).

This increase of traffic has been attended with a very large reduction of rates, on both competitive and non-competitive business (Mr. Hill, I, 684, 720-726, 730-1).

If defendants' witnesses were to be examined now (they were examined in October, 1902); and if their testimony agreed with the concurrent opinions of the large coal dealers in St. Paul and Minneapolis, they would say that Mr. Hill's forebodings of an approaching bituminous coal famine in the Northwest, and his judgment that the Burlington road furnished the only safeguard against such a calamity, had been fully justified, and that it is the through shipments from the mines reached by the Burlington road, made possible by the purchase of its shares, that have saved much of the country along the lines of the purchasing companies from such a famine, and have made it habitable during the last winter.

(1) **The attempt of Hostile Interests to gain Control of the Northern Pacific Shares.**

(2) **How the Attempt was Defeated.**

(3) **Effect of it, if successful, on Northern Pacific and Great Northern Properties and their Enterprise, and the Value of their Shares. Would not so much Divert Commerce as destroy it.**

(4) **Classes of Northern Pacific Stock; Retirement of Preferred Stock.**

(1) Mr. Hill, I, 46-49, 50, 52-55.
Mr. Schiff, I, 262-3, 271.
Mr. Steele, I, 280-282.
Mr. Morgan, I, 337.

(2) Mr. Hill, I, 48, 50-51, 52, 55-6, 60, 64.
Mr. Steele, I, 284-286, 287-8.
Mr. Morgan, I, 337-342.

(3) Mr. Hill, I, 65, 66, 84; I, 694-5, 738-9, 740, 742.

(4) Mr. Hill, I, 57, 64-5, 80-82, 101-2.
Mr. Mellen, I, 170-1, 172.
Mr. Kennedy, I, 217-8.
Mr. Perkins, I, 239.
Mr. Steele, I, 301, 305-312.
Mr. Morgan, I, 323-5, 366-7.
Vol. I, 381-2; Ex. 4.

(1) What Mr. Hill thought so unlikely—that anyone should undertake to buy in the market the control of 155 millions of stock, a thing absolutely without precedent—actually came to pass within a fortnight. In the earliest days of May, 1901, J. P.

Morgan & Co. learned that the large purchases of Northern Pacific shares that had been recently made were made by what the witnesses call the "Union Pacific Interests"—that is by persons closely identified with that road and acting in its interest. It was afterwards learned that these purchases comprised 41 millions of the preferred and 37 millions of common stock, making in all 78 millions, a clear majority of the 155 millions of capital stock of the company. These same interests had already applied to share in the Burlington purchase, and their request had been refused. (Mr. Hill, I, 44-6). The Union Pacific Co. owned all the shares of the Oregon Short Line Co. and with it owned all the shares of the Oregon Railway and Navigation Co., (Mr. Harriman, I, 603, 608), and was a direct competitor with the Northern Pacific Co., and could not be suspected of making such enormous purchases out of any desire to promote the interests of the other shareholders of that company, or of that company itself, or its business—and least of all its interests involved in the purchase of the Burlington shares. This was the opinion of J. P. Morgan & Co., "and that we would probably be looked to by the minority shareholders or outstanding shareholders to protect the Northern Pacific road from going into control of anybody else." (Mr. Steele, I, 281). That firm had had absolute control of the reorganization of the company in 1896 (Mr. Morgan, I, 314). They had ever since been its fiscal agents, and also members of the voting trust till its termination January 1, 1901. (Id. 317-8).

(2) Mr. Morgan says (I, 338):

> "When I heard that, I felt in this position. We had reorganized the Northern Pacific. We had placed all the securities of the Northern Pacific. * * * I feel bound in all honor when I reorganize a property, and am morally responsible for its management, to protect it, and I generally do protect it; so I made up my mind that it would be desirable to buy 150,000 shares of stock, which we proceeded to do, and with that I knew we had a majority of common stock, and I knew that actually gave us control, and they couldn't take the minority and have it sacrificed to the Union Pacific interests."

Mr. Steele also testifies (I, 282) that "we decided that it was important and there was a moral obligation upon us to endeavor to secure the stock, and my firm proceeded to purchase Northern Pacific common stock."

They did this between May 1 and May 7, buying about $15,000,000 of common stock (Mr. Steele, I, 284, 285).

Before making this large purchase, Mr. Steele ascertained from Mr. Hill that he and his friends would not part with their common stock (Mr. Steele, I, 282,) and they both understood that the preferred stock was to be retired (Mr. Steele, I, 282-3; Mr. Hill, I, 62, 64).

Mr. Morgan's knowledge that with a purchase of 15 millions of (common) stock "we had a majority of common stock," was based on these facts:

His own firm held before the purchase about 4 or 5 millions and after the purchase about 20 millions (Mr. Steele, I, 285-6).

In the reorganization, Mr. Hill and three others received 3 millions of common stock (Mr. Hill, I, 145).

Afterwards, and in 1896, he bought for himself and several friends (on individual and not joint account) about 26 millions. (Mr. Hill, I, 145; Mr. Kennedy, I, 212; Mr. Morgan, I, 317 and note). Of the 29 millions thus obtained in 1896, they held early in May, 1901, about 20 millions. (Mr. Hill, I, 48). These sums, together with other amounts held by friends of J. P. Morgan & Co., made up a total of between 41 and 42 millions—a clear majority of the common stock (Id. I, 48; Mr. Steele, I, 298).

Mr. Morgan's confidence that the holding of a majority of the common stock would defeat the hostile plans of the holders of a majority of all the stock of the company, and protect the company from a hostile control was based on the character and conditions of the preferred stock, as provided in the resolutions under which it was issued (I, 375, 381-2, 384). By those resolutions each share had equal voting power with a share of the common stock, but the company had power to pay off at par and retire all or any part of the preferred stock on the first day of January of any year up to 1917.

The preferred stock was regarded as

> "Simply a temporary loan until we should issue the common stock at par and take it up; and consequently in dealing with the question, the question simply was when the directors of the Northern Pacific should decide that it was expedient to do so." (Mr. Morgan, I, 325).

In the fall of 1900, Mr. Morgan considered that this stock might and should be retired in the near future, but preferred that this should be done by a board of directors chosen directly by the shareholders after the voting trust should have been dissolved. (Id. I, 323).

Upon the retirement of the preferred stock, the 80 millions of common would be the only outstanding stock of the company. Messrs. Hill and Morgan and their friends, having a majority of this, would also be in position to retain that majority when the rest of the capital (75 millions) should be issued as common stock to take the place of the retired preferred stock, and so continue in "complete control." (Mr. Hill, I, 65). They would be entitled to the same proportion of the new as of the existing common stock,—of course, on payment for it at par—i. e., on payment of about $39,000,000.

The power to retire the preferred stock was considered by Messrs. Morgan and Hill to be in the board of directors—not in the body of the stockholders. It was afterwards exercised by the board, and their action was sustained by the courts in Minnesota and in New York. The board at that time had been nominated by the voting trust— i. e., by J. P. Morgan & Co. The annual meeting for choice of a new board was to be in October. At that meeting the Union Pacific interests could elect the board. Should the existing board in the meantime have taken action for retiring the stock on January 1, 1902, could its action be revised and nullified by the stockholders' meeting or by the new board? And

if there was danger of this, could not the present board amend the by-laws by which the date of the stockholders' meeting was fixed in October, so as to fix it in January after the stock should have been actually paid off and retired?

These details—all found in the evidence introduced by the Government—are important as showing how nearly the Union Pacific interests succeeded in their attack, and the principal cause of their failure. It would seem that they were ignorant or ill-advised as to the seat of the power to retire the preferred shares. Otherwise, instead of buying 41 millions of preferred and only 37 millions of common, they could not have failed to buy 41 millions of common and only 37 millions of preferred. In that case they would have had absolute control, whether the preferred stock was retired or not.

Any question as to the ultimate stock control of the company was soon put at rest. During the operations of the opposing parties many persons had sold them stock they did not own. The competition between these persons to buy stock for delivery pushed the price of common stock at one time to $1,000 (on May 9, 1901,) and threatened a general panic, and caused a stringency in the money markets of the world. It would seem that persons who had just bought 78 millions of stock on credit must have been of all the most desirous of allaying the tempest. However this may have been, and whatever the reason for their action, they did, at a meeting of bankers and others held to devise means for relieving the financial situation, agree that Mr.

Morgan should have power to name the board of directors to be chosen at the October election. This of course sealed the fate of the preferred stock beyond a peradventure, and left the stock control of the Northern Pacific Co. absolutely with Mr. Hill and Mr. Morgan and their friends. (Mr. Hill, I, 50-51, 55-6, 61-2, 63; Mr. Steele, I, 287-8).

It was claimed by the Government in the Circuit Court that at this meeting the retirement of the preferred stock was agreed on. But Mr. Harriman testifies (I, 903) that as late as November, 1901, he considered that he had a controlling interest in the Northern Pacific Co., although "there was a probability that there would be an effort made to retire that stock without our consent." And see Mr. Hill's testimony, I, 68, 99.

It was further claimed that at this meeting directors representing Union Pacific interests were agreed on for the Northern Pacific. And a Wall Street newspaper was offered as proof of this.

But at this time Mr. Morgan was in Europe. His partner, Mr. Steele, who attended the meeting, denies any such agreement. He says that the first suggestion of naming any directors from the Harriman party came from himself in conversation with Mr. Morgan, after the latter's return from Europe in July. (Steele, I, 287, 294-5).

Mr. Morgan (I, 342-4) says that in making the appointments in July, he acted in entire independence, and "I think that the people that were more

than surprised that they were put on, were the Union Pacific interests themselves. * * * It showed that we had nothing to fear from it."

Mr. Hill, (a witness for the Government) says:

> "Q. Was there at that conference, Mr. Hill, any agreement among the parties to it as to the Union Pacific being represented on the board of the Northern Pacific?
> A. There was not.
> Q. No understanding with reference to that?
> A. None whatever."
>
> (I, 60, and see 58, 59, 61, 68-9).

(3) The very great injury which the success of the "raid" would have wrought to the Northern Pacific shareholders and to that company, and especially to its interests under the Burlington purchase and the traffic to result therefrom, seems hardly to require proof; but abundant proof is furnished by what was done to defeat it and prevent a repetition of it. And the passages cited above contain direct evidence on this point. Thus Mr. Hill says (I, 742):

> "The value of the property would be destroyed. Its growth would be restricted. It would be controlled in the interests of another property or body, for the reason that it would be restricted or might be restricted so as not to interfere with the growth of the other property."

And the injury to the Great Northern would be no less. Besides its effect on the general interstate business of that company, the control of the Northern Pacific by the Union Pacific would deprive the Great Northern of the benefit of the Burlington con-

nection, to acquire which it had incurred a joint and several liability of over $200,000,000, and would deal a fatal blow to the commerce to which that connection was absolutely essential.

In his testimony in the Peter Power case, introduced by the Government, Mr. Hill says that in such case there would have been nothing left for the Great Northern shareholders to do but to sell out to the Union Pacific (I, 65, 66, 84).

Testifying for the defendants in this case, he says (I, 694):

> "With the Northern Pacific as a half-owner in the shares of the Burlington and responsibility for one-half of the purchase price of these shares, the transfer of the shares of the Northern Pacific or the control of the Northern Pacific to an interest that was adverse or an interest that had greater investments in other directions, the control being in the hands of companies whose interests would be injured by the growth and development of this country, would of course put the Great Northern in a position where it would be almost helpless, because we would be, as it were, fenced out of the territory south which produces the tonnage we want to take west and which consumes the tonnage we want to bring east; and the Great Northern would be in a position where it would have to make a hard fight—either survive or perish—or else sell out to the other interests. The latter would be the most business-like proceeding.
>
> "Q. What would be the effect of such an acquisition by a hostile interest on the minority stockholders in the Northern Pacific?
>
> A. Why, it would, practically put the control of the Northern Pacific interest in the hands of people who were hostile to its growth or development. *The measure of injury would be destruction.* It would destroy the entire

plan upon which the whole enterprise was originally designed and carried out, as far as it had been carried out.

Q. That is, your plan for building up a great interstate and Oriental traffic?

A. Yes, sir; and the conditions under which that business should be done, because the other lines could not—it was a physical impossibility for them to carry at the rates that are necessary to carry it, and the rates that we must make, without making a positive loss on the business.

Q. So that, in effect, they would not only deprive you of that commerce, but they would destroy the commerce itself?

A. Destroy the commerce itself."

After stating in a passage too long for quotation why the other lines could not carry on this commerce—could not make rates in competition with the high seas and the Suez Canal—and being asked if there was any other motive in having the Securities Co. acquire a majority of the Northern Pacific stock than to defend and protect the interest of the stockholders and the enterprise he had spoken of, Mr. Hill says (I, 695):

> "The object and the intent was to defend the property that otherwise would be destroyed, both of the Northern Pacific and the Great Northern. When I say *destroyed*, there would be something left, but the main plan would be destroyed; there would be something left, but the property would be incapacitated from doing what it was intended to do and what it was quite able to do."

On cross-examination by the Government, Mr. Hill again describes (I, 738-740) in what manner the Union Pacific control of the Northern Pacific would operate to prevent the use of the Burlington

as a means of developing the commerce which his company "had worked long and hard to establish." And to the suggestion of the Government counsel that it was a mere matter of competition, and the only effect would have been that "competition would have been so severe you could not have stood it?" he replies, (I, 740):

> "It was not a question of competition. It was a question of physical inability to reach the market. We would be shut out from the markets."

(1) **Original Plan of a Stockholding Company. Its Purpose. Confined to a few Great Northern Minority Shareholders. Privilege to be offered to other Great Northern Shareholders.**

(2) **Lesson of the attempt to gain Control of Northern Pacific Stock. Defence Against Future Attacks. Majority of Northern Pacific Shares, but not a majority of Great Northern Shares, Expected to be Transferred to Proposed Company, but this not a condition. New Company to be open to other Northern Pacific Shareholders as well as those of Great Northern Co.**

(3) **No Agreement among Promoters to transfer their Shares to New Company.**

(4) **New Company to hold also other Stocks besides the Railway Shares.**

(1) Mr. Hill, I, 82-5, 87, I, 690, 706-8.
Mr. Kennedy, I, 190-1, 192.
Mr. Steele, I, 301.
Mr. Harriman, I, 632.
Col. Clough, I, 783, 810-2.

(2) Mr. Hill, I, 83-4.
Mr. Kennedy, I, 193-5, 196-7, 215, 221.
Mr. Perkins, I, 241.
Mr. Steele, I, 289-290, 299.
Mr. Morgan, I, 344-6, 347-9, 354-5, 356, 361-2, 363.

(3) Mr. Hill, I, 110, 114.
Mr. Kennedy, I, 215-6, 221-2.
Mr. Perkins, I, 241.
Mr. Steele, I, 303-4.
Mr. Hill, I, 700.
Col. Clough, I, 788.
(4) Mr. Hill, I, 87, 126-7, 129-130.
Mr. Kennedy, I, 197-8.
Mr. Morgan, I, 346.

(1) Their narrow escape from so great a danger being assured, it was the part of prudent men to profit by the lesson so rudely taught and to devise means of defense against, or better still prevention of any repetition of the attack which had so nearly proved successful. The Union Pacific interests still held 37 millions of the Northern Pacific common stock. Between one and two millions were not held by either of the parties. The loss of three millions from the majority holdings might occur from various causes, and the attack just defeated might be renewed with success by the same or other assailants.

Now, there had been for some years a project on foot, in which Mr. Hill and several other shareholders of the Great Northern Co. (who held at this time some 32 or 33 millions, or about 27 per cent of that company's stock) to form a corporation to which they should transfer their shares in consideration of shares of such new company. Mr. Hill gives the names of the others as follows (I, 698): Mr. Kennedy, Lord Strathcona, Lord Mount Stephen (represented by Mr. Sterling), D. Willis James, Samuel Thorne, Johnston Livingston, Col. Lamont, Oliver Payne, Edward Tuck, George C. Clark and George

F. Baker. They had taken an active interest in the operations first of the Manitoba Co. and then of the Great Northern Co. (some of them from the inception of the Manitoba Co. in 1879) and had been those most consulted by Mr. Hill, regarding the policy of the company. Some of these gentlemen were advanced—a few of them far advanced—in years, and in case of their death their shares were liable to be scattered. And it was the general wish that their shares should be kept together and voted as a unit at the meetings of the company for the continuation of the policy which had proved so highly successful, and that if sold, they should all fare alike. These gentlemen had never "controlled" the company. In a sense the control had been with Mr. Hill (I, 706), to whom nearly all the shareholders who did not personally attend the meetings and vote with him, had uniformly sent their proxies (Mr. Kennedy, I, 191-2). But such "control" was in no way the result of stock ownership. It was simply that the management and policy of Mr. Hill had been always approved by the shareholders, as well those who were not as those who were among the number who are called in the evidence his associates, and who projected the stockholding company just spoken of (Col. Clough, I, 808).

This project had been the subject of discussion between not more than two or three of these gentlemen at a time for several years, but there had never been anything like a meeting to consider details or even to formulate a definite plan (Mr. Kennedy, I, 190-1). That such a project was on foot was, how-

ever known to others besides those engaged in it. Mr. Morgan had heard of it (I, 344) and Mr. Steele (I, 299), and even Mr. Harriman (I, 632).

The Great Northern shares have always been at a considerable—usually at a very high—premium, so that the capitalization of the proposed company would be largely in excess of the par value of the Great Northern shares transferred to it. The company was to be absolute owner of the shares transferred to it, with full power to vote or sell them as its directors elected by a majority of its shareholders should determine. While each shareholder in the new company could sell his shares, yet the Great Northern shares held by the company, while held by it, would be a unit for all purposes of voting, etc., and in the event of any opposing interest arising to break the perfect harmony that had always prevailed among the shareholders, such interest could not acquire the control or the vote of a single one of the Great Northern Co. shares held by the new company, without acquiring a majority of the shares of the new company (Col. Clough, I, 810-812).

It was also contemplated that the company might acquire and hold stock in other corporations whose operations might aid the railway and whose shares could not be held by that company (Mr. Hill, I, 87). And Mr. Morgan seems to have been aware of this (I, 346).

At least a year before the spring of 1901 there was a general feeling among those projecting the company that each shareholder in the Great Northern should have the opportunity to come into it on the

same terms as the projectors. This was solely because they didn't wish to be in the position of making a corporation and closing the door on their old associates—a reversal of the relations that had always existed among the shareholders of the Great Northern Co. (Mr. Hill, I. 82-85, 87; 690, 706-8; Mr. Kennedy, I. 190-192; Col. Clough, I. 790-1).

This was the situation of the original plan of these Great Northern minority shareholders in May, 1901.

(2) When Messrs. Hill and Morgan and their associate shareholders in the Great Northern Co. and the Northern Pacific Co. set themselves to devise means to prevent the recurrence of such a "raid" as had just been defeated, it was very clear to them that they must depend for safety wholly upon themselves. The law gave them no protection. They had every reason to believe that such a holding as that of the Union Pacific Co. in the Northern Pacific is in no way forbidden by the Anti-trust law, and they knew that just such holdings had existed for years among all the principal railways of the East. The inaction of the attorney general showed that this was also the opinion of that high official specially charged with the enforcement of the Anti-trust Act. And so far as that act is concerned, the acquisition and holding, by an interstate railway company, of a majority of the shares of a competing interstate railway company is strictly legal, though it may be, as the Union Pacific holding of Northern Pacific would

have been, "iniquitously legal." This will be fully shown in the argument on the construction of that act.

In this state of things and early in June, 1901, Mr. Kennedy, on his return from Europe (whither he had gone on April 2, returning on June 8th—I, 185, 190), expressed to Mr. Hill his opinion that "we must devise some plan to prevent hereafter such raids as have occurred" (Mr. Hill, I, 689), and suggested to Mr. Hill the utilizing for that purpose of their proposed holding company by including in it their Northern Pacific in addition to their Great Northern stock (Mr. Hill, I, 84-5). This suggestion did not include a majority of Northern Pacific shares, but only those of Mr. Hill and his associates in the Great Northern Co.—did not include the shares of J. P. Morgan & Co. (Id., I, 127).

Shortly after Mr. Morgan's return from Europe, the question of forming some sort of company to acquire and hold the Northern Pacific shares held by J. P. Morgan & Co. and their friends (including the $15,000,000 bought by the former), was discussed by him with Mr. Steele (I, 290).

Mr. Morgan's own statement is as follows (I, 344):

> "When we found ourselves in this position, with the danger—having escaped as I thought at that time from what I thought was a great danger, that is to say, our property being absorbed by a competing line without our knowledge or consent, it occurred to me something ought to be done to prevent that, because, while we chose to defend the property, I did not want it to go on indefinitely; and I thought the best

> plan was to go to some trust company to take the Northern Pacific stock and hold it. * * * We didn't want convulsions going on. * * * What I wanted to accomplish was to put that stock so that it would be protected—to maintain the policy of the company as it then existed. * * * I wanted it so that I could go to Europe and not hear next day that somebody had bought it for the Boston and Maine or I don't know what other company. I wanted the Northern Pacific stock put where nothing could interfere with the policy I had inaugurated, and for the carrying out of which we were perfectly satisfied and morally responsible."

But the idea of a trust company was quickly abandoned, for it would cost less to buy up the stock of the trust company than of the railway company (I, 356).

On page 347 he says: "Everything, so far as the Northern Pacific road is concerned and a holding company, all occurred to my mind subsequent to the 9th day of May."

Being asked (still on examination by plaintiff): "When did the idea of putting the control of *both* these roads in one place come up after your return?" he says, (I, 345):

> "I suggested to Mr. Hill, 'why not.' I think I did, at any rate. If it was not, it may have been Mr. Steele. Whether I did or J. P. Morgan & Co., I think we are responsible for having made that suggestion."

This was just before he went to California, which he did early in October (I, 346).

Asked the result of his talk with Mr. Hill, he says (I, 348):

> "The result of it was that we decided that

> the Northern Pacific—so far as I was concerned as a stockholder in the Northern Pacific, I would put my stock in, provided that he would take everybody else's into this thing that he had proposed to arrange for the Great Northern. * * * I didn't care whether he went in or not. We had a majority without him. I wanted a majority of the Northern Pacific stock in the Securities Company. I didn't care who went in provided there was enough there to protect the Northern Pacific * * * (I, (349). Mr. Hill and I worked together. * * * We worked simply because he was a stockholder; but I was independent of Mr. Hill in that transaction. I wanted simply to keep the stock of the Northern Pacific safe beyond question."

And asked as to whether there was not some understanding with Mr. Hill that he should go in, and whether he would not have been much surprised if Mr. Hill had not done so, Mr. Morgan says (I, 349): "Simply because I know he wanted to make the most he could out of the Northern Pacific"—i. e., as a shareholder.

In the interval between Mr. Kennedy's suggestion to Mr. Hill in June that their plan for a holding company of Great Northern stock should be enlarged so as to include the holding (about 20 millions) of themselves and their associates in Northern Pacific, and the time when Mr. Morgan decided to put his firm's Northern Pacific shares into the same company, that suggestion developed into a plan for enlarging the scope of the company so that it should have power to acquire all of the 42 millions of Northern Pacific common stock (being a majority of such stock) then held by Mr. Hill and

Mr. Morgan and their respective associates. "We were particularly anxious to put a majority of that stock where it could not be raided again as it had been" (Mr. Hill, I, 693). And Mr. Kennedy, asked why it was planned to get a majority of Northern Pacific and not of Great Northern, says (I, 195): "Well, my idea was in consequence of what took place last May. We didn't want to be subject to such an attack as took place last May." The price at which the stocks should be taken by the new company came up, and it was considered that $180 per share for Great Northern and $115 for Northern Pacific would be a fair valuation (Mr. Hill, I, 86, 96). It was still the purpose to give all Great Northern shareholders who might desire to come in an opportunity to do so (Mr. Kennedy, I, 197; Mr. Hill, I, 87, 690, 708). The matter of capitalization so as to provide for acquiring, at the prices suggested, a majority of Northern Pacific shares, should they be offered and whatever Great Northern shares might be offered by their holders, and also for acquiring other properties as contemplated, was considered (Mr. Hill, I, 87, 690-2, where the basis of proposed capitalization is stated).

For these purposes a capital of 300 millions was thought to be enough, and up to the middle of September it was hardly deemed necessary to make it larger (Mr. Hill, I, 692). The conferences during this period were of the same character as the earlier ones had been; there was no meeting, but Mr. Hill discussed the matter from time to time with one

and another of his friends (Mr. Hill, I, 87; Col. Clough, I, 821, 822, 829).

The advantage of including the Northern Pacific shares in a company open to all Great Northern shareholders, instead of forming a separate holding company for the 42 millions of Northern Pacific shares, was obvious from the increased capitalization resulting therefrom. Should all Great Northern shareholders come in, the acquisition of their 125 millions at $180 would take $225,000,000. If less than all came in, then of course so much less of the capital would be required for that purpose. The valuation ($180) of Great Northern shares was thought likely to deter the holders from coming in, their market price being from $187 to $195 and so on to $200 (Mr. Hill, I, 692). Should it have that effect, then so much of the capital provided for acquiring Great Northern shares as was not required for that purpose could be utilized for the other purchases and operations of the company. Such purchases had been part of the plan for the company for a long time, if not from the outset. Mr. Hill had so told Mr. Morgan two years before (Mr. Morgan, I, 346-7).

The process by which the capitalization of the proposed company was increased by various considerations and suggestions until it was finally fixed at 400 millions, is also stated by Col. Clough (I, 789-792).

An error in the opinion that would not be worth noting except for the court's profession of absolute accuracy, is found in the statement (II, 1704) that

the Securities Co. "was organized * * * with a capital stock of $400,000,000, that sum being the *exact* amount required to purchase the total stock of the two railroad companies at the price agreed to be paid therefor." The "exact amount" would be $403,250,000.

While every Great Northern shareholder was to be given an opportunity to come into the new company, this was not in order to give the new company control of the stock of that company, but for the reason already stated.

Mr. Kennedy, being asked whether the opportunity given to all Great Northern shareholders was for the purpose of placing a majority of Great Northern as well as of Northern Pacific shares in the Northern Securities Co., says (I, 197):

> "I think not. The idea was to give the Great Northern shareholders who might desire to come in an opportunity to come in, that they might not feel that they were not fairly treated if certain persons went in and other persons left out."

And elsewhere he says (I, 195):

> "It was our intention to have a majority of the Northern Pacific; but as to the Great Northern it was simply an intention to let the members in who chose to come in, and it remained to be seen whether it would be a majority or minority."

And Mr. Hill, on cross-examination, by the Government, after giving the same reason as Mr. Kennedy why the Securities Co. was thrown open to all Great Northern shareholders, says (I, 708):

"If the question has reference to the desire

> or preference, I should answer that if the individual men who formed the Securities Co. had their choice, and all the stockholders were there and could say: 'We release you'—we would have preferred to have had the Northern Securities Company stock restricted to the 35 millions." (That is to their own holdings, which were from 33 to 35 millions, of Great Northern stock). "There isn't any question about that. The question was, 'Shall we make a corporation and close the door on our old associates?' If we do, it is the first time that anything has ever been done in which any shareholder had the advantage over all the shareholders. *And that was the reason for making the offer, and the only reason for making the offer.*"

And yet, in the face of this testimony, which is no where contradicted or qualified, the Circuit Court in its decision says (II, 1704), that the individuals who planned the Securities Co. not only "agreed with each other to exchange their respective holdings of stock in the last-named railroad companies for the stock of the New Jersey Company when the same should be fully organized," but that these same persons also

> **Agreed with each other * * * to use their influence to induce other stockholders in their respective companies to do likewise to the end that the New Jersey company might, become the sole owner of the whole or at least a major portion of the stock of both railroad companies.**

Whether as regards Mr. Hill and his friends, owning both Great Northern and Northern Pacific shares, or Mr. Morgan and those represented by his firm, the above is as destitute of evidence to support it and in as complete antagonism with the record, as the statement (see page 34, *supra*) that the pur-

chasers of the Burlington stock paid for them with that company's bonds, or the statement, soon to be noticed, that the Securities Co.'s purchases of Great Northern shares from others than the promoters were made by means of "the advice, procurement and persuasion of those stockholders of the Great Northern Co., who had been instrumental in organizing the Securities Co., and had exchanged their own stock for stock in that company shortly after its organization" (II, 1705).

As already stated, Mr. Morgan, about October 1st, expressed a willingness to put the shares of his firm and their friends into the proposed company. He continued to be governed by the sole wish to protect the Northern Pacific Co., which he considered himself to be under a moral obligation to do. He did not care much what else was in the company, so long as a majority of the Northern Pacific stock was there. He did not consider that he was planning or forming a company, but considered that he was merely going into one already planned by Mr. Hill. He says (I, 354):

> "Mr. Hill did not decide the Northern Pacific. I told him I thought if he was willing we would take it; and that was probably some time either just before (I went to) or just after I returned from California. * * * I told him that would be my decision if everything went smooth. * * * That was satisfactory to me if it was to him. We both agreed to it. * * * He was acting for his stock and I for mine, with the condition that if the Northern Securities Company was organized, the holders of the Northern Pacific stock should have the right to put in their stock the same as we did."

And of the influence of the large capitalization of the new company (the result in great measure of its being open to all Great Northern shareholders) upon his own action, Mr. Morgan says (I, 356):

> "That is another advantage I took into account, and that was that the capital of the Northern Securities Company was so large I did not believe in a night or a week anybody would ever be able to get control of it."

Asked what special benefits accrued from putting the shares of both railways in one company, he says (I, 356):

> "Because it seemed to me the best remedy; the company is so large, * * * I wanted to put it in a company with capital enough that nobody could ever buy it, and that is the only one I know of. It is the only investment or trust company that I know of, of that kind where the stock was large enough so that in all human probability I felt that if it was not safe there it was not safe anywhere."

(As to Mr. Morgan's mention of a "trust company," see his explanation, I, 361).

Asked whether a number of the larger stockholders of the Securities Co., acting together, could not control both roads, Mr. Morgan says (I, 356):

> "No, sir; I do not think it would be possible. If you go and select all the stockholders—of course, I have no doubt if you had a list of the stockholders, and take all the largest until you get over $200,000,000, those people would control; but there is no interest that I know of today that can control the Northern Securities Company."

About the time that Mr. Morgan, as before stated, announced his purpose of transferring his firm's Northern Pacific shares to the proposed company, with reservation of the same right to others, and probably in connection with that transaction, the capital of the company was fixed at 400 millions, the sum named afterwards in its articles. Mr. Hill thinks this was arrived at some time in October (I, 693).

(3) While it was desired and expected that a majority of the Northern Pacific common stock should be transferred to the new company (Mr. Hill, I, 115, 693; Mr. Kennedy, I, 221), there was no agreement on the part of any of the holders to transfer his shares. Each was free to do as he liked. The same was true as in respect of the Great Northern shares held by Mr. Hill and his associates. It was not a condition of the formation of the Securities Co. that a majority of the shares of either company should be transferred to it.

Mr. Kennedy says (I, 215):

> "Q. Did you understand that the formation of the Securities Co. was in any way conditional upon its acquiring a majority of the stock of both railroad companies?
>
> A. No, sir; no such condition.
>
> Q. Well, was it or was it not decided to form it whether it procured—
>
> A. Whether it procured a majority or whether it did not.
>
> Q. Did you know of any agreement between the majority stockholders of the Northern Pacific Company that they would all turn their

stock in or sell it to the Northern Securities Co.?

A. I know of no such agreement; never heard of it."

Mr. Kennedy also says (I, 221):

"Q. Was it not generally understood between you that the parties who were acting with you and had acted with you during this flurry, and who had stood together, were agreed on the general plan or policy of putting their holdings into the Securities Co.?

A. I don't recall any general agreement about it. * * * Personally I supposed that a majority of that stock would go into the Securities Co.—of the Northern Pacific common stock.

Q. So that at the time you planned the organization of this present Securities Co. it was pretty generally understood that all of you gentlemen would put your holdings in there?

A. I supposed they would. I had no positive information on the subject. They were free to do as they pleased.

(I, 222): Q. And it was your plan and purpose, and the plan and purpose of those who organized the Securities Co. to have the stock go in there?

A. If the people chose to sell it. We couldn't compel it."

Mr. Perkins says (I, 241):

"Q. Was there any agreement between J. P. Morgan & Co. or J. P. Morgan and his associates and Mr. Hill and his associates, to organize the Northern Securities Co. and to transfer to it the ownership of a majority of the Northern Pacific and Great Northern Railway Companies' stock?

A. Not to my knowledge.

Q. Was there any agreement of any such character?

A. Not to my knowledge."

Mr. Steele says (I, 303-4):

"Was the fact of acquiring a majority of the stock of both or either the Northern Pacific or Great Northern Railway Companies made a condition of the organization of the Securities Co. as far as you know?

A. Not to my knowledge, sir.

Q. Well, do you know that it was determined to form the Northern Securities Co., without knowing whether they would acquire a majority of either one of the companies, either the Northern Pacific or the Great Northern?

A. I have always understood that it was intended to form that company anyhow, independently of getting any Northern Pacific stock whatever, and independently of getting a majority of the Great Northern stock as I have already testified. I understood that company was to be formed originally to hold the Great Northern stock which was owned by Mr. Hill and some of his associates, which I understood amounted to about 30 to 35 millions.

Q. Was there any agreement between J. P. Morgan & Co. or J. P. Morgan and his associates to organize the Northern Securities Co. and to transfer to it the ownership of a majority of the Northern Pacific and Great Northern Railway Companies' stocks?

A. None whatever.

Q. Was there any agreement of that character?

A. Not to my knowledge.

Q. In the organization of the Northern Securities Co. did your firm speak for a majority of the stockholders of the Northern Pacific, or act at all other than for your own personal interests—your own interest? Or did you have anything to do with organizing the Northern Securities Co. other than to sell to it your stock?

A. I was about to answer that I have already testified that we had nothing to do with the organization of the Northern Securities Co.;

and the first connection that we had with it was the negotiation by which we sold it to it the Northern Pacific common stock which we held."

Mr. Hill says (I, 700):

"Q. In the formation of the Northern Securities Co. was there any agreement among its promoters or any of them, including yourself, by which they or any of them bound themselves to transfer their stock in either railway company to the Northern Securities Co. when it should be organized?

A. There was no agreement of any kind. When I discussed the matter with these gentlemen they said 'All right, go ahead; we will put ours in'—each man speaking for himself, and I think I saw them all separately with one exception. I saw Mr. Kennedy and Mr. James together; possibly I saw Mr. Thorne and Mr. Clark together; the others I saw separately. There was no agreement; an hour—a minute—before any particular shareholder of the Great Northern transferred his stock he was at liberty to turn around and go away with it."

And here it is to be noted that Mr. Hill, owning from 11 to 12 millions of Great Northern stock, retained and did not transfer to the Securities Co. between 2½ and 3 millions (I, 110), and at the time of his examination, still retained them as a matter of sentiment—of course considering that he had a right to do so (I, 114).

FORMATION, NATURE, POWERS AND PURPOSES OF SECURITIES CO.

(1) **Formation of the Securities Co. Railway Companies had nothing to do with Formation or Plan for forming it. Wholly the Work of Shareholders Acting in their own Interest as such, and in that of their Fellow Shareholders.**

(2) **Nature of the Securities Co. A Lawful Corporation. Not a Railway Company, and has no power whatever to build or oprate Railways. Stocks of the two Railway Companies not Consolidated. They remain wholly distinct. No Increase of Capitalization of Railway Companies.**

(3) **Securities Co. may sell all or any part of its shares in either Railway Company without selling any of its shares in the other. It is absolute owner of all shares held by it.**

(4) **It was not formed to restrain or monopolize Commerce or lesson Competition in any way.**

(5) **Its Formation had no Connection with the Retirement of the Northern Pacific Preferred Stock.**

(1) Mr. Hill, I, 698, 88.
Mr. Mellen, I, 172, 860.
Col. Clough, I, 784, 824-831.

(2) Col. Clough, I, 836-840.
Defts. Ex. 8 and 23; I, 977, 982, 1000, 1002.
Mr. Kennedy, I, 213.

(3) Mr. Morgan, I, 361.
Mr. Hill, I, 699.
Col. Clough, I, 788, 792.
(4) Mr. Kennedy, I, 216-7.
Mr. Perkins, I, 241-2.
Mr. Steele, I, 304-5.
Mr. Morgan, I, 362-3.
Mr. Hill, I, 695-696.

(1) The actual formation of the Securities Co., including the determination under the laws of what state it should be organized, and what its articles should contain, was in very few hands (Col. Clough, I, 824, 831).

Mr. Morgan says he "had nothing to do with it" (I, 351).

Mr. Hill further says (I, 88):

"The plan for organizing the Securities Co. was worked out and modified or changed between the 1st of September and the date of the publication of the Articles.

Q. Who finally decided upon the plan that was adopted in the organization of the Northern Securities Co.?

A. Practically, Mr. Kennedy, Mr. George Baker, Mr. James, Mr. Thorne, Mr. Clough, Mr. Perkins and myself.

Q. And were there no others than those whose names you have just given who had anything to do with the actual perfecting of the plan of organization of the Northern Securities Co.?

A. No one outside of the counsel who drew the papers. I think I had as much to do with it as anybody.

Q. Mr. Hill in the discussion and consummation of the plan which resulted in the organization of the Northern Securities Co., had J.

Pierpont Morgan or his partners anything to do with it?

A. Mr. Perkins was his partner. He had something to do, but in the first instance nothing, and at the last very little"

There was, however, no meeting of these gentlemen. Mr. Hill would see one and another of them as stated in a passage (I, 700) already quoted.

It was proposed to form a Minnesota corporation, if a suitable territorial charter could be found and acquired, and a considerable time was spent in the search for such a charter without finding one that was available (Col. Clough, I, 784-5; 817-9, 824; and see Mr. Morgan, I, 354: "We could not tell at that time if we were going to be able to get our charter").

An organization under the Minnesota general laws was not favored, because of the double liability imposed on shareholders by the state constitution, and the general unfriendly policy of that State towards corporations and their shareholders (Col. Clough, I, 784, 815, 858). There was nothing in the nature of the proposed company to make an incorporation in Minnesota or Wisconsin necessary, or even of more propriety than an incorporation elsewhere. An extremely small percentage, whether in number or amount, of its expected shareholders would be residents of either state. A charter was accordingly sought in another state, just as the citizens of Minnesota uniformly do when forming a corporation of any magnitude whether for manufacture, trade or other purposes. After examination of the

laws of West Virginia, New York and New Jersey, the latter state was selected, principally because its incorporation laws were of earlier date and had been more thoroughly construed than those of the other states (Col. Clough, I, 785, 787, 824-6, 830-1). It was left to Col. Clough to make the selection as between these states, and it was made by him (I, 828), and made only a few days before the actual incorporation, November 13, 1901 (Id. 831).

The formation of the Securities Co. was from the inception of the project to the complete organization of the company wholly the work of a few shareholders of the two railway companies, acting in their own interest and that of their fellow shareholders to protect that interest. While their action must necessarily benefit the two companies—especially their interests and their commerce arising from the Burlington purchase—it was still the action of the shareholders only, and of only a very small portion of the shareholders of each company. Neither railway company had anything to do with the formation of the Securities Co., or with the project of forming it, at any stage of that project or in any manner whatever.

> "Neither the Great Northern Co. nor any of its officers as such had anything whatever to do with it," (the formation of the Securities Co.) "not any more than the most distant railway corporation in the country. Absolutely nothing. The matter of forming the Northern Securities Co. was purely of the shareholders, and limited to a very small number. I think I am safe in saying not to exceed 11 out of 1800" (Mr. Hill, I, 698).

And the holdings of these 11 in Great Northern "was between 33 and 35 millions out of a capital of 125 millions." (Id.)

Mr. Hill says (I, 699) that he knows of no action taken by the Northern Pacific Co. or its officers in forming or organizing the Securities Co., and Mr. Mellen, president of the Northern Pacific Co., says that none was taken (I, 860), and that he had nothing to do with it (I, 172).

(2) The nature and purposes of the Securities Co. are those and those only set forth in its Articles of Incorporation, which are an exhibit to the petition. There can be no doubt but that it is a lawful corporation under the laws of New Jersey, nor is the lawfulness of its creation and existence questioned in the petition. It is not a railway company, has no power to operate railways or carry on transportation of any kind, either local or interstate.

The petition, it is true, charges (in par. XI) that the company "was not organized in good faith," but was organized "to incorporate the pooling of the stocks"—whatever that may mean, and to act a grotesque combination of parts in respect of the stocks. And that it "never had any capital sufficient to warrant such stupendous operation," which may possibly be true, for it is not clear how any amount of capital would enable the company to be at one and the same time what the petition says it is, viz: "a mere depositary, custodian, holder and trustee," of the same stock; and all this when, as stated in

paragraph VI, it is also the absolute owner of that stock.

Its ownership of shares of the two railway companies no more consolidates, or pools, or merges those shares, or the two companies, or their property, than the ownership of two pieces of real estate by the same person consolidates them or the title to them. The shares of the railway companies owned by the Securities Co. remain as separate and distinct from each other as would 100 shares of each company held by an individual.

This whole matter of capitalization of this state corporation is a subject outside of the regulative power of Congress under the Commerce clause, and is of course not covered by the Anti-trust act. The cry of stock-watering may always be relied on to excite prejudice against a corporation—except before a tribunal where prejudices are unknown—but has no bearing on the case.

Paragraph XI of the bill charges that the capital of the Securities Co. exceeds by $122,000,000 the combined capital of the Great Northern and the Northern Pacific Companies. And in the cross-examination of Col. Clough (I, 836-9) the claim is made that this is an "increase in an indirect way of the capitalization of the constituent companies" (836). Of course, as counsel should have known, there are no "constituent" companies. And there is no more increase of capitalization than if the several shareholders of the Great Northern Co. should carry their shares on their books at $180 or even at the market value of $200, or should sell them at either

of those prices. That the capital of a corporation is increased by the amount of the aggregate premiums on a sale of all its shares is a discovery in finance. It is quite of a piece with the notion produced in the same cross-examination (839-840) that the Great Northern capital was watered because it had been largely increased within a few years, and this when the proof shows that the shares were selling at from $190 to $200 in a market somewhat noted for "squeezing out the water" (I, 986; Defts'. Ex. 17). And the testimony is that every dollar of added stock represents a dollar added to the property of the company (Col. Clough, I, 836-840, 977-986; Defts'. Ex. 8, I, 977).

The fact is that this over-capitalization and stock-watering charge is simply another of the errors due to the misinformation furnished the Attorney General by the instigators of this litigation, and by which he has been misled into bringing this suit. The following is a statement of the mileage and capitalization of the Great Northern and Northern Pacific systems on June 30, 1901, as it appears in the record, except that in this statement the full amount of authorized Great Northern shares ($125,000,000) is given, instead of the amount then issued and outstanding ($98,711,750).

	Mileage	Stock	Bonds	Total Capitalization
Northern Pacific (II, 1000, 1002)	5100.14	155,000,000	177,925,789	332,925,789
Great Northern (II, 977, 982)	5429.18	125,000,000	97,138,054	222,138,054

There is no claim or pretence that the Northern

Pacific is over-capitalized, and the charge against the Great Northern Co. is so baseless that the Attorney General could never have made it had he not been grossly misinformed.

(3) The Securities Co. does not hold its railway shares as trustee, but as absolute owner. This is positively stated by Mr. Kennedy, I, 213; Mr. Morgan. I, 361; Mr. Hill, I, 699; Col. Clough, I, 788, 792, and is alleged as positively and directly in paragraphs VI and VIII of the petition, though in paragraph XI the Securities Co. is put into the before-mentioned inconsistent and incongrous positions of "depositary, custodian, holder and trustee" of the same shares—as trustee, with the legal title, and custodian, with no title at all.

And the decision seems to halt between the statement in one place that the Securities Co. is the owner of the shares it has acquired, and the statement in another that it is a mere fictitious personage, and that the shares have merely been placed in its name by the real owners. Compare II, 1704-5 with II, 1706-7, 1708, and see pages 12, 13, 17, supra.

Being absolute owner of the shares it has acquired, the Securities Co. is free to sell (and, indeed, as Mr. Hill says—I, 699—"to burn") all or any of its shares of either railway company without selling any of its shares of the other. And the same absolute ownership and consequent absolute power of sale was of the essence of the original project of a company to hold only Great Northern stock (Col. Clough, I, 811).

How can shares which are thus owned and may be thus dealt with be said to be consolidated, or merged, or amalgamated or pooled? And if the shares are not, certainly the corporations are not, nor are their railroads consolidated or merged, either "practically" as charged in the petition and contended for in the cross-examination of Col. Clough (I, 806), or theoretically, or in any other way.

(4) The affirmative evidence of the purpose and the only purpose for which the Securities Co. was formed is conclusive that it was to enlarge and not to restrain or monopolize interstate and foreign commerce. The evidence introduced by the Government as well as that introduced by the defendants contains also categorical denials of the charge in the petition that the Securities Co. was the outcome of a combination and conspiracy to restrain and monopolize the competitive interstate and foreign commerce of the two roads. No such thing was even thought of by any one concerned in it.

Mr. Kennedy, I, 216-7.
Mr. Perkins, I, 241-2.
Mr. Steele, I, 304-5.
Mr. Morgan, I, 362-3.
Mr. Hill, I, 695-6.

(5) It is one of the many immaterial charges brought against the Securities Co. in this suit and its precurser the Peter Power suit, that the formation

of that company and the retirement of the Northern Pacific preferred stock were parts of one scheme with two objects, viz: to defraud the preferred stockholders, according to Peter Power, and to restrain interstate commerce, according to counsel for the Government.

The one ground for this fanciful charge is the fact that the filing of the Articles of the Securities Co., and the passage of a resolution by the Northern Pacific directors for retiring the preferred stock, took place on the same day, November 13, 1901.

It is safe to say that if the conspiracy had embraced those two objects, the conspirators would have taken especial care to avoid, and would have avoided, this coincidence.

The retirement of the preferred stock had been determined on long before the Securities Co. was thought of. As already stated, it was thought to defer it for action by a board of directors not chosen by the voting trust (*Supra*, pp. 29-30). That board was chosen at the stockholders' meeting in October. There was no directors' meeting in that month for want of a quorum (Mr. Kennedy, I, 218), hence the first meeting of the new board was held November 13. The stock must be retired, if at all, on January 1st of some year. To retire it required the payment of $75,000,000. The interval between November 13th and January 1st was short enough for carrying out plans for raising this sum, and also for giving notice to the preferred stockholders. And so if action were to be taken, it had to be taken at this meeting, and this was accordingly done (Mr. Steele,

I, 306; Mr. Morgan, I. 323-327; Minutes of Northern Pacific Directors' Meeting, I, 586).

On the other hand, the completion of the Securities Co.'s Articles was delayed by absence of some of the gentlemen concerned, so as to put off the filing of them until November 13th (Col. Clough, I, 786-7).

SECURITIES CO.'S PURCHASES AND HOLDINGS OF STOCK—IT IS NOT CONTROLLED BY THE "CONSPIRATORS."

(1) Aquisitions of the Securities Co. Its Purchase of Shares. Transfer by Shareholders of each Railway Company were made Separately and Individually and not in Concert with Each Other.

(2) The Purchase of the "Harriman Shares"

(3) Control of Northern Securities Co. Mr. Hill and his Associates and Mr. Morgan and his Associates, all the "Conspirators" together, do not hold one-third of the outstanding Shares of the Company.

(4) The Securities Co.'s Holdings of Shares of other Corporations than the two Railway Companies.

(1) Mr. Kennedy, I, 213-4, 215-6.
Mr. Steele, I, 297-8, 303.
Mr. Morgan, I, 363.
Col. Clough, I, 788, 792.

(2) Mr. Hill, I, 91-98.
Mr. Perkins, I, 228-235, 240.
Mr. Schiff, I, 267-8.
Mr. Steele, I, 291-3, 297, 301-3.
Mr. Morgan, I, 357-8, 362.
Mr. Harriman, I, 899-909.
Minutes of Securities Co., Directors Meeting, I, 910.
Col. Clough, I, 914-6.

(3) Mr. Hill, I, 120-2, 123-4, 129-130.

(1) Soon after its organization the Securites Co. began the acquisition of shares of the two railway companies, at the valuations already mentioned of $180 for Great Northern and $115 for Northern Pacific, at which Mr. Morgan thought the shareholders of the latter had rather the best of it. (I, 354). On November 22, 1901, the company issued a circular to the Great Northern shareholders, (I, 701,) announcing its readiness for sixty days to accept offers of their shares at $180, payable in Securities stock at par, a price considerably less than the market price of this stock at that time, which was between 187 and 195. (Mr. Hill, I, 692.) This was in accord with the purpose that had existed almost from the outset, and resulted in various letters and personal applications by Great Northern shareholders to Mr. Hill for information and advice. (Mr. Hill, I, 702; Col. Clough, I, 832). Being about to leave New York, he prepared a form of letter to meet such inquiries as might be made in his absence, and to be sent "only in answer to communications," and "not to people that you (I) had not received inquiries from." (I, 703.) This letter (I, 704-5), dated November 30, 1901, notwithstanding the evidence given by counsel for the Government, (I, 833,) contains nothing in the way of solicitation or even advice, nor did the company, by its circular of November 22, or in any other way, make any such solicitation. (Col. Clough, I, 834; Mr. Morgan, I, 363).

Great Northern shareholders resorted to Mr. Hill for his opinion as to whether it would be for their

interest to exchange their stock, just as they had doubtless often resorted to him for his opinion as to whether the stock was a good purchase at the market price, or whether they had better take their proportion of a new issue of shares, or sell their rights. And Mr. Hill answered these new inquiries about exchange of stock, just as he had many times answered inquiries such as have just been suggested —and for the same reason and no other.

The circular and draft of letter are as follows (I, 701, 703):

"27-29 Pine Street, New York City,

November 22, 1901.

"TO HOLDERS OF STOCK OF THE GREAT NORTHERN RAILWAY COMPANY:

"The Northern Securites Company, incorporated under the laws of the state of New Jersey, with an authorized capital stock of $400,000,000, and with power to invest in and hold the securites of other companies, has commenced business, and has acquired from several large holders of stock of the Great Northern Railway Company a considerable amount of that stock.

"A uniform price has been paid of $180 per share, in the fully paid stock of this company, at par. This company is ready to purchase additional shares of the same stock at the same price, payable in the same manner, and will accept offers made on that basis if made within the next sixty days.

"Offers for sale of stock of the Great Northern Railway Company should be made upon the enclosed form, and should be accompanied by the certificates of the stock offered with transfers duly executed, having United States stamps for transfer tax of two cents per share affixed.

"Upon receipt of any such offer, so accom-

panied, the Northern Securites Company will deliver to the seller of the stock of the Great Northern Railway Company, certificates of its own stock to the amount of the purchase price above named, or, if such certificates are not ready for delivery, its negotiable receipt obliging it to issue and deliver such certificates as soon as ready. For fractional parts of shares scrip certificates, convertible into stock in multiples of $100, will be given.

"NORTHERN SECURITIES COMPANY,
By James J. Hill,
President."

November 30th, 1901.

"Dear Sir:

"Replying to your letter of the 23rd instant, asking for further information about the Northern Securities Company, I beg to say that the business of that company is to deal in high-class securities, to hold the same for the benefit of its shareholders, and to do such other acts as will advance the interests of the companies whose securities it holds.

"The powers of the company do not include the operation of railways, banking, nor buying or selling for others on commission.

"The organization of such a company has been considered for many years by the original promoters of the St. Paul, Minneapolis & Manitoba Railway Cmpany, and its successor, the Great Northern Railway Company, who have always remained the largest shareholders therein. These men have deemed it wise to make permanent arrangements for the protection of their interests and for securing a continuous policy in the management of their properties. Believing the Northern Securites Company will secure the objects named, they have generally sold to it their holdings of Great Northern shares, on the terms stated in the circular.

"The traffic of coal and other local companies is of great value to the railway, while the conduct of the business of such companies is out-

side of the railway's corporate powers. The Securities Company will control this large traffic for the railway and will receive the profits of these separate properties.

"The offer contained in the circular came from the request of the large holders of Great Northern, above mentioned, who desired that all other holders might have the same opportunities as themselves in association with them, and upon the same terms. The writer is of opinion that the offer of the Securities Company is one that Great Northern shareholders can accept with profit and advantage to themselves.

"Yours truly,
(Signed) JAS. J. HILL."

It will be noticed that in neither the circular nor the letter is there any designation of any railway shares as acquired or likely to be acquired by the Securities Co. other than those of the Great Northern Co. There is not even an intimation that any Northern Pacific shares have been or will or may be obtained.

It does not appear that a single Great Northern shareholder, outside of Mr. Hill's immediate associates holding about 33 millions, transferred his shares to the Securities Co. with any knowledge or notice that the Securities Co. had acquired or contemplated acquiring any shares whatever of the Northern Pacific Co., or with any knowledge of the conspiracy charged in the petition.

And it does not appear how many Great Northern Shareholders received this letter of Mr. Hill, nor how many of those who did receive it transferred their shares to the Securities Co.

In October, 1902, the Securities Co. had acquired 95 millions of Great Northern stock, for which it

had issued its own shares to the amount of 171 millions. (Col. Clough, I, 839).

It had also acquired about 150 millions of Northern Pacific common stock, including the 37 millions of the Harriman stock and the new common stock issued in place of the retired preferred stock. And the total stock outstanding was about 350 millions.

The transfers of shares in each company were made by the share-owners individually, each for himself, without any agreement or concerted action, and in each case they were absolute, without any condition as to title or use, or any agreement as to the use or disposition of the shares of the Securities Co. received in exchange.

On these points the testimony (most of it introduced by the Government) is conclusive.

J. P. Morgan & Co's. shares were the subject of some negotiating before they were turned in. (Mr. Hill, I, 143; Mr. Steele, I, 297, 303).

Mr. Kennedy says (I, 213):

> "I sold it" (my stock) "absolutely to the Northern Securities Co." (I have) "no control over the stock. I have over the Northern Securities Co. stock, of course, but not over the stock that I sold them."
>
> (I, 214) Q. The stock that you received from the Northern Securities Co. you own yourself?
>
> A. Individually; yes.
>
> Q. Have you had any agreement or arrangement as to how you shall vote or handle that?
>
> A. None whatever. Never heard such a thing suggested.
>
> Q. Was there ever any agreement, so far as you know, between the stockholders of the

Northern Securities Co. that any set of men, so far as you know, were to control the Northern Securities Co.?

A. I never heard of such a thing.

Q. Or any control over it other than comes through a majority of the ownership of the stock?

A. That is the only way. Each man owns his own stock, and can do as he likes with it.

Q. Did you know of any agreement between the majority stockholders of the Northern Pacific Co. that they would all turn their stock in or sell it to the Northern Securities Co.?

(I, 216): A. I know of no such agreement; never heard of it.

Q. So far as you know, did or did not the stockholders act individually as they saw fit?

A. They all acted individually.

Q. In selling their stock to the Northern Securities Co.?

A. Certainly. I did, I know, and I suppose all the others did the same.

Mr. Steele says, (I, 303):

Q. In dealing with the Northern Securities Co. for the sale of stock, did the Northern Pacific stockholders act separately or in a body?

A. As to that I can only state what I think I have already testified to" (I, 297-8) "that my firm made the negotiations as to the price at which the stock which we had should be sold to the Northern Securities Co.; and it was understood that our friends, by which I intend to mean the same persons that I tried to describe to Mr. Boutelle, were to have the right to put their stock in at the same figure. There was no binding agreement on our part that they should, and we had no authority to obligate them to do so. It was a matter for individual determination by each Northern Pacific stockholder, and extended only to those whom I have included as our friends, constituting in amount about 41 or 42 millions."

Mr. Morgan confirms Mr. Steele (I, 363):

Mr. Hill says, (I, 700):

> Q. In the purchases made by the Northern Securities Co. from the Great Northern stockholders, state whether or not such purchases have been the result of any agreement among several stockholders, or whether they were separate transactions with each shareholder who sold his stock?
>
> A. Each sale covered nothing but the sale of that particular stock. Each shareholder acted for himself at all times. * * *
>
> Q. Now, was there any solicitation with the shareholders of the Great Northern either on the part of the officers of the Great Northern or of the officers of the Northern Securities Co. —any solicitation to them to turn in, to transfer, their shares to the Northern Securities Co.?
>
> A. No, sir, *there was absolutely none.* On the contrary *great pains were taken to see that every shareholder understood that it was a matter for himself to decide and one that nobody else could decide for him.* The price was such, being below the market, that it was thought it would deter a number from selling their stock. In fact, I did not expect that so large a number of the shareholders would exchange their stock. We gave them the opportunity if they desired it."

And see I, 704-6, for Mr. Hill's cross examination on this point and on his form of letter to inquiring shareholders.

Col. Clough, vice-president of the Securities Co. and in general charge of its New York office, being questioned (I, 787) as to his knowledge of the transfers of Great Northern and Northern Pacific shares to the Securities Co., and having answered that he had knowledge and that "it was all done

under my supervision" testifies as follows, (I, 788):

> Q. Now, state whether the transefers were individual, absolute without reservation, and without solicitation from the Northern Securities Co.—fully.
>
> A. To answer the first question: Every purchase of stock that has been made by the Northern Securities Co. (whatever stock it may be) has been made by direct individual transactions and negotiations with the owner, except in the one instance I have referred to in my previous testimony of the purchase of the Harriman and Pierce stock, where J. P. Morgan & Co. negotiated the purchase, and the purchase was assigned to the Northern Securities Co.
>
> Q. Now, were the transfers absolute?
>
> A. They were absolute and unconditional in every case.
>
> Q. Were they solicited by the Northern Securities Co.?
>
> A. *No, sir; in no case.*

Col. Clough goes on to speak of the circular of November 22, 1901; of the many shareholders who brought in their stock personally, and of the information given them, especially after the bringing of suits against the company had been begun.

There is nothing in the record to contradict or qualify this and the other evidence on this point. Yet the Circuit Court, having found that the promoters of the Securities Co. agreed with each other to use their influence to induce other shareholders in the two railway companies to transfer their shares to the Securities Co. (see page 68, supra) has also found (II, 1705) that—

"The Securities Co. was enabled to make the subsequent purchases of stock from stockholders of the Great Northern Company not immediately concerned in the organization of the Securities Co., by the advice, procurement and persuasion of those stockholders of the Great Northern Co. who had been instrumental in organizing the Securities Co. and had exchanged their own stock for stock in that company shortly after its organization."

(2) The Purchase of the "Harriman Shares."—Shortly after its organization, the Securities Co. became the purchaser of the Northern Pacific common and preferred shares (amounting together to about 78 millions) which had been bought by the Oregon Short Line Co., and stood in the name of Mr. Harriman and Mr. Pierce. Much space is devoted in the testimony for the government to the preliminaries of this purchase, but the facts may be briefly stated:

When the Oregon Short Line Co. realized that the Northern Pacific Board of Directors who had been chosen in October, 1901, (and who, according to agreement, had been named by Mr. Morgan) would in all probability take proceedings to retire the preferred stock, and thus make the Oregon Co. a minority shareholder, negotiations were opened with J. P. Morgan & Co. for a sale of these shares (Harriman, I, 901-2, 903-4). The negotiations were protracted. Mr. Harriman, who acted for the Oregon Co., seems to have waited till the Northern Pacific directors, on November 13, 1901, had voted to retire the stock on the first day of January then next,

before closing the bargain (I, 907). It was toward the end of the negotiations and but a few days before they were closed, that it was proposed to make part-payment in stock of a company which proposed to take Great Northern shares at $180 and Northern Pacific at $115, payable in its own shares at par (I, 901, 902-7).

Mr. Harriman first learned that the stock was to be delivered to the Securities Co. when it was in fact delivered.

> "The first I knew was when it was delivered to that company" (I, 902).
>
> "There never was anything on their part, it seems to me, that would lead me to infer that they were to turn that stock over to a holding company. Towards the end when the matter crystalized, and when we were very nearly at the end of our tether, they offered to pay for these shares in the stock of a holding company so much, and so much in cash. Now, there was nothing said as to whether they would turn this stock over to a holding company, or whether they would hold it themselves; but they would give us that holding company's stock in part-payment" (I, 901).

He dealt with J. P. Morgan & Co., as principals. They did not claim to be acting for others (I, 900, 901, 902). He had nothing to do with forming the Securities Co. and made no investigations, but relied on the statements of J. P. Morgan & Co. and the reputation of the men engaged in forming the company (I, 907).

Mr. Perkins, who acted for his firm in negotiating the purchase, says the terms were agreed on about November 18, 1901, and that J. P. Morgan & Co.

then sold the shares or assigned their purchase to the Securities Co. (I, 240, and see Mr. Morgan, I, 357; Schiff, I, 267; and Col. Clough, I, 788). The purchase was not at so much per share, but for a round sum. And when the shares came to be delivered to the Securities Co., they proved to be less than had been supposed, and the Securities Co. refused to take them at the price, but did take them after a substantial reduction of the price (I, 240; Mr. Steele, I, 302). The shares actually delivered amounted to $37,023,000 of common stock, and $41,085.000 of the preferred stock. The reduced price paid was the round sum of $91,407,500, payable $82,491,871 in shares of the Securities Co. and $8,915,629 in cash (I, 910 as explained by Col. Clough, I, 914-6).

An examination of the citations from the record at the head of this statement of the Harriman purchase, will supply matters of detail necessarily omitted here. There is some discrepancy among the witnesses in the matter of dates, but they agree that J. P. Morgan & Co. acted for themselves, and that they closed the bargain with Mr. Harriman after the organization of the Securities Co., (and see Mr. Steele, I, 302-3,) and afterwards assigned to the Securities Co.

Mr. Hill took no part in the negotiations, and knows only that there were negotiations and that the sale was made (I, 92, 94, 96).

Mr. Steele (I, 303) testifies that there was no connection whatever between the organization of the Securities Co. and the acquisition of the Harriman

stock. And Mr. Morgan says (I, 362):

> Q. Was it agreed by any one, so far as you know, before the Northern Securities Co. was organized that the so-called Harriman or Union Pacific stocks in the Northern Pacific should be placed in the Northern Securities Co.?
>
> A. No, we did not require it.
>
> Q. And you did not know that it would be done until after the consummation?
>
> A. Not until after.

Mr. Hill was asked (I, 99) if there was any connection between the organization of the Securities Co. and the purchase of the Harriman stock, and is emphatic in his denial of any connection whatsoever between them.

And Mr. Morgan's testimony (I, 357, at bottom) shows that he considered his firm had bought the Harriman stock and might have kept it if they so desired, instead of selling to the Securities Co.

(3) The petition, while it charges Messrs. Hill and Morgan and their friends with conspiring to restrain and monopolize commerce by placing the control of the two railway companies (then possessed, as it says, by themselves) in the hands of the Securities Co., wisely refrains from charging them with doing this in their own interest or for their own benefit. The evidence shows that whereas before the formation of the Securities Co. they possessed a majority of Northern Pacific common stock, with the right to acquire a majority of all the stock in the retirement of the preferred stock and issue of an equivalent

amount of new common stock, (see page *supra*), and somewhere near 39 per cent of Great Northern, their conspiracy has, up to the present time, cost them the control of the Northern Pacific, and they have not gained control of either the Great Northern Co. or the Securities Co. Whatever Northern Pacific or Great Northern stock they may still retain must be far less than enough to give any sort of control; and the more of such stock they retain, the less stock have they in the Securities Co. But even if they had transferred to the Securities Co. all their 33 millions of Great Northern, (less Mr. Hill's 2½ to 3 millions, retained by him) and all their 41 to 42 millions of Northern Pacific Common, and all the new common stock which the holders of the 42 millions would be entitled to obtain (75/80 of their holding,) they would still hold only about 140 millions of Securities Co. stock, out of a total of 400 millions, of which 350 to 360 millions have been issued. (Col. Clough, I, 254; Mr. Hill, I, 713). And none of them has any stock left in either railway company, except Mr. Hill, who has a little over two per cent of Great Northern—hardly a "controlling interest."

If their aim was to restrain or monopolize commerce, it was not to do either for themselves, but to surpass all the classic instances of "*Sic vos non vobis.*"

And hence the statement in the decision (II, 1709) that "a few men acting in concert and in the name and under cover of its charter" are given "the power to control all the means of transportation of" the two railway companies, and the statement (II, 1710)

that "the object and necessary effect" of the combination in hand "is to give to a single person or to a coterie of persons full control of all means of transportation," etc., are without foundation. They lay out of account the 1300 shareholders who have not conspired, and who hold the great majority of the stock; for the word "coterie" would hardly include them, and "a few men" certainly would not. Mr. Morgan says, (I, 356) in testimony offered by the Government:

> "There is no interest that I know of to-day that can control the Northern Securities Company."

Even without the plenary proof of what *was* the purpose of the men who promoted the Securities Co., the bare statement of their holdings in that company is alone enough to show that it was not to gain control of both railway companies, whether for the purpose of restraining or monopolizing commerce or committing any other crime. They knew that the result of their plan would not be to give them additional control, but would take from them the control they already had of one (and one only) of the companies, and take away whatever power they already had of violating the Anti-trust Act in respect of the commerce of either of them.

RESULTS OF FORMATION OF SECURITIES CO.

(1) Commerce has not been Monopolized or Restrained. Each Railway is managed and required by law to be Managed by a wholly Different Board of Directors from that of the other. Each is operated as independently and competes as much with the other as before the Securities Co, was formed.

(2) Amount and Percentage of the Interstate Commerce of Each Railway on which competition could be lessened or Rates Controlled even by a full Consolidation of the two Companies and the Absolute Ownership of both Lines by a Single Company. Such Amount is less than 3 per cent of the total Interstate Commerce of Each—Competing Rates between same points necessarily the same on both Lines, however Independent of Each other.

(3) Increase of Traffic from Burlington Purchase necessarily brings reduction of rates along the whole line of each Company. Reduction already made.

(4) No Evidence of a Purpose on the Part of the Securities Co. or either Railway Co. to restrain or Monopolize Commerce or to combine or conspire for that purpose.

(1) Mr. Mellen, I, 175-8, 179.
Mr. Morgan, I, 320, 322.
Mr. Hill, I, 697.
Col. Clough, I, 843-5.
Gen. St. Minn. 1894.
(2) Defts. Ex. 6 and 7, Vol. I, 969-976.
Mr. Hill, I, 697, 714.
Col. Clough, I, 802-3.
Mr. Commissioner Prouty, I. 642.
(3) Mr. Hill, I, 683-4, 730-1).

(1) The formation of the Securities Co. has not resulted in any monopoly or restraint of commerce or suppression of competition.

The management of each railway company is solely in its board of directors, and its commerce is carried on by the board and by the officers and servants appointed by the board. The Securities Co. can at most elect a board of directors for each company. And these boards must be distinct from each other. No person can be a member of both boards, nor can the same person be an officer of both companies. The Great Northern charter provides (I, 441,) that

> "'All the affairs and business of the said company shall be conducted by or under the direction of the board of directors and they are authorized for the purposes specified in this act to make and establish regulations and by-laws, and to do all things necessary to be done, and not inconsistent with the constitution and laws of the United States, or the laws of this territory, or this act."

The same section provides that the first directors chosen shall be divided by lot into three classes, to hold office respectively for one, two and three years;

and the directors elected in each year thereafter "shall hold their offices three years and until their successors shall be elected and enter upon their duties." (I, 441). And this classification and term of office is shown in the list of directors in the 12th and 13th annual reports of the company. (I, 465, 921, 923).

The Northern Pacific charter provides as follows (I, 425):

> "Section 9. All of the affairs of said company shall be managed by a board of directors, who shall be stockholders, and who are hereby invested with all the powers of the corporation save as hereinafter provided. They shall be chosen annually by ballot by the stockholders at the annual meeting of the company" * * *

The evidence, introduced by the Government, of Mr. Mellen and others as to the management of the two railways since the formation of the Securities Co. is as follows (I, 175-8):

> "Q. Mr. Mellen, is there any difference in the management of the Northern Pacific road before and the management since the organization of the Northern Securities Company?
>
> A. None whatever. * * *
>
> Q. Speaking about competition, Mr. Mellen. Now, take between the head of the lakes and Minneapolis and St. Paul, the rates of the Great Northern and the Northern Pacific are the same, are they not?
>
> A. Yes.
>
> Q. Must be the same?
>
> A. Yes. * * *
>
> Q. You said there was active competition. Do you mean by that each road is struggling to get all the business it can?
>
> A. Yes.

Q. And that competition is active to-day, is it?

A. Yes, sir.

Q. Now, is it possible in railroad management for the rates between the same points to be different over one line from another line between the same points?

A. Yes; if you want the business all to go by the line with the lowest rate.

Q. If each company does business, the rates have to be the same?

A. Substantially the same.

Q. As between all competing points between the Northern Pacific and the Great Northern the rates are the same, are they not?

A. They are.

Q. And have always been the same since you have been there?

A. So far as I know.

Q. Then you mean by competition each line is struggling by soliciting business and getting business to get all it can?

A. Yes; offering superior facilities and bringing pressure to bear and influence personal and otherwise, and every way you can.

Q. Do you mean to say that the conditions that you have just testified to were due to business conditions, to natural conditions, or to agreements and understandings reached between traffic managers and officials of the lines?

A. Both.

Q. Well, isn't the main factor in the conditions you have testified to the fact that the roads, for the purpose of preventing competition, have made a tacit agreement to maintain certain rates?

A. No.

Q. That is not the fact?

A. No.

(I, 178):

Q. Are not the rates, and have they not been for a number of years between the Northern Pa-

cific and the Great Northern, understood between those companies and maintained to a certain given point?

A. The rates between the Northern Pacific and Great Northern are frequently misunderstood, I am very sorry to say, to the detriment of both companies and the public, and I find no difference in the conditions to-day from what I found when I came here, and I don't expect there will be any difference in the conditions if I should stay here for ten years to come. * * *

(I, 179):

Q. The rates, of course, have to be published?

A. Yes.

Q. And you have to publish those rates a certain time before they go into effect under the law?

A. Yes.

Q. Do you know of any way that the Great Northern can have a published tariff or have a rate that is less than the Northern Pacific between two common points and the Northern Pacific get any business?

A. No. I don't know how it can be done.

Q. Isn't it a positive necessity that makes rates between the same termini of competing railroads the same? Isn't it a positive necessity?

A. Yes.

And in the examination of Mr. Harriman by the Interstate Commerce Commission, put in evidence by the Government, Commissioner Prouty thus expresses what is a truism in railway transportation, (I, 642):

"You know, Mr. Harriman, that *competing rates* have to be practically the same between the same points."

Mr. Morgan says (I, 320) that up to the date of his testifying (March 26, 1902) the Northern Pacific Co. has been conducted as an independent organization.

Mr. Hill, testifying for defendants, says (I, 697):

> Q. Has anything been done between the two companies for the purpose of reducing competition at any point?
>
> A. Nothing whatever. I think the competition is just as free and full as it has been at any time in the past 20 years.
>
> Q. So that, as far as you know, Mr. Hill, is either road operated less independently of the other since the formation of the Northern Securities Co. than it was before?
>
> A. If there is any difference, I think they are a little more independent of each other. (And he goes on and gives an instance of this).

As to the status of the board of each company as independent of the shareholders during its term of office, and the statutory requirement of separate officers for each company, see Col. Clough, I, 841-3.

(2) The amount or percentage of the interstate commerce that could be affected even if the Securities Co. had control of the operations of the two companies—had as complete control as the Burlington would have should it obtain a 99 year lease of both the Great Northern and Northern Pacific, or as the New York Central has of the West Shore by virtue of a perpetual lease (besides ownership of all the stock)—is very small. Mr. Hill in his testimony (I, 697, 714) puts it as under 10 per cent; but

it is much less than 10 per cent. It does not exceed 3 per cent of the interstate commerce of the two companies. This is fully shown in Defendants' Exhibits 6 and 7, (I, 969-976), which are explained by Col. Clough (I, 802-3, 874-8, 853-7).

The following table, a combination of those in I, 969 and 973, shows the percentage of the competitive and noncompetitive interstate commerce on each line.

	G. N. per cent.		N. P. per cent.	
1. Traffic, the rates on which could be controlled by joint action of the two companies alone ..	2.78		2.89	
2. Traffic the rates on which could be controlled by the two companies and connecting lines,but not by the two companies alone	.65	3.43	4.90	7.79
3. Traffic which is in competition with other lines, and the rates on which could not be controlled by the two companies alone	6.89		2.58	
4. Traffic the rates on which could be made only by agreement with connecting carriers, and which is also in competition with other carriers, so that the rates on it could not				

be controlled by the two companies alone, or by them and connecting carriers	17.09	23.98	13.25	15.83
5. Traffic on either line between points not reached by the other, and so non-competitive	72.59		76.38	

The rates on any class of traffic, except class 1, can not be controlled merely by control of the two companies. Those in class 2 (joint rates) can be made only by assent of connecting carriers. Those on class 3 are subject to the competition of other carriers. Those on class 4 (joint rates) require assent of connecting carriers and are also subject to the competition of other carriers. Those on class 5 are non-competitive, and subject to the sole control of each company to the exclusion of the other.

It is therefore evident that the only interstate competitive traffic which the control of the two railways could give power to restrain or monopolize by suppressing competition is that in class 1, being 2.78 per cent of the total interstate and foreign commerce of the Great Northern Co. and 2.89 per cent of that of the Northern Pacific Co.

From this table, with the statement in the same exhibits of the amount of the gross earnings in each of these five classes of commerce, it appears that, In the year ending June 30, 1901, from class 1 the Great Northern earned (I, 972) $471,218.88, and the Northern Pacific (I, 976) $554,395.24, making a

total of $1,025,614.12 for both roads. Deducting the operating expenses—51 per cent on the Northern Pacific (I, 998) and 55 per cent on the Great Northern (I, 484) and the net earnings from the traffic in question were:

Great Northern	$212,048.49
Northern Pacific	282,741.57
	$494,790.60

These were at the rates prevailing before any "monopoly."

Assuming that the monopoly brings about an increase of ten per cent in rates on this class of traffic, (and an increase no greater by the trunk lines, the wages of labor and everything used by the railways having risen from 25 to 150 per cent, has recently brought the Interstate Commerce Commission down upon them,) and that the advance of rates would not (though it presumably would) bring about a diminution of traffic, then the increase of the net earnings of the two companies as a result of the "monopoly" would be $49,479.

The amount actually earned by each company is of course mingled with its other funds, and from the aggregate its dividends are declared and paid. Assuming that the Securities Co. owned (as it does not) all the shares of both railway companies, it would receive from them, separately, dividends the aggregate amount of which would be increased by this sum of $49,479.

Of this Messrs. Hill and Morgan and their associates, if they owned as much as 140 millions of Securities Co. stock, would receive $19,791, if only 350

millions of the Securities stock were issued. If the whole 400 millions were issued, they would receive $17,317.

And when either of these sums is divided up among Mr. Morgan and Mr. Hill and their associates, the addition to his annual income which each of these gentlemen would receive would hardly seem to justify their labor and outlays, to say nothing of their abandoning control of the Northern Pacific Co. and incurring the heavy penalties of a criminal conspiracy.

This proof furnishes an additional corroboration of what needed no such aid—the direct testimony of the alleged conspirators as to their real motives and objects. And whether by itself, or in connection with the proof showing that the alleged conspiracy to control the two companies was (if a conspiracy at all) a conspiracy to abandon control of one of them and make it more difficult to gain control of the other, it amounts to a demonstration of the absurdity of the charge of conspiracy on which alone the petition is founded.

(3) Mr. Hill (I, 683-4, 730) speaks of the increase of traffic and reduction of rates since the Burlington purchase and since the organization of the Securities Co., and says that the reduction already made amounts to about 10 per cent, reducing the gross earnings by that amount. That the reduction of rates was made possible by the increased earnings and that the increased earnings were large-

ly due to the Burlington purchase. And see I, 682, 736, (already quoted) as to the increase of traffic. And see the Great Northern Annual reports for the years ending June 30, 1901 and 1902, respectively, (I, 483, I, 921, 944) the first showing gross earnings of $28,350,689.06 and the second showing $36,032,256.06. That this is not owing wholly to good times is apparent on comparing the earnings of 1900-1 with those of 1899-1900, also given at I, 483, and which were $28,910,789.26.

So that up to October of last year the formation of the Securities Co. had neither restrained the commerce (domestic, or interstate or foreign) of the Great Northern Co. or raised rates. On the contrary commerce has increased and rates have as a consequence been reduced.

And what is true of the Great Northern is also true of the Northern Pacific. See the Reports I, 998, 1004.

(4) There is absolutely no evidence whatever, direct, circumstantial or even presumptive, that the Securities Co., or either railway company, or any body connected with either of the three companies has now or has ever had or ever will have any purpose of restraining or monopolizing any part of the interstate or foreign commerce of the two railways or of either of them, or of engaging in any contract, conspiracy or combination to that end, or of doing anything to impair the absolute independence of the management of the railways and the free com-

petition between them which the evidence shows has not been in anywise changed by the stock acquisitions of the Securities Co.

The Government's case must rest on the assumption that such stock holding by the Securities Co. *necessarily* destroys that independence and freedom, and necessarily imposes restraint and creates monopoly. But that can hardly be called a *necessary* result which the evidence shows has not resulted at all.

And while the Circuit Court was wrong, as we claim, in its law when it held the power to restrain commerce to be the same thing in law as actual restraint, the decision whether wrong or right, has no application to the facts of this case, for the Securities Co. has no power to restrain the commerce of either railway company.

SPECIFICATION OF ERRORS.

First. The Court erred in finding and deciding that in the summer of 1901 certain large and influential stockholders of the defendant railway companies conceived the design of placing a very large majority of the stock of both said companies in the hands of a single owner. And erred in finding and deciding that the stockholders thus described had practical control of the roads of the two defendant railway companies.

Second. The Court erred in finding and deciding that said above described shareholders arranged and agreed with each other that a corporation to be formed by them under the laws of New Jersey should buy all, or least the greater part, of the stock of each of the defendant railway companies.

Third. The Court erred in finding and deciding that the above described stockholders agreed with each other to exchange their respective holdings of stock in the two defendant railway companies for the stock of such New Jersey company.

Fourth. The Court erred in finding and deciding that the above described stockholders agreed with each other to use their influence to induce other stockholders in their respective companies to exchange their respective holdings of stock in said railway companies for the stock of such New Jersey company, and in deciding that this was to the end that the New Jersey company might become the sole

owner of the whole or at least a major portion of the stock of both said railway companies.

Fifth. The Court erred in finding and deciding that the Northern Securities Company was organized under the plan mentioned in the foregoing assignments, and in finding and deciding that the capital stock of $400,000,000 with which the Northern Securities Company was organized, was the exact amount required to purchase the total stock of the two defendant railway companies at the price agreed to be paid therefor.

Sixth. The Court erred in finding and deciding that when the Northern Securities Company was organized it assented to and became a party to the above mentioned scheme so found by the court as aforesaid to have been devised by its promoters.

Seventh. The Court erred in finding and deciding that the Northern Securities Company was enabled to make purchases of stock of the Great Northern Railway Company from holders thereof not immediately concerned in the organization of the Northern Securities Company, by the advice, procurement and persuasion of those stockholders of said railway company who had been instrumental in organizing the Northern Securities Company.

Eighth. The Court erred in finding and deciding that the scheme so as aforesaid erroneously found by it to have been devised and consummated, placed the control of the railways of said two railway companies in the hands of the Northern Securities Com-

pany, and destroyed every motive for competition between said two railway companies by pooling their earnings for the common benefit of the stockholders of both railway companies; and erred in finding and deciding that any such, or any pooling of earnings was ever contemplated or has ever been made.

Ninth. The Court erred in holding and deciding that all contracts and combinations which merely tend to restrain interstate commerce whether by suppression of competition or otherwise, are in themselves, and although such tendency does not result in any such restraint, violations of the Act of Congress of July 2, 1890, known as the Anti-trust Act.

Tenth. The Court erred in holding and deciding that all contracts and combinations which merely confer the power to restrain interstate commerce, whether by suppression of competition or otherwise, are in themselves contracts or combinations in restraint of such commerce and declared illegal by the Anti-trust Act, though such power is not and is not intended to be exercised.

Eleventh. The Court erred in holding and deciding that every combination whereby the power is acquired to suppress competition between two parallel and competing lines of railway operating under State charters and engaged in interstate commerce, is a combination in violation of said Anti-trust Act whether such power is exercised or intended to be exercised, or not.

Twelfth. The Court erred in holding and deciding that it would have been a violation of said Anti-trust Act had the individual defendants, in pursuance of a previous agreement so to do, sold their shares of stock in the defendant railway companies to a natural person, and had induced their fellow-shareholders to do the same, with the resulting acquisition, by such individual, of a majority of the stock of each railway company.

Thirteenth. The Court erred in holding and deciding that the interstate commerce of each defendant railway company is controlled by its shareholders and not by its Board of Directors.

Fourteenth. The Court erred in holding and deciding that the Northern Securities Company directly controls the commerce of both of the defendant railway companies, though by the charter of each company the management of its business is vested in its Board of Directors, and the companies have and must have separate and distinct Boards of Directors.

Fifteenth. The Court erred in holding that the ownership of a majority of the shares of each of two competing railway companies gives to the owner of such shares a control over each of such companies and its commerce which the holder of a majority of the shares of a single railway company was held, in Pullman's Palace Car Co. v. Missouri Pacific Ry. Co., 115 U. S. 587, not to possess over such single railway company or its commerce.

Sixteenth. The Court erred in holding and deciding that the constitution and composition of railway companies chartered by states or organized under State laws, but carrying on interstate commerce, are themselves matters of interstate commerce, and, as such, subject to regulation by Congress. And in holding and deciding that under the Commerce clause of the Constitution Congress has power to prescribe who may and who shall not be shareholders in such companies, and how much stock any one stockholder or combination of stockholders may own in any such company, and to authorize and forbid the consolidation of such corporations or any of them.

And erred in holding and deciding that the acquisition and holding of stock in such railway companies, and all matters of their internal constitution and composition, are not matters over which the State incorporating such company has exclusive power of regulation. And erred in holding that the authorizing or forbidding of the consolidation of any two such railway companies is not within the exclusive power of the State or States by or under whose laws they have been incorporated.

Seventeenth. The Court erred in holding that consolidations of railway companies created by or under State laws and competitors in interstate commerce, are effectual restraints upon such commerce, and that such consolidations, though expressly authorized by State charter, are violations of said Anti-trust Act and illegal.

Eighteenth. The Court erred in holding and deciding that any of the defendants have ever attempted to interpose the New Jersey charter of the Northern Securities Company as a shield between themselves and the law, and that such charter is about the only shield that can be so interposed.

Nineteenth. The Court erred in finding and deciding that "the reasoning which led to the acquisition of that (the said New Jersey) charter" was "that while as individuals the promoters could not, by agreement among themselves, place the majority of the stock of the two competing and parallel railroads in the hands of a single person or a few persons, giving him or them the power to operate the roads in harmony and stifle competition, yet that the same persons might create a purely fictitious person termed a corporation, which could neither think nor act except as they directed, and by placing the same stock in the name of such artificial being, accomplish the same purpose."

Twentieth. The Court erred in holding and deciding that the shares of the two defendant railway companies held by the Northern Securities Company have merely been placed in its name by the former holders thereof, and that it is not the absolute owner of the same in its own sole right.

Twenty-first. The Court erred in holding and deciding that, "so far as the New Jersey charter is concerned, the question which the Court has to determine is whether a charter granted by a State

can be used to defeat the will of the National legislature as expressed in a law relating to interstate trade and commerce over which Congress has absolute control."

Twenty-second. The Court erred in holding and deciding that the existing combination gives to a few men acting in concert and in the name of the Northern Securities Company and under cover of its charter the power to control all the means of transportation of the defendant railway companies, and to directly control said companies and all their commerce.

Twenty-third. The Court erred in finding and deciding that "the object and necessary effect" of the combination found by it to exist in this case, "is to give to a single person or to a coterie of persons full control of all the means of transportation owned by two parallel and competing lines of railroad engaged in interstate commerce, as well as the power to fix the rate for the transportation of persons and property."

Twenty-fourth. The Court erred in holding and deciding that the said Anti-trust Act, if construed as forbidding or restricting the shareholders of the two defendant railway companies from selling their shares to the Northern Securities Company, or exchanging them for shares of that Company, or as forbidding or restraining that company from making such purchases or exchanges and holding the railway shares thus acquired as its own, is a valid law

and not in conflict with the fifth amendment of the Constitution of the United States.

Twenty-fifth. The Court erred in holding that the said Anti-trust Act was intended, and was and is effectual, to include and prohibit "virtual consolidations" of parallel and competing railway companies chartered by the several States, and combinations looking to such "virtual consolidations."

Twenty-sixth. The Court erred in holding and deciding that this proceeding can be maintained under Section one of said Anti-trust Act, although it is alleged in the Petition itself, and appears by the proofs, that whatever the combination or conspiracy complained of was formed to do had been fully and completely done and effected before this proceeding was begun.

Twenty-seventh. The Court erred in disregarding as immaterial the averments of the answers and the proofs in support thereof, showing that the combination in question was not a combination in restrain of commerce; that its purpose was and its effect has been to very largely build up, increase and protect the interstate and foreign commerce of the two railway companies. And erred in considering not all the effects of said combination upon such commerce, but only its possible effect in restraining a minute portion of such commerce—an effect at the most incidental—and in unduly magnifying the extent and importance of such incidental restraint, and holding the same to be the principal if not the only purpose and effect of such combination.

Twenty-eighth. The Court erred in holding that the proofs disclosed any contract, combination or conspiracy in restraint of interstate or foreign commerce, or any other combination than one to build up and enlarge interstate and foreign commerce without any restraining of either.

Twenty-ninth. The Court erred in deciding and decreeing "that the defendants have heretofore entered into a combination or conspiracy in restraint of trade or commerce among the several states, such as an Act of Congress, approved July 2, 1890, * * * denounces as illegal."

Thirtieth. The Court erred in deciding and decreeing that all of the stock of either of the defendant railway companies claimed to be held and owned by the defendant Northern Securities Company, was acquired and is now held by the Northern Securities Company in virtue of the combination or conspiracy mentioned in the last preceding assignment, and erred in decreeing that any of said stock was acquired or is held in virtue of any such combination or conspiracy.

Thirty-first. The Court erred in decreeing that the Northern Securities Company be enjoined, and in enjoining it, from acquiring or attempting to acquire any further stock of either of the defendant railway companies, and from voting any stock at any stockholders' meeting of either railway company, and from exercising or attempting to exercise any control, direction, supervision or influence whatever

over the acts of either railway company by virtue of its holding of stock therein.

Thirty-second. The Court erred in decreeing that each defendant railway company, and its directors, officers, agents and servants, be enjoined, and in enjoining them, from permitting the shares thereof held by the Northern Securities Company to be voted at any corporate election of such railway company; and from paying to that company any dividend on the stock of such railway company which it now claims to own and hold; and from permitting or suffering that company or any of its officers or agents to exercise any control whatever over any of the corporate acts of such railway company.

Thirty-third. The Court erred in deciding and decreeing that the Northern Securities Company does not and cannot lawfully hold shares in *even one* of the defendant railway companies, and has not and cannot enjoy or exercise the rights and powers incident to such ownership; and in decreeing injunctions depriving it of all rights of a stockholder in either one of the two railway companies.

Thirty-fourth. The Court erred in rendering any decree save a decree for a dismissal of the petition and proceeding.

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ARGUMENT.

Summary of the Facts.

1. For some years prior to 1901 the two railway companies had been engaged in an enterprise of building up a great interstate and Oriental commerce. (Supra, pp. 22-31).

2. In April, 1901, they purchased nearly all the Burlington shares at a cost of over $200,000,000, paying for them with their joint bonds, and not with the bonds of the Burlington Co. as stated in the decision, (supra, pp. 32-34). They made the purchase not with any view of placing the two companies, their shares or their commerce, under a single control. (Supra, p. 39).

3. Immediately after this purchase, persons interested in the Union Pacific Ry. Co. attempted to obtain the stock control of the Northern Pacific Co., their object being to prevent the carrying out of the enterprise of the defendant railway companies, and especially to prevent the use of the Burlington road in carrying out that enterprise. (Supra, pp. 46-7).

4. This "raid" (as it is called) on the Northern Pacific stock failed, the failure being largely due to an error of the raiders in buying common instead of preferred stock. (Supra, pp. 48-51). But there was imminent danger that another like attempt might be made and be successful. (Supra, p. 57).

5. Such a raid, if successful, would destroy the commerce the railway companies were building up, and in aid of which they had bought the Burlington shares. (Supra, pp. 53-6).

6. For some years prior to 1901, Mr. Hill and ten other shareholders in the Great Northern Co., holding less than 30 per cent of its stock, had contemplated the formation of a company to which they should make absolute transfers of their shares in consideration of the shares of such new company. Their purpose was that the shares should be voted alike in the future as they had been in the past, and that they should fare alike in any sale of them that might be made. (Supra, pp. 58-60).

7. In June, 1901, after the defeat of the raid, it was first suggested that the proposed company should be enlarged so as to include the Northern Pacific common stock (about $21,000,000) held by the same persons, and later the plan was still further widened so as to include the Northern Pacific common stock (about $20,000,000) held by J. P. Morgan & Co. should they desire to make such disposition of the stock held by them. (Supra, pp. 62, 64-5).

8. It had all along been the purpose of Mr. Hill and his ten associates that every shareholder in the Great Northern Co. should be given an opportunity to join the company as originally planned,—this not because they needed or desired the accession of such other shareholders, but to avoid any complaint of unfair treatment on their part. (Supra, pp. 60-61).

9. This purpose was carried into the enlarged project, and, at the instance of Mr. Morgan, the same opportunity was to be given to holders of Northern Pacific stock. (Supra, pp. 65, 64).

And like the company originally projected, the enlarged company was to be authorized and was expected to acquire shares in coal mines and in industrial enterprises of utility to the railways, but whose stock the railway companies could not hold, and also to be a financial as well as an investment company, with power in that capacity to aid the operations of the railway companies, or of any other companies whose shares or securities it might hold.

10. The amount of Great Northern stock held by Mr. Hill and his ten associates was from 33 to 35 milions out of a total capital of $125,000,000. (Supra, p. 58).

In 1896, they had severally acquired $29,000,000 of Northern Pacific common stock, which amount had, on May 1, 1901, been reduced by sales to $20,000,000. (Supra, p. 49).

11. In forming the Northern Securities Co. (which was incorporated November 13, 1901) it was the intention of its promoters that it should acquire, if it could, a majority of Northern Pacific stock, thereby protecting such stock from future raids, and protecting the commerce of the railways from the ruin that would result from a successful raid.

They did not desire or expect that the Securities Co. should acquire a majority of Great Northern shares. Such acquisition was not deemed necessary

for the protection of the stock of that company or of the commerce of the roads. (Supra, pp. 67-68, 71).

12. While the capitalization of the Northern Securities Company is nearly, it is not (as stated in the opinion) the *exact* amount required to pay for all the shares of the two railway companies at the prices ($180 for Great Northern and $115 for Northern Pacific) fixed for such exchanges. (Supra, p. 67).

13. Mr. Hill and his ten associates who promoted the Securities Co. did not agree or bind themselves even to transfer their own shares to the Northern Securities Co. Each of them was left to decide for himself. Mr. Hill retained between two and three millions of his shares. (Supra, pp. 71-4).

And neither they, nor any one concerned in promoting the Securities Co., nor J. P. Morgan & Co. ever agreed in any manner that upon the organization of the Securities Co. they would "use their influence to induce other stockholders in their respective companies to do likewise," as erroneously stated in the decision, II. 1704. (Supra, pp. 67-8).

14. The Securities Co. is not a railway company and has no power to build or operate railways. Its powers are limited to buying, selling and holding stocks, bonds and other securities, with power to aid in any manner any company whose stock or bonds it may hold, and to do all acts designed to aid any company whose shares or securities it may hold, and

protect or enhance the value of its investment; also to hold any real or personal property required for the transaction of its business. In short, it is at once an investment and a financial company. See the Articles, I, 18a.

15. Soon after its organization, and on November 18, 1901, the Securities Co. purchased the Northern Pacific shares that had been acquired by those concerned in the raid, known as the Harriman shares. Those had been purchased from them by J. P. Morgan & Co. The purchase comprised $37,023,000 of common stock and $41,085,000 of preferred stock, at a lump price of $91,407,500, payable (and paid) $8,915,629 in cash, and $82,491,871 in shares of the Securities Co. at par. (Supra, pp. 95-7).

About the same time it received from its promoters and J. P. Morgan & Co., the Northern Pacific common stock (about $42 000,000) held by them.

It availed itself of its right as a common stockholder of the Northern Pacific Co., to purchase at par for cash, the new common stock (issued to replace the $75,000,000 preferred stock retired) to the amount of 75-80 of the amount of common stock held by it.

As a result of these purchases, the Securities Co., at the beginning of the year 1902, and before this suit was begun (in March, 1902) held about $152,000,000 of the total $155,000,000 stock of the Northern Pacific Co.

16. Soon after its organization, Mr. Hill and the other promoters of the Securities Co. transferred to it about 30 millions of Great Northern shares at

$180 in exchange for Securities shares at par, and within three months from its organization, (and before the commencement of this suit) the Securities Co. had acquired, on the same terms and from other holders, about 65 millions of Great Northern shares, making its total holdings 95 millions of the total capital of 125 millions (Decision II, 1705; Col. Clough, I, 244-6, 654).

17. It is not the fact, as stated in the decision (II, 1705), that the Securities Co. was enabled to make the purchase of the 65 millions of stock bought from non-promoters, or of any of it, by the advice, procurement or persuasion of the Great Northern shareholders who had been instrumental in organizing the Securities Co. There is not any evidence in support of this finding, and the evidence is conclusive against it.

The facts proved beyond question are that each purchase was an independent transaction between the seller of stock, and the Securities Co., without solicitation, persuasion or other influence by the Securities Co., or any one else. (Supra, pp. 90-94).

18. At the time of the formation of the Securities Co., the Great Northern shareholders were 1800 in number. Of them about 1200 transferred their shares to the Securities Co. (I, 701).

When this suit was begun, in April, 1902, the shareholders of the Securities Co. were more than 1300; in October, 1902, they were about 1890 (I, 787).

19. The Securities Co. is the absolute owner of the shares acquired by it and of the dividends thereon. The shares are not pooled or consolidated, nor are the earnings of the two roads pooled. It is in no sense a "trust." (Supra, pp. 82, 91-2).

20. The promoters of the Securities Co.—Mr. Hill and his ten associates—do not, all of them together hold, nor have they ever held more than one-third of the $360,000,000 stock of the Securities Co. that has been issued and is outstanding (I. 803), and these gentlemen and J. P. Morgan & Co. have never held more than $140,000,000. (Supra, p. 99).

21. By the charter of each railway company, its commerce is controlled and directed wholly by a board of directors, the members of which are chosen for prescribed terms and cannot be removed during their terms. And by the laws of Minnesota and Wisconsin no person who is a director in one company can be a director in the other. (Supra, pp. 102-3; I. 811-3).

22. The Securities Co. has not attempted to control or meddle with the commerce or the management of either railway, nor is there any evidence that it purposes doing either. Ever since its formation such commerce has been conducted by the two boards of directors in complete independence of each other (Supra, pp. 103, 106).

23. There has been no agreement to suppress and no suppression of competition between the two rail-

way companies, which is as active as it was before the Securities Co. was formed. (Supra, pp. 103).

24. The entire interstate commerce of the two railways, the rates on which can be controlled by those companies without other competition or consent of connecting lines, falls short of three per cent of their total interstate commerce; and any restraint that could be in any event be imposed by the Securities Co. on their interstate commerce could only affect this three per cent. (Supra, pp. 106-8).

All the interstate commerce of each railroad (including the competitive three per cent) has been largely increased since the organization of the Securities Co., owing to the great advantages of the Burlington connection, and to the protection afforded to all the commerce of the roads by placing a majority of Northern Pacific shares beyond the reach of raids, in the ownership of the Securities Co. (Supra, pp. 41-5). And during such period rates have been reduced to such an extent as to reduce net earnings by upwards of $1,000,000. (Supra, p. 684).

25. There has been no increase of capitalization of either railway company, nor any watering of that of the railway companies or of the Northern Securities Co. The capital of each railway remains unchanged. If the Securities Co. had issued its shares at par for cash, and used the money to buy the railway shares for cash in the market at their market value, its outstanding shares would be more than at present. It would have had to issue and sell at least 190 of its shares, to be able to buy for cash each 100

shares of Great Northern which it has obtained by exchange of only 180 of its own shares. And it would have had to pay more than $115 for Northern Pacific.

The course pursued, instead of watering in any way the Securities Co.'s stock, has furnished that company with properties of a market and intrinsic value considerably in excess of the par value of the shares issued by it in payment for them.

THE ANTI-TRUST ACT AND ITS MEANING.

The title of the Anti-trust Act and the sections here material are as follows:

> "An act to protect trade and commerce against unlawful restraints and monopolies.
>
> "Sec. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.
>
> "Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize, any part of the trade or commerce among the several states, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceding one year, or by both said

punishments, in the discretion of the court.
* * *

"Sec. 4. The several Circuit Courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited.
* * *

"Sec. 8. That the word 'person,' or 'persons,' wherever used in this act, shall be deemd to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country." (26 Stat. 209, c. 647).

1. The act is wholly a criminal law, directed to the punishment and prevention of crime. The remedy by injunction, etc., given by the 4th section is not to protect property interests, but solely to prevent "violations of this Act" (i. e. crimes, for every violation of the Act is a crime, and, without this section, would not be within the competence of a court of equity to restrain by injunction).

2. Being a criminal statute, the act is not to be enlarged by construction. The first section cannot be stretched so as to make criminal (and whatever the section declares unlawful it makes criminal, and makes nothing criminal it has not declared unlawful) every agreement, combination or conspiracy that

merely *tends* to restrain commerce among the states, or that *confers* on the parties to it or any one else *the power* to restrain trade.

3. The act makes unlawful and criminal every contract, combination or conspiracy in direct restraint of interstate trade or commerce.

The gist of the crime is the contract, combination or conspiracy, and the offense is complete on the making of such contract, or the formation of such combination or conspiracy, though nothing be done to carry it out, and though trade be not in fact restrained.

But to constitute a combination or conspiracy in restraint of interstate trade or commerce, the parties must combine or conspire to do acts which, if performed, *will of themselves restrain* such trade or commerce, and will *directly* restrain it—that is, acts which *operate directly on such commerce*.

If the acts which the parties combine or conspire to do fall short of this, if they are not such as *operate directly on the commerce*, and by such operation *directly* restrain it, then the combination or conspiracy is not within the act.

4. The act makes criminal those contracts, combinations and conspiracies only which *directly* and *immediately* restrain interstate trade or commerce—that is by acting *directly* and *immediately* upon such trade or commerce (171 U. S. 568, 592; 175 U. S. 234, 245).

5. As the crime consists in contracting, combining or conspiring to do acts which by their own oper-

ation will directly and immediately restrain interstate commerce, it necessarily follows that if the acts which the parties contract or combine to do are of that description, they violate the law, though they had no conscious purpose or "specific intent" to restrain interstate commerce by the means of such acts or at all (166 U. S. 341).

On the other hand, if the acts to be done are not such as by their own operation on interstate commerce directly restrain it, the contract, combination or conspiracy to do those acts is not a crime under the Anti-trust law (175 U. S. 234).

6. The act makes criminal every contract, etc., in direct restraint of commerce, without respect of persons.

A contract or combination or conspiracy that would be criminal as in restraint of interstate commerce or trade if made between two or more railway companies, is equally a crime if made between two or more interstate carriers by wagon or stage-coach or ferry, or between two or more interstate traders, wholesale or retail (166 U. S. 312).

7. Any restraint of interstate commerce, or power to restrain it, directly consequent upon the acquisition of property and incident to its ownership, is not, nor is the agreement for such acquisition, made criminal by this act (156 U. S. 16).

Hence, where competitors in interstate trade or commerce agree to and do form a partnership or a corporation, or where one of them buys out the other, or a third person or association of persons buys out

both, whatever suppression of ~~commerce~~ competition or power to suppress ~~commerce~~ competition may follow is not, nor is the agreement to form such corporation, partnership or association for such purchase, made criminal by the act (171 U. S. 505, 567).

8. So where a combination is formed to acquire, and which does acquire, nearly all of an article in common use throughout the country and shipped in large quantities among the states, such ownership, though it gives the power to control the interstate trade and commerce in such article, and to suppress such trade and commerce altogether, is not nor is such combination a restraint of commerce prohibited by the Anti-trust Act, the power being an incident of ownership (156 U. S. 1, 16).

9. By this Act Congress regulates commerce by punishing the making of certain contracts by fine and imprisonment. The regulation is and must be uniform throughout the United States, for an act made criminal when done in Minnesota cannot be innocent when done in Massachusetts.

The matters embraced in the Act, thus requiring a uniform regulation throughout the country, are matters within the *exclusive* jurisdiction of Congress, and no matters that are not within such exclusive jurisdiction are within the act.

If it appears that the states have jurisdiction of any matter (e. g. the ownership of stock in or the consolidation of railway companies doing an interstate business) claimed to be within this act, the existence of jurisdiction in the states is conclusive that such matter is not within the act.

APPELLANTS' PROPOSITIONS.

We shall maintain the following propositions:

1. *The Government is not entitled to maintain this proceeding under sections 1 and 4 of the Anti-trust Act, nor had the Circuit Court jurisdiction of it under those sections, for the conspiracy or combination charged in the petition and found by the Circuit Court, if it ever existed, had done all it was formed to do, and had come to an end, before the proceeding was instituted.*

2. *The only combination of which there is any evidence is a combination formed in aid of commerce, to liberate, protect and enlarge and not to restrain it, and which has liberated, protected, aided and enlarged it, and has not restrained and does not threaten to restrain it.*

3. *There is no evidence of the combination or conspiracy charged in the petition, or of the combination or conspiracy found by the Circuit Court.*

4. *The conspiracy or combination in question whether as alleged in the petition or as found by the Circuit Court, was not a combination or conspiracy in restraint of interstate commerce, for the only things which the parties thereto combined or conspired to do or procure to be done were (1) the or-*

ganization of the Securities Co., and (2) the acquisition by the Securities Co., with their help, of a large majority of the shares of each of the defendant railway companies in exchange for its own shares.

The things so to be done or procured to be done (whether taken separately or together) are such as do not and cannot in any wise restrain interstate commerce, and hence a combination or conspiracy to do them or procure them to be done is not in restraint of interstate commerce.

The Circuit Court erred in holding (1) That the Securities Co., having acquired such majority of shares, has power to suppress competition between the railway companies; (2) that it obtained and holds such power by means of and as a party to the combination or conspiracy and not as an incident of its ownership of the shares; (3) that the possession of such power to suppress competition is of itself, and irrespective of its exercise, a restraint of interstate commerce; and therefore (4) the combination or conspiracy in question was in restraint of such commerce.

5. *The petition does not allege nor do the proofs disclose any facts showing a monopoly or a conspiracy or attempt to monopolize any interstate or foreign commerce.*

6. *The case is not within the Anti-trust Act, for in any view of the matters complained of, their effect upon commerce—whether much or little, for good or for ill—is indirect and remote. The Anti-trust Act and the regulative power of Congress under the commerce clause of the Constitution, are alike strictly limited to matters which directly and immediately affect interstate or foreign commerce.*

7. *The very general language of the Anti-trust Act was not intended to include combinations to purchase railways or railway shares, competing or non-competing, nor consolidations actual or "virtual" of railways or railway companies. Congress, when passing the Act, knew that the railway systems of the country rested on such combinations authorized by state laws, some of them having existed many years. If Congress had meant to declare such consolidations and stock purchases of competing companies to be illegal, the securities issued by them void, and the state legislation unconstitutional, it would have said so in plain, specific and apt language.*

The construction put on the Act by all branches of the Government and by everybody down to the commencement of this proceeding, has been in full accord with our position that the act has nothing to do with combinations to own railways or railway shares.

8. *Even though the Government were entitled to any injunction, the decree goes far beyond what the Government was entitled to receive, or the Circuit Court authorized to grant.*

FIRST.

The Government is not entitled to maintain this proceeding under Sections one and four of the Anti-trust Act, nor had the Circuit Court jurisdiction of it under those Sections, for the conspiracy or combination, charged in the petition and found by the Circuit Court, if it ever existed, had done all it was formed to do, and had come to an end, before the proceeding was instituted.

(1) The right of the Government to bring this proceeding in equity and the jurisdiction of the court to entertain it are found in the 4th section of the act, giving the Circuit Courts jurisdiction "to prevent and restrain violations of this act," and requiring the several district attorneys of the United States "to institute proceedings in equity to prevent and restrain such violations."

To ascertain what are violations of this act, we must look to the first and second sections.

The first section declares to be unlawful and makes criminal "every contract, combination (in the form of a trust or otherwise) and conspiracy in restraint of trade or commerce among the several states, or with foreign nations."

The restraint of commerce is not declared unlawful or made criminal by this section—not even if it results from a conspiracy. If, as claimed in this case, the mere holding of a majority of the shares of two competing interstate railway companies re-

strains their interstate commerce, still this section does not forbid or prevent the acquisition and holding of such majority by an individual. And the contracts of purchase made by such individual in the acquisition of such majority are not "contracts in restraint of commerce."

And so if a number of individuals conspire and combine to acquire such majority of shares and convey them to an individual. If such acquisition and holding by an individual in itself restrains interstate commerce, then this is a combination or conspiracy to restrain such commerce, and while it is in progress may be restrained. But suppose the conspiracy has done its work, is *functus officio*, and the shares are held by the individual to whom the conspirators have conveyed them, his ownership of the shares, whether it be a restraint of commerce or not, would seem to be not a conspiracy or combination (or any part, or either) in restraint of commerce, or a "violation of this act" (unless it be also a monopoly forbidden by the 2nd section, which will be considered in its place) so as to be subject to restraint by a proceding like this.

The holder of shares thus acquired would seem to stand on the same footing as if there had been no previous conspiracy, but he had bought them piecemeal, from time to time, in the open market. True, his holding is the result of a conspiracy, but of a conspiracy fully executed. The purpose of that conspiracy and the doings of the conspirators are ended and it has ended with them. While it existed, its acts might be prevented or restrained by the

court, but they cannot be prevented or restrained after they are all done. And the jurisdiction given to the court is to prevent the *executory acts* of a conspiracy, not to undo what has been done by a conspiracy which has itself come to an end. The act is directed at existing conspiracies, not at those which are defunct.

Of course, any conspiracy entered into by the purchaser to restrain commerce, whether by means of the shares so acquired or otherwise, would be a violation of section one, and might, while executory, be enjoined.

And so a combination in existence when the suit is brought may be treated as still subsisting for the purpose of a decree enjoining further proceedings by it as in the *Freight Association Case*. As in other cases, the jurisdiction, once attached, will not be defeated by acts of the defendants. 166 U. S. 290, 309. And so where a conspiracy has not been fully excuted, the court, may, of course, restrain its further execution by enjoining what remains to be done. But these cases are no argument for the jurisdiction under the 4th section, where, before the suit is brought, the acts in violation of the statute which the conspiracy was formed to do have been done, so that there is nothing executory to be enjoined, nor any subsisting conspiracy to be dealt with.

(2) And what is true of an individual would seem to be also true of a corporation. The 8th section of the Act classes a corporation among persons, and makes no distinction between a corporation and

any other person, and no distintion between corporations. If one corporation may acquire and hold a majority of the shares of each of two such railways, without thereby restraining interstate commerce, or becoming a combination in restraint of such commerce, so may any other corporation. If the New York Central Co. may lawfully buy and hold the shares of two or three competing interstate railway companies (as, for instance, the West Shore, the Nickel Plate, the Lake Shore and the Michigan Central companies), or if the Burlington Company might itself have lawfully bought the majority of the shares of these two railway companies instead of its own shares being bought by them, then any other corporation, whether formed for the purpose or not, could make the same purchases. The law does not permit to a railway company what it makes criminal in other corporations.

(3) The petition does not charge a conspiracy or combination to restrain *all* the interstate commerce of the country, nor even all that of the two companies, or to restrain any of the latter commerce by *all possible means*. It was limited in its subject-matter and in the things to be done.

It is charged to have been

> "An unlawful combination or conspiracy to effect a virtual consolidation of the Northern Pacific and Great Northern systems, and to place restraint upon all competitive interstate and foreign trade or commerce carried on by them, and to monopolize or attempt to monopolize the same, and to suppress the competition theretofore existing between said railway sys-

> tems in said interstate and foreign trade or commerce, through the instrumentality and by the means following, to-wit:" (I, 7a).

The conspirators combined to accomplish the ends just described only so far as and no farther than they would be accomplished by use of the means which and which only they conspired and combined to use—by doing the acts which they combined and conspired to do—and to which they definitely and strictly limited themselves by the language immediately following that just quoted, viz:

> "A holding corporation to be called the Northern Securities Co. was to be formed under the laws of New Jersey, with a capital stock of $400,000,000, to which, in exchange for its own capital stock, upon a certain basis and at a certain rate, were to be turned over and transferred the capital stock or a controlling interest in the capital stock of each of the defendant railway companies, with power in the holding corporation to vote such stock and in all respects to act as the owner thereof, and to do whatever it might deem necessary to aid in any manner such railway companies or enhance the value of their stocks" (I, 7a).

It cannot be contended that the conspirators conspired *to do* anything more than these two things, viz: to form a holding company and transfer to it the controlling stock interest, even if these things would not accomplish any of the numerous purposes alleged. Suppose that such transfer would not of itself suppress competition, but that joint action of the boards of directors of the two railway companies would be necessary for that purpose (as it certainly would),

it is not charged that they conspired to corrupt those boards to violate the law.

And if the conspiracy was not thus limited in its means, then it had no limit as to means to be used or time in which to use them. It was a conspiracy in which the individuals named conspired to use all means they might choose to accomplish the purposes named, and to do so during the entire life of the railway companies. This is absurd, and the conspiracy must be held a conspiracy to do the two things specified, and to do nothing else.

Again, the whole theory of the petition is that the "virtual consolidation," monopoly, suppression of competition, etc., are the necessary result of the ownership by the Securities Co. of a controlling interest in the stock of each railway company, and could not be effected without such controlling interest, and would be fully effected by a transfer of such interest to the Securities Co. The petition says that when the conspiracy was formed the conspirators held such controlling interest, and by the terms of the conspiracy such controlling interest was to be turned over to the Securities Co.—of course by the conspirators, for they had it and no one else could have it to turn over. And in turning it over they would have done everything necessary to fully accomplish the purposes of the conspiracy; and moreover they would no longer have in their hands the means of consolidating, suppressing competition, etc., and so could do nothing farther to accomplish those ends, since they would no longer hold a controlling interest. Hence the conspiracy would nec-

essarily be fully accomplished and at an end when the stock was turned over.

However looked at, the petition leaves no room for escape from its plain statement that the only things to be done under the conspiracy were the formation of the Securities Co. and the transfer of the stock to it.

(4) Now, both these things had been done before the petition was filed, and it so states, in Paragraph VIII, as follows, after stating the formation of the Securities Co. on November 13, 1901 (I, 9a):

> "Thereupon, in further pursuance of the unlawful combination or conspiracy aforesaid, the defendants James J. Hill and his associate stockholders of the defendant the Great Northern Co. assigned and transferred to the defendant the Securities Co. a large amount of the capital stock of the Great Northern Co., the exact amount being unknown to complainant, but constituting a controlling interest therein, and complainant believes a majority thereof, upon the agreed basis," of $180 to $100, "and the defendants J. Pierpont Morgan and his associate stockholders of the Northern Pacific Co. assigned and transferred to the defendant the Securities Co. a large majority of the capital stock of the defendant the Northern Pacific Co., the exact amount being unknown to complainant, upon the agreed basis" of $115 to $100.

In the same paragraph VIII, the petition further states (I, 10a):

> "In further pursuance of the unlawful combination or conspiracy aforesaid, the defendant the Northern Securities Company has acquired an additional amount of the stock of the defendant railway companies, issuing in lieu thereof

its own stock upon the basis of exchange aforesaid, and *is now holding, as owner and proprietor,* substantially all of the capital stock of the Northern Pacific Railway Company, and, as complainant believes and charges, a majority of the capital stock of the Great Northern Railway Company, but if not a majority, at least a controlling interest therein. * * *

"By reason whereof, *a virtual consolidation under one ownership* and source of control of the Great Northern and Northern Pacific Railway Systems *has been* effected." * * *

It is true that as a sort of makeweight (like various other matters in the petition, such as the statement that the Securities Co. never had money enough to buy the shares it acquired), the petition charges that the Securities Co. is monopolizing the interstate commerce of the two roads, and it is also true that the crime of monopolizing, under the second section, does not require for its commission any combination or conspiracy, but may be committed by a single person, individual or corporate. And so if the Securities Co. is monopolizing commerce, the Government may sue in equity, under the 4th section, for an injunction to prevent it from further violating the act by a continuance of such criminal practice. But, as before said, this charge is a mere makeweight; no facts in support of it are stated in the petition or shown in evidence, and it was disregarded by the Circuit Court. We shall, however, point out, under our 5th point the insufficiency of the petition to charge any monopoly. And so paragraph XIII of the petition (I, 13a), charges that the individual defendants named and their associate stock-

holders of the defendant railway companies have combined and conspired with other persons unknown, to use and employ, in addition to the corporate scheme and devices aforesaid, and in aid thereof, various other schemes, devices and instrumentalities, the precise details of which are at present unknown to the complainant, but will be laid before the court when ascertained.

No attempt, however, was made to prove any such conspiracy as was alleged in this paragraph of the petition, and so it will in this argument be disregarded.

We submit, therefore, that on the petition, this proceeding cannot be maintained to prevent or restrain the alleged violations of section one of the Act.

(5). Turning from the petition to the decision, we find the following (II, 1704):

> "In the summer of the year 1901, certain large and influential stockholders of the Northern Pacific and Great Northern companies, who had practical control of the two roads, and who have been made parties defendant to the present bill, acting in concert with each other, *conceived the design of placing a very large majority of the stock of both of the last named companies in the hands of a single owner.*
>
> "To *this end* these stockholders arranged and agreed with each other to procure and cause the formation of a corporation under the laws of the State of New Jersey, which latter company, when organized, should buy all or at least the greater part of the stock of the Northern Pacific and Great Northern companies.
>
> "The individuals who conceived and promoted this plan agreed with each other to exchange

> their respective holdings of stock in the last-named railroad company for the stock of the New Jersey company when the same should be fully organized, and to use their influence to induce other stockholders in their respective companies to do likewise, to the end that the New Jersey company might become the sole owner of the whole or at least a major portion of the stock of both railroad companies."

After stating that "in accordance with this plan," the Securities Co. was organized on November 13, 1901, and, when organized, "assented to and became a party to the scheme that had been devised by its promoters before it became a legal entity," the decision proceeds to state that:

> "Very shortly after its organization the Securities Co. acquired a large majority of all the stock of the Northern Pacific Co. at the rate of $115 per share, paying therefor in its own stock at par."

And on the following page (II, 1705) it recounts the acquisitions of Great Northern shares:

> "At the same time" (i. e. very shortly after the organization of the Securities Co.) "it acquired about 390,000 shares of the stock of the Great Northern Co. from those stockholders of that company who had been instrumental in organizing the Securities Co., paying therefor at the rate of $189 per share, and using its own stock at par to make the purchase.
>
> "The Securities Co. subsequently made further purchases of stock of the Great Northern Co. at the same rate, and in about three months (viz. by February 13, 1902), had acquired stock of the latter company amounting at par to about $95,000,000 (the total capital of the Great Northern Co. being $125,000,000), "using for

that purpose its own stock to the amount of about 171.000,000.

"The Securities Co. was enabled to make the subsequent purchases of stock from stockholders of the Great Northern Co. not immediately concerned in the organization of the Securtiies Co., by the advice, procurement, and persuasion of those stockholders of the Great Northern Co. who had been instrumental in organizing the Securities Co. and had exchanged their own stock for stock in that company shortly after its organization.

"At the present time (April, 1903) the Securities Co. is the owner of about 98 per cent of all the stock of the Northern Pacific Co. and the owner of about 76 per cent of the Great Northern Co."

[The capital stock of the Northern Pacific Co. is $155,000,000 and 98 per cent is $151,900,000.

The proofs show that all this stock was acquired before the middle of January, 1902. (I, 248, 179).

The capital stock of the Great Northern Co. is $125,000,000 and 76 per cent of it is $95,000,000—the same amount that the Securities Co. had acquired by the middle of February, 1902].

The Court proceds:

"The scheme that was *thus* devised and *consummated*, led inevitably to the following results. First it placed the control of the roads in the hands of a single person, to-wit: the Securities Co. *by virtue of its ownership* of a very large majority of the stock of both companies; second, it destroyed every motive for competition between two roads engaged in interstate traffic which were natural competitors for business, by pooling the earnings of the two roads for the common benefit of the stockholders of both companies."

There could hardly be a plainer showing that the work of the conspiracy was ended before suit brought. "The design" was that "of placing a very large majority of the stock of both of the railroad companies in the hands of a single owner." And "*to this end*" the Securities Co. was to be organized to buy the stocks. This had been done, "the scheme thus devised" was "consummated" by the middle of February, 1902. This suit was commenced March 10, 1902.

In the decision the Circuit Court answers (II, 1712) the defendant's argument and its own statement, by saying *inter alia* that "the Securities Co. made itself a party to a combination in restraint of interstate commerce that antedated its organization as soon as it came into existence."

If this statement is anything more than the Court's legal conclusion from the fact that the Securities Co. bought the shares of the two railway companies—if it is meant as a statement of fact—it is absolutely without support in the evidence. (Supra, pp. 75-82, 98-100). Indeed, *it was not even alleged* in the petition.

The same may be said of the statements just quoted that the promoters of the Securities Co. agreed with each other to induce their fellow-stockholders to sell their shares to the Securities Co., and that the latter was enabled to make its purchases of Great Northern shares (from others than its promoters) by means of the advice, procurement and persuasion of the promoters.

Both statements are destitute of support in the evi-

dence, and are in direct conflict with it (Supra, pp. 67-8, 90-4).

But conceding for argument that the Securities Co. did become a party to the conspiracy and that its promoters agreed to use their influence to persuade other shareholders to exchange their shares, and that the latter did so under such persuasion. This did not change the character or purpose of the conspiracy, as already stated in the decision. Its plan and purpose still were to organize the Securities Co.—which they had done—and to furnish it with a large majority of the stock of the two railway companies, which last they accomplished before February 15, 1902, the Securities Co. having by that time acquired 98 per cent of Northern Pacific stock and 76 per cent of Great Northern. The joinder of the Securities Co. to the conspiracy can have no possible bearing on the question here presented, and the decision itself shows that the agreement to use persuasion with other shareholders was fully performed, and a majority and half as much again of Great Northern shares were acquired, most of them by means of the persuasion, before suit brought.

The rest of the argument of the Circuit Court on this point is (1) that the Securities Co. is itself a combination in restrain of commerce; (2) that it has power to restrain commerce; (3) that unless an injunction will lie, the act will be lacking in efficacy.

(1) This is nowhere charged in the petition nor anywhere else in the opinion, where, indeed, the Securities Co. is styled, not a combination but a person,

and a "single owner," and "single person," just as the act itself includes a corporation among persons, and does not look upon it as a "combination."

(2) Assuming that the Securities Co. has power to restrain commerce, it has that power because, as the Court itself elsewhere says (II, 1707): *"the ownership* of all the stock of two parallel and competing roads *rests the owner thereof with the power* to suppress competition between such roads." And again (II, 1705), "The scheme * * * placed the control of the two roads in the hands of a *single person*, to-wit, the Securities Co., *by virtue of its ownership* of a large majority of the stock of both companies."

The power, being thus an incident (and an inseparable incident) of stock ownership, to divest the stockholder of the power he must be divested of the ownership, and so the injunction sought is not an injunction against further proceedings in a conspiracy, but an injunction against the owning of property, on the ground that such ownership, by reason of one of its incidents, gives the power to violate the statute. But the act provides for no such injunction. To enjoin an individual or corporation from owning property or exercising powers incidental thereto, because such ownership was the fruit of a conspiracy or such powers are liable to be used to restrain commerce (there being no charge or proof of any present agreement between such owner and others to use the power for such purpose or that any restraint of com-

merce is intended or threatened) is a proceeding not authorized by the Anti-trust Act.

Of course if any persons are conspiring to restrain commerce, or if one person or several are monopolizing or attempting to monopolize it, they may be enjoined. And if in this case it were proved (what is not even alleged) that at the time the proceeding was brought, the Securities Co. was engaged in a conspiracy (for instance, with the directors of the railway companies) to restrain or monopolize commerce, the further proceedings of such conspiracy might be restrained by injunction. But that is a very different case from enjoining the possesion or use of property because it was acquired by means of a past and gone conspiracy. No such injunction is authorized by the act.

(3) The argument that without injunction in a case like this the act would be lacking in efficacy, would justify the granting of injunctions to restrain the doing of any act made criminal by statute, although for such injunction there were no statutory authority. Such a course would doubtless contribute largely to the efficacy of all criminal laws. But the question is not how to make the statute efficacious, but to find out what it means and enforce it as it stands. And the Circuit Court, seeming to think that, without injunction against the ownership or use of property, the Government will be powerless to break up unlawful combinations, omits to take account of the penal features of the act, usually the only means of enforcing obedience to a criminal

statute, and usually deemed sufficient to that end, and which Congress has evidently considered sufficient in the case of this statute wherever the conspiracy has been carried out.

The decision leaves the case just where the petition placed it, viz: as a case not within the 4th section of the Act.

SECOND.

The only combination of which there is any evidence, is a combination formed in aid of commerce, to liberate, protect and enlarge, and not restrain it, and which has liberated, protected, aided and enlarged it, and has not restrained and does not threaten to restrain it.

In the Circuit Court, this branch of our argument was presented so imperfectly as to leave that court under the impresion that we were trying to justify an admitted restraint of commerce on the ground that such restraint was really for the public good. (See Decision, II, 1712-3). What we attempted to show in that court and shall attempt to show in what follows, is that the combination in question was formed not to restrain commerce, but to enlarge it; and if in its operation it did impose a slight restraint on a small part of the commerce of the companies, it freed that part and all that commerce from a much greater restraint that would have destroyed it.

According to the Circuit Court, the defendants are like a man charged with lessening the size of a house, who should say, "Yes, but I made a better looking house of it." Whereas our case is more like that of the man who, to a like charge, should say, "Yes, I took off a foot at one end, but, while doing so I added thirty feet in place of it." Needless to say that any admission in this branch of the argument that there has been any restraint whatever, is an admission for the purpose of the argument only.

I.

1. Every contract—indeed, every act—must be judged as a whole. It must be interpreted in view of its subject-matter and the surroundings. And every contract and every act has effect in more than one direction.

In judging of the meaning and legal effect of a contract or of any part of it, it will not do to isolate a portion, and pass judgment on that, much less on the entire contract from a study of the isolated portion.

And so the effect of a contract or other act cannot be rightly judged from an examination of its operation in one direction, ignoring its operation in other directions. He would learn little of the effects of artillery who studied only the recoil of the gun.

There is nothing in the nature of a contract or combination affecting commerce and attacked for restraining or monopolizing it, requiring or permitting a different rule for judging it. Whether such a contract or combination does restrain or monopolize depends on its effect as a whole, on its operation in all the directions and on all the subjects of commerce on which it does operate.

One cannot extract a single covenant of the agreement, and say "this covenant restrains commerce," still less can one go farther and say therefore the whole contract restrains commerce.

It cannot be said that the combination in question here restrains the interstate commerce of the two railway companies because in one direction of its

operation it may or does restrain to a small extent 3 per cent of that commerce, if by its operation in another direction it furnishes a needed—an indispensable—protection to *all* that commerce, preserves it from restriction or diminution to an extent far exceeding 3 per cent, and is a principal factor in its extension and enlargement.

The rule stated has always been recognized as specially applicable when there is question of a restraint of trade—and with reason, for the ramifications of trade are wide spread and far reaching.

> "All the facts and circumstances are, however, to be considered, in order to determine the fundamental question whether the necessary effect of the combination is to restrain interstate commerce." *Addyston Pipe Co. v. United States*, 175 U. S. 211, 245.

And see, to the same effect, *Oregon Steam Nav. Co. v. Winsor*, 20 Wall. 64, 68, per Bradley, J.

2. There is hardly any agreement of trade or commerce which does not in some direction of its operation restrain trade. A grain dealer in Minneapolis, by contract, on a sufficient consideration, gives to a dealer in Chicago a ten days' option of purchase of all the wheat then in his warehouse in the former city. And in the contract he specially covenants that during the period of option he will make no sale to any one else. The special covenant taken alone is plainly a restraint of trade. But no one would claim that the whole contract, including the special covenant, was in restraint of interstate or any other trade or commerce.

And so in the case of all the contracts which at

common law are held not to restrain trade though they include special covenants directly restraining it. In U. S. v. Addyston Pipe Co., 29 C. C. A. 141, 150; 85 Fed. 271, 280, 281, Circuit Judge Taft classifies them under the heads of agreements for sale of a business, where the seller covenants not to carry on the same business; for sale of property where the buyer covenants not to use it in competition with the seller's business; by partners not to engage individually in any business, whether in competition with that of the firm, or not, etc.

In each of these instances, the special covenant *directly* restrains trade. It acts directly on trade by restricting the power or freedom of the covenantor to carry it on. A contract consisting wholly of such a covenant on the one hand, and a consideration however ample on the other, would as a rule be void on its face. But in each instance the whole contract, of which the covenant forms part, and therefore the covenant itself and the restraint of trade which it imposes, are valid. The reason is that though the contract, in one part of it and by its operation in one direction restrains trade, yet, taken as a whole, and notwithstanding such restraint, the contract enlarges and protects trade and is beneficial to it.

Thus, take the first of the cases, that of a seller who covenants not to engage in the business. Without the restraint imposed by the covenant there would or might be no sale in the particular case; and, in general, if the buyer could not protect himself by placing such restraint on the seller, there might be no buyers; a man wishing to retire from business might

not be able to sell that business to another who would carry it on, but might be obliged to wind it up; in which case there would be a business the less, and trade would be lessened to that amount.

3. And so in other cases than sales or contracts of any kind. Every charge by way of toll on a turnpike or bridge, or for transportation on a railroad, is in itself, in one direction of its operation, a restraint on the commerce of those highways. The complaint in this case is that the Securities Co. restrains commerce by suppressing competition, which suppression increases charges and so lessens the volume of commerce. And if increasing the charges restrains commerce, it must be because any charge is a restraint, and indeed this goes without saying.

But it does not follow that those imposing this restraint on interstate traffic by rail, turnpike or toll-bridge are criminals under the Anti-trust law. Without such charges—without charges sufficient to maintain the turnpike, bridge and railway and pay the cost of operating the latter, and a reasonable profit on their value or the capital invested in them—the existing highways of this description would go to ruin and no more would be built. And so though the charge be a restraint, yet, looking at the cause which occasions it, and the great increase of commerce which that cause products, looking at the operation of the charge as furnishing the means of maintaining and operating the bridge or railway, and weighing the restraint against the increase, the latter greatly exceeds the former; and therefore,

looking at the whole conduct of the proprietors of the turnpike, bridge or railway, they do not restrain trade.

No state has power to pass a law directly restraining such interstate commerce as consists in transportation. And a tax or charge on the gross receipts of such transportation is a direct restraint on such commerce. A law laying such tax on the gross receipts from interstate transportation by a railway already in operation is *ultra vires* of a State and is void.

But suppose a State, when chartering a company to build an interstate railway, requires the company to pay, for the whole period of its existence, 20 per cent of the fare received by it from each interstate passenger whom it carries. This last provision, taken by itself and in one aspect of its operation, is clearly void; it would certainly be void if enacted in respect to an existing railway. But in another direction it operates to enable the company to procure the charter and build a railway for interstate commerce. And so, taking the whole charter—the whole law—together, we find that its operation is to enlarge interstate commerce by creating a new route, and the charge is laid on a new commerce created by the act. The charge imposed by the act is laid on the commerce created by the act and which would not exist without it, and so commerce is not restrained, but enlarged; not enlarged so much as if the act had laid no burden on it, but still enlarged. And the act is therefore valid, and just such an act was sustained in *Railroad Co. v. Maryland*, 21 Wall., 456.

4. In every case where the question is whether a contract restrains the trade of a party to it, or a combination restrains trade among its members, or whether such contract or combination restrains the trade or commerce of others than the parties to it, the contract or combination must be judged as a whole, and in the light of the circumstances in which it was made. The whole enterprise of which it was an essential part must be taken into account; and if the whole enterprise, including the contract or combination, is in furtherance of trade—if the net result of carrying it out would remove from trade more or heavier shackles than are thereby laid upon it,—then the portion of the enterprise which, standing alone, would restrain trade, is free from objection whether at common law or under the Anti-trust law.

II.

1. The purpose of the formation of the Securities Co. is not open to question. The defendant railway companies were engaged in an immense enterprise of creating and building up an interstate and foreign commerce, which could not fail to be of inestimable benefit to the country traversed by their railways and to producers and shippers at all points along their lines or reached by their connections. As a necessary adjunct to this enterprise they bought the Burlington shares, incurring obligations therefor exceeding 200 millions of dollars. Immediately thereafter came the attempt of a rival line to defeat

their enterprise, to destroy the commerce they were building up, and to subordinate the interests of the Northern Pacific shareholders and the interests of the territory which it served to those of a rival railroad and a distant section of the country, at the same time threatening the very means of existence of the Great Northern Co. This attack was made by the purchase of $78,000,000 of Northern Pacific shares in the market. The attack having been defeated by a concurrence of circumstances such as could not be hoped for in case of a second raid (no future raiders could make the fatal mistake of buying preferred shares instead of common), the holders of a majority of Northern Pacific shares and less than one-third of Great Northern common shares took measures for the defense of their own interest as shareholders and those of their fellow shareholders. A plan had long existed among these few shareholders of the Great Northern Co. for forming a corporation of which they should become members and to which they should transfer the ownership of their Great Northern shares. Their motives in this are stated, *supra*, p. 59. As a means of defense against a future raid it was determined that this projected company should be organized, and that the holders of the majority of the Northern Pacific common shares should have the right to transfer them to it. There was no contract on their part to do so, nor was there need of any, for they had a common interest and a common desire that these Northern Pacific shares should become the property of the new company. The company was also made large enough to acquire such

shares of other Great Northern holders as should wish to come into it, and this solely for the reasons stated, supra, pp. 67-8. But there was no especial desire and but little expectation that any great number of them would do so, their shares being valued at from 15 to 20 per cent below their current market value for purposes of exchange for those of the new company. Still, the larger the amount of Great Northern stock held by the new company, the more efficient the defense, the greater the security, against future raids on the Northern Pacific Co.

That this defense and this security were the only thing aimed at, that the obtaining of them was the sole motive and the sole purpose in placing the ownership of a majority of the shares of either railway company in the Securities Co., cannot be questioned. The testimony is plenary, much of it offered and vouched for by the Government, and all of it from witnesses of the highest character.

2. Their sole motive and purpose, then, was self-defence. Did the danger exist? Was it of a character to require such a defence?

That it existed we have the testimony of witnesses than whom none more competent could be found were the whole country to be searched for such. Nor can there be any question of their credibility—some of this evidence also is produced and vouched for by the Government, and no opposing evidence has been offered.

The magnitude of the peril is shown by the same witnesses—by the anxious care they took to guard

against it. And Mr. Hill, than whom there is no more competent judge, has testified in a passage quoted, (*supra*, p. 54), that in case of the success of such an attack the measure of the injury to the interstate and foreign commerce of the two railway companies "would be destruction."

Such was the sole purpose in forming the Securities Co. and vesting in it the title to a majority of the common stock of the Northern Pacific Co. and to such shares of the Great Northern Co. as the owners of them might choose to transfer to it—a purpose to preserve and protect the interstate and foreign commerce of the two railway companies (and especially that portion of it in aid of which the Burlington shares had been bought) from a danger which threatened and which had already nearly accomplished their ruin. Such were the means taken to effectuate that purpose, to preserve and protect such commerce. That the means were well chosen to ensure such protection cannot be questioned. By these means the protection has been secured, and it does not appear in evidence, nor can it be shown by argument, that any other means existed adequate for that purpose.

Certainly, the purpose was a lawful one. These men surely had a right to protect their property interests. A man may always defend his property, and sometimes even to the point of taking human life. "The law of self-defence and protection applies to one's business as well as to one's person." *U. S. Chemical Co. v. Provident Chemical Co.*, 64 Fed. 946, per Priest, J.

3. And this one purpose was not only justifiable as a measure of self-defence, but it was laudable and meritorious insomuch as it defended and protected and secured the maintenance, and also the enlargement and upbuilding, of the interstate and foreign commerce of the two railway companies, including the identical 3 per cent of such commerce which they are now charged with conspiring to restrain and monopolize.

It made secure the Burlington connection with the manifold advantages described in the evidence, (*supra*, pp. 34, 41) both to the inhabitants of the Burlington territory and of the territory traversed by the Great Northern and Northern Pacific, not the least of the benefits to these last being that they thereby have an assurance they could not otherwise obtain of being supplied with the fuel that is necessary to enable them to live in the country at all.

4. It is also proved by direct testimony, much of which also was produced and vouched for by the Government and which no attempt has been made to contradict, that in all the proceedings of these gentlemen, they had no purpose whatever of creating a monopoly or restraining commerce in any way whatever. They never even thought of such a thing. (*Supra*, p. 83). And all the circumstances corroborate this (*Supra*, p. 98). Indeed, their minds were too full of the great commerce in which their millions were embarked, to have room for the 3 per cent competitive commerce they are charged with monopolizing.

5. The case is not here presented of an isolated contract or combination which in its purpose or effect restrains interstate commerce. The combination here was not isolated or independent. It was not made for the sake of making it and thereby restraining or monopolizing commerce. It would not have been made but for the fact that the companies had an *existing* interstate commerce and a great enterprise which was in jeopardy, not of restraint only but of destruction. It was in aid of that enterprise, to save commerce from destruction, that the combination was made. It was strictly ancillary to that enterprise as a necessary protection to it—as much so as the covenant of the seller of a business that he will not engage in it; and as fully as such a covenant, and on the same grounds, it must be deemed not in restraint of commerce, as such a covenant was so declared not to restrain trade in the *Freight Association Case*, 166 U. S. 290, 329.

And these shareholders had an even greater right to protect the very life of the commerce of their companies from aggression than the buyer of a business has to protect his purchase by exacting from the seller a covenant in terms restraining trade. Their need of protection is no less, and that of the buyer is a necessity of his own making. He is under no compulsion to purchase and thereby incur the risk against which he seeks protection.

6. The purpose of the formation of the Securities Co. was to protect the commerce of the rail-

ways,—to protect it from a restraint that would be destruction—and such is its effect, even upon the three per cent of that commerce which it is charged is in some measure restrained. But such restraint, if there be any, and if it is properly a result of the combination, neither of which we admit, is, at most, but incidental and wholly collateral to the principal effect of the formation of the company and the sole purpose of its founders.

If a combination formed to maintain and promote interstate commerce on a magnificent scale, and which does thus maintain and promote it, is to be adjudged a combination and conspiracy in re straint of commerce, and its members therefore criminals, because of such slight and incidental restraint as is alleged here,—a restraint, too, which proceeds, as is shown elsewhere, not from the combination, but from the ownership of the railway shares—then, in the language of this Court in the *Hopkins Case*, 171 U. S. 578, 600, "there would scarcely be an agreement or contract among business men that could not be said to have indirectly or remotely some bearing upon interstate commerce, and possibly to restrain it" And we may add there would not be prisons enough to hold the criminals, for hardly a business man engaged in affairs of any magnitude could avoid a daily violation of the law.

7. The case is not here presented of a contract or combination which restrains trade and is made for that purpose alone, but which, in its unforseen operations in other directions, enlarges trade elsewhere by removing a restraint from it—a case

where the parties have builded better than they knew. Whether the parties to such a combination should fare any better than other sinners out of whose evil doings good may have been educed, is a question not arising in this case. Here the one purpose is to protect commerce from restrictions by its enemies which would strangle it.

8. On this matter of combination of shareholders for self-defence—for the defence of their property and the property and the interstate and foreign commerce of the railway companies in which they were so largely interested—the case is widely different from the *Freight Association* and *Joint Traffic Cases*, and the *Addyston Pipe Case*. In each of those cases the defendants combined, not to protect their own or their companies' business from attack by others, but (as they pleaded) to protect it from disastrous competition *among themselves*, and in the first two cases from a secret competition forbidden by law. They made an agreement on its face forbidden by law, to accomplish what they could just as well have accomplished by obeying the law. And in each case the agreement went far beyond what was needed for protection. In the railway cases an agreement against secret (and illegal) rate-cutting would have been sufficient and lawful. There was no call for an agreement surrendering the power to make and publish rates. All these agreements to protect the makers of them against themselves have no element of protection properly so called.

THIRD.

There is no evidence of the combination or conspiracy charged in the petition or of the combination or conspiracy found by the Circuit Court.

The proofs do show that a few gentlemen, not holding a majority or controlling interest in the stock of either railway company, projected an investment and financial company, at first simply to keep their shares together, and, in its ultimate stage, also as a means of defence of their interests as shareholders against aggression.

Only a very few of the alleged conspirators had anything to do with the formation of this company —the Securities Co.

Mr. Morgan and his firm had nothing to do with it, (supra, pp. 76-7; I, 300), and there is no evidence that Col. Lamont had.

There was no doubt a combination to organize the Securities Co., with power to acquire shares of the two railway companies, as well as of other corporations in exchange for its own, and it was expected that the holders of a majority of the Northern Pacific common stock would transfer their shares to it; and it was understood that all shareholders of both railway companies might do the same. But there was no combination to transfer any shares, no agreement to transfer any. It was left open to every one of the promoters of the company to go into it or stay out. See pp. 71-4, *supra*.

It is in evidence that Mr. Hill and his associates

in the Great Northern Co. held among them (severally) about 33 millions of the 125 millions of the capital stock of that company, being about 27 per cent. They also held (severally) about 20 or 21 millions of Northern Pacific common stock, and J. P. Morgan & Co. held about the same amount until some time in August, 1901, when he sold some 10 or 12 millions to Mr. Hill and friends individually (Mr. Morgan I, 349-350; Mr. Kennedy I, 201-2,) the aggregate of these holdings being between 41 and 42 millions. J. P. Morgan & Co. do not appear to have held any Great Northern stock.

Now, if there was a conspiracy to turn over any stock at all to the Securities Co., *it did not include the turning over of any stock not held by the conspirators.* Counting Mr. Morgan's firm among them, they might turn over about 42 millions of Northern Pacific common stock, and about 33 millions of Great Northern common stock. This was not a majority or controlling interest of either. The outstanding shares of the Northern Pacific Co. amounted to 155 millions. True, the 42 millions might become a majority of Northern Pacific stock upon the retirement of the preferred stock, and remain so until the issue of the 75,000,000 of new common stock to take the place of the retired preferred stock. If these two proceedings were simultaneous, there never would be a time when 42 millions of common stock would constitute a majority or controlling interest. If the holders of the 42 millions should, upon the retirement of the preferred stock, avail themselves of their right to their

proportionate share of the new common stock at par (*i. e. 75/80 of 42 millions*) on paying therefor $39,000,000, they would hold a majority of all the stock of the company. But the retirement of the preferred stock was a matter for the holders of the common and preferred, or of the directors. The conspirators, as holders of but 42 millions, could not compel it. Nor could they, after turning over their 42 millions to the Securities Co., provide that company with enough of the new issue of common stock to give it a majority. The Securities Co. would have to get that for itself.

And so with the Great Northern party. There is no evidence that they agreed to put in any shares, and *certainly none that they contemplated putting in more than they had*—about 33 millions; and of this from 2½ to 3 millions—part of Mr. Hill's holdings—were not put in.

But assuming that the 42 millions of Northern Pacific gave control, and that the conspirators agreed to turn over all their shares to the Securities Co., still the fact remains that the shares to be transferred by the conspirators and those which they did transfer, at most were "a controlling interest" *in one company only*, and that *they did not conspire to and did not transfer a controlling interest in the Great Northern Co.* Thirty per cent does not give control even of a shareholders' meeting, and these conspiring Great Northern shareholders never controlled that company in any sense of the word. Like all the shareholders—the other 70 per cent as well as themselves—they supported Mr. Hill's man-

agement and sent him their proxies, and in respect of "control" they stood on the same footing as the rest. So far as there was any control except in the whole body of the stockholders, it was in Mr. Hill alone.

Col. Clough, vice president of the Great Northern Co. from 1890 to 1901, says, on cross examination (I, 807):

> Q. Is it not a fact that Mr. Hill, with his group of friends, with their relatively small holdings in the Great Northern to which reference has been made, have found that sufficient to control the Great Northern Railway?
>
> A. It was not the holdings in the stock that Mr. Hill and his friends had that induced the great majority of the stockholders to send their proxies favorable to his re-election. It was the favor with which the policy of Mr. Hill and his associates had met for years that induced all the other stockholders as a body, practically, to support that policy and favor its continuation. It wasn't any holding that those other gentlemen had at all. That had nothing to do with it.
>
> Q. You think then that a strong body of very rich men, controlling 35 millions of the stock of the Great Northern Railway had nothing to do with their effectual control of the operations of the road?
>
> A. Absolutely nothing. I know from my own knowledge it had nothing to do with it. It was merely the support that the majority of the stockholders gave on account of their favoring the policy of Mr. Hill.

And the petition says (par. VIII) that he "was the president and controlling power in the management of the Great Northern Co." He possessed this control and power, not because of his stock ownership, but because of the confidence reposed in him by

the shareholders by reason of the character of his management.

But such a "control" resting on such a basis, or any control not resting on the holding of a majority of shares, is in no sense a control of the stock, still less of the corporation. Otherwise, the holders of a majority of Northern Pacific shares, in conjunction with Mr. Hill, holding perhaps no more than 10 shares of Great Northern, would also "control" the Great Northern, or have a "controlling interest" in the stock of that company.

And certainly this control held by Mr. Hill by reason of his personality and the confidence reposed in him by the stockholders, was not a thing that could be turned over to the Securities Co., or that the conspirators conspired to turn over to it.

There was therefore no conspiracy to turn over a majority or controlling interest in Great Northern stock, however it might have been with the Northern Pacific shares. And if a controlling interest in the shares of *both* companies in the hands of the Securities Co. was needed to constitute a restraint of commerce, (and no other restraint than that held to result from such possession is found by the Circuit Court), then the conspiracy, being to turn over such interest *in one company only*, was not a conspiracy in restraint of commerce.

It is true that after the organization of the Securities Co. it acquired from other shareholders of the Great Northern Co. stock enough to give it a majority. But *this was no part of the conspiracy, and these shareholders were not parties to the con-*

spiracy. They acted independently, each for himself, and so far as appears with no knowledge of the conspiracy, and even in ignorance that the Securities Co. held or was likely to hold any Northern Pacific shares. The company's circular to them of November 22, 1901 (*supra*, p. 88), and Mr. Hill's letter (*supra*, pp. 89, 90) are wholly silent on this point. It can't be said that their transfers or the company's acquisitions from them were part of the things which the alleged conspirators combined or conspired to do, especially when the things they did conspire to do are expressly declared and limited in the passage quoted from the petition.

And while the petition states that these acquisitions were "in furtherance of the unlawful combination or conspiracy aforesaid," this does not mean that they were *among the acts which the conspirators conspired to do*, especially as the petition, in the same paragraph VIII, had already alleged the previous turning over to the Securities Co., by the conspirators themselves, of all the shares which, by the terms of the conspiracy as charged in the petition, were to be turned over to it.

And these acquisitions from other shareholders were not *necessary* consequences of the acts to do which the conspiracy was formed, so that it cannot be said that the conspirators must have intended them, for each of them required the intervention of an independent actor, who might or might not sell, according to his own will and pleasure.

And while the petition does not charge that the conspirators contemplated such purchases of Great

Northern shares by the Securities Co., it negatives any such purpose, for

1. It expressly states that the conspiracy included the acquisition of those shares only—that majority or controlling interest—possessed by the conspirators and which it says they turned over.

2. The possession of any additional shares by the Securities Co., was, according to the theory of the petition, not needed to effect the purpose of the conspirators. Having received from them either a majority or a "controlling interest," it would, according to the petition, have every power over the commerce of the roads—every power to suppress competition or monopolize the traffic, the object of the conspiracy—which stock ownership could give; every power which the conspirators thought necessary to the success of the conspiracy.

II.

The Circuit Court, however, adds a new feature to the combination or conspiracy, charged in the petition, by its finding that as part of their scheme the conspirators agreed with each other to use their influence to induce other shareholders to exchange their shares for those of the Securities Co., and that the Securities Co. was enabled to make its purchases of Great Northern shares from others than the promoters by the advice, procurement and persuasion of the promoters. (II. 1704, 1705; supra, pp. 10, 11).

We have elsewhere (supra, pp. 67-8, 90-95) point-

ed out the errors in these statements and adduced a portion of the evidence refuting them. We subjoin additional excerpts to the same effect. So far as we are aware there is nothing in the record—not even Mr. Hill's letter, (supra, p. 89)—which in any way impairs the effect of this evidence. There is not even a color of proof to sustain the findings.

By the evidence before printed (supra, 67-8, 90-95) and that which immediately follows) these facts are plainly established:

1. The promoters of the Securities Co. did not think it necessary for their purpose that it should acquire a majority of Great Northern shares, or any more than those held by such promoters.

2. They had no desire to admit such outside shareholders into the Securities Co., and would have preferred not to do so, except that they did not wish to expose themselves to criticism or complaint should such shareholders not be given an opportunity to come in.

3. They accordingly agreed that such opportunity should be offered, but never agreed to use their influence to induce its acceptance by such outside stockholders.

4. They did not advise, procure or persuade any of such outside shareholders to exchange their shares, nor did the Securities Co. obtain any of such shares by means of any such advice, procurement or persuasion.

Mr. Hill says (I, 87):

"After discussing the matter with Mr. Kennedy, and with some of my friends from abroad who were here in July, it was considered, and I may say determined, to go on and form the company. Many of them felt that they would like to give all the shareholders of the Great Northern the right to participate in any company, the old leading shareholders to put their stock in, and they said if a close corporation was formed it would be the first time in the history of the property that each and every shareholder had not the same opportunity that every other shareholder had, and they discussed that with me, sometimes one and sometimes another. There was no meeting to discuss it. The general feeling, however, was among those with whom I talked, and I had that feeling myself, that we would give each shareholder the opportunity to come in at the price we put our own in, if he desired, and if he preferred to stay out, that was his privilege."

I, 115: "Q. Was it your expectation and desire at the time of the organization of the Northern Securities Company that a majority of the stock of the Great Northern Railway Company should also be exchanged for Northern Securities Company stock?

A. I think it was expected that a majority would be exchanged. At the same time the market price at that time was considerably higher than the price the Northern Securities Company purchased the Great Northern stock at. It was a matter that was left to the shareholders."

Mr. Kennedy testifies (I, 194):

"Q. Now, Mr. Kennedy, is it not a fact that in the autumn of 1901 Mr. Hill, J. P. Morgan & Co., D. Willis James, George F. Baker, Lord Strathcona, and Lord Mount Stephen held a

majority of the stock of the Great Northern and of the Northern Pacific?

A. I can't speak as to a majority of the Great Northern; I don't think they hold a majority of the Great Northern; I am pretty sure they don't."

I, p. 195:

"Q. Why did you plan on getting a majority of the Northern Pacific and not of the Great Northern, Mr. Kennedy?

A. Well, my idea was in consequence of what took place last May; we didn't want to be subject to such an attack as took place last year.

Q. You wanted to have a majority of the stock of the Northern Pacific where you could absolutely control it

A. Yes, sir.

Q. Under all circumstances?

A. Under all circumstances.

Q. You had no fears, Mr. Kennedy, that the Union Pacific nor the Canadian Pacific, nor any other railroad company could go into the market and buy up a majority of the Great Northern?

A. I don't remember thinking anything about it.

Q. Well, why did you distinguish? You say you wanted a majority of the Northern Pacific where you could absolutely control it so as to prevent another such occurrence as that of May 9?

A. Yes.

Q. Weren't you equally anxious to prevent the possibility of such an occurrence with reference to the Great Northern?

A. I think those who were called Mr. Hill's associates had enough stock to prevent anything of that kind."

(I, 196-7): "Q. It was a fact, Mr. Kennedy, that so far as your own feelings went you were perfectly satisfied that a successful attack could

not be made on the Great Northern?

A. I was satisfied of this, that if we held the controlling majority of the stock of the Northern Pacific, the chances were remote that they would make an attack on the Great Northern.

Q. Now, it was finally determined, Mr. Kennedy, after it was decided to take in a majority or more of the stock of the Northern Pacific, to throw open the privilege to all stockholders of the Great Northern to go into the Northern Securities Company?

A. Yes, sir.

Q. And was that done for the purpose of placing a majority of the stock of the Great Northern in the Northern Securities Company, as well as a majority of the Northern Pacific?

A. I think not. The idea was to give the Great Northern stockholders who might desire to come in an opportunity to come in, that they might not feel that they were not fairly treated if certain persons went in and other persons left out."

(I, 215): "Q. On pages 233 and 234 of the testimony this question was asked you, Mr. Kennedy: 'Now, Mr. Kennedy, is it not a fact that in the autumn of 1901, Mr. Hill, J. Pierpont Morgan & Co., D. Willis James, George F. Baker, Lord Strathcona and Lord Mount Stephen held a majority of the stock of the Great Northern and Northern Pacific?

A. I could not speak as to a majority of the Great Northern; I don't think they held a majority of the Great Northern; I am pretty sure they don't; but we did hold a majority of the stock of the Northern Pacific; at least I was so informed.' Did you mean that those gentlemen held a majority of the Northern Pacific?

A. Not those gentlemen, but others who were friends of Mr. Hill; who they all were, I don't know.

Q. That was the common stock?

A. The common stock.

Q. You didn't mean the total stock?

A. No, no; the common stock."

(I, 216): "Q. Now, in the organization of the Northern Securities Company, or previous to the organization of the Northern Securities Company, was there any question made or any discussion that that company was organized for the purpose of acquiring a majority of the stocks of both those railroads for the purposes of maintenance of rates, railroad rates, suppression of competition, or controlling competition or commerce on those roads?

Mr. Boutelle: Objected to as not proper cross examination and incompetent, irrelevant, and immaterial.

A. I have never heard of such a thing. I have never heard such a thing suggested in any quarter whatever."

Mr. Hill says:

I, 699: "When it came to making a holding company that would hold the ownership of the stock held by these people, they all hesitated about forming any company to hold the shares of the Great Northern Railway in which all the shareholders might not be allowed to participate, if they so desired. And in that way it became necessary—it was decided, and it was decided early, possibly in June; it had been discussed at least a year before that. I know Mr. Farrer, of the firm of Baring & Company of London, was here and he said, 'No matter what you do—your company has always had the reputation of dealing with all the shareholders on the same basis—no matter what you do, try and keep that.' Everybody seemed to be of the same mind—that all the shareholders might participate in any advantage that any shareholder might have, so far as related to the action of those who were most active in the company's affairs.

A. * * * we were to offer the Great Northern shareholders the right to come in if they desired,

but the market price was higher than the price offered.

Q. The price offered was 180, I believe?

A. Yes, sir.

Q. And what was the market price of the Great Northern stock during the fall and winter of—

A. I think it ran from 187 to 190 or 195. I don't think it has ever been 180 from the time the offer was made to the present time."

(I, 706): "Q. And so, in order to continue the policy which had obtained for so many years for the benefit of the company and of the public, they arranged to put their holdings into this holding corporation,—these shareholders?

A. The eleven shareholders?

Q. Yes.

A. And asked that the same offer be made to all the shareholders so that they might not be charged with any discrimination, or doing anything for themselves that they were not willing to do for all the shareholders."

(I, 708-9): "If the question has reference to the desire or preference, I should answer that if the individual men who formed the Securities Company had their choice and all the shareholders were there and could say, 'We release you from any responsibility,' we would have preferred to have had the Northern Securities Company stock restricted to the 35 millions. There isn't any question about that. I have discussed that with the shareholders many, many times. One gentleman spent an afternoon with Mr. Grover; another spent an evening at my house; came over from London to discuss it. so, it is not a new question with us. The question was, shall we make a corporation and close the door on our old associates? If we do, it is the first time that anything has ever been done in which any shareholder had the advantage over all the shareholders. *And that was the reason for making the offer, and the only reason for making the offer.*

Q. Now, what was the response to the offer? How much stock of the Great Northern was exchanged for stock of the Northern Securities Co.?

A. Oh, I don't recall the amount. I know a great deal came in before—I should say nearly half of it came in very soon after—maybe 40 per cent. Then a lawsuit was started, I think by the State of Minnesota first, or Peter Power, I am not sure which—but a lawsuit was started, and we took pains then—a great many had sent their stock to the office—we took pains to notify them that a lawsuit had been commenced, and the stock was not purchased, the transaction was not closed, until they were notified and asked: 'Do you still want to sell your stock?' We felt it was a duty to let them know that such a lawsuit had been commenced, as that might make some difference in their view as to whether they wanted to sell their stock to the Securities Company or to hold it as Great Northern."

Col. Clough says, (I. 787):

"Q. Had you knowledge of the fact of transfers of the Great Northern and Northern Pacific to the Northern Securities Company?

A. Yes, sir, I knew about that; it was done under my supervision.

Q. You had general charge of the New York office of the Northern Securities Company?

A. As far as it is entrusted to the officials; the business affairs of the Northern Securities Company are, under its charter and by-laws, controlled by its board of directors and its executive committee.

Q. You were in the office, and had charge of the office?

A. Yes, sir.

Q. Now, state whether the transfers were individual, absolute, without reservation, and without solicitation from the Northern Securities Company—fully.

A. To answer the first question, every purchase of stock that has been made by the Northern Securities Company (whatever stock it may be) has been by direct individual transactions and negotiations with the owner of that stock, except in the one instance that I have referred to in my previous testimony of the purchase of the Harriman and Pierce stock, where J. P. Morgan & Co. negotiated the purchase and the purchase was assigned to the Northern Securities Company.

Q. Now, were the transfers absolute?

A. They were absolute and unconditional in every case.

Q. Were they solicited by the Northern Securities Company?

A. No, sir; in no case. The Northern Securities Company, some time in November, I have forgotten the precise date, I think it was the 22nd, issued a circular to each individual stockholder of the Great Northern Railway Company, of which a copy has been introduced.

Q. Were you present in the office of the Northern Securities Company at the times when holders of shares came there to make transfers or to make inquiries?

A. Yes, sir; I was there constantly in attendance at all times during practically every business day from the time of the organization of the company until, I might say, last Friday."

Q. Now, were a considerable number of transfers made there by parties appearing personally or by their representatives?

A. Yes, sir, quite a good many people brought their stock in personally; many others sent it by mail.

Q. What information or suggestions were made to them respecting the transfers?

A. Why, there was nothing special; the transaction would be that that individual would present his Great Northern stock, or Northern Pacific stock, as it might be, and ask to sell it to the Company and to receive in pay the stock of

the Company. When litigation against the Company was threatened, I think in every instance that fact was communicated to every person bringing his Great Northern and Northern Pacific stock to the Securities Company to sell it.

(I. 790): "Mr. Morgan was very strenuous that when this stock was all out, if he sold his stock to the Northern Securities Company, that each of the other holders of the common stock, if he wanted to do so, should have the privilege of selling to the Northern Securities Co. at the same rate. He was extremely insistent on that. Some of the eight or nine or ten Great Northern stockholders who were consulted in this matter had quite early taken a similar view in regard to Great Northern stock. They suggested that it had been the settled policy of the Great Northern management that whatever benefits of any kind should be open to the holder of any of the Great Northern stocks should be open upon equal terms to all the others. * * *

It was believed by myself and Mr. Hill and Mr. Kennedy and some of the others who had watched things very closely, that there was very little probability of anything nearly like the whole of the stockholders, of the Great Northern at least, coming in, because that was a well established stock in the market. It had been on the market for ten years and had a high market value and was thoroughly well known. It was held entirely by investors. There had never been any speculative movement in Great Northern stock, and it was thought that, being held that way, the holders of a well-known and well-established stock would be loath to sell it and take in pay the stock of a new and comparatively unknown company. But finally it was said, and that was the argument which prevailed in fixing the amount at what it was—it was finally suggested by somebody and strenuously insisted (I think it came from Mr. Morgan perhaps first) that if the capital stock of the North-

ern Securities Company were fixed at any sum very largely below what would be required to purchase the capital stock of the Northern Pacific and Great Northern Companies, it would have an appearance upon its face as of an intention on the part of the gentlemen promoting this company to exclude some of the other stockholders from the benefits, whatever they might be, in the new organization.

(I, 835): "A. The purpose, as I said, in its origin—the only thought that I have ever heard expressed in its origin—in regard to the Northern Securities Company, related to keeping together all the stock of the gentlemen I have named as being those who were consulted. So far as the other stockholders were concerned, comprising the great majority of the stocks of both the Northern Pacific and Great Northern, and comprising the great majority of the stockholders of the Northern Securities Company—those gentlemen were given an opportunity to come in because the other gentlemen who had promoted this company thought it was only right and fair to give every stockholder in the same class with them the same opportunity for whatever advantages (if there were any, which would arise out of the sale of their stock to the Northern Securities Company."

FOURTH.

The conspiracy or combination in question, whether as alleged in the petition or found by the Circuit Court, was not a combination or conspiracy in restraint of interstate commerce, for the only things which the parties thereto combined or conspired to do or procure to be done, were (1) the organization of the Securities Co., and (2) the acquisition by the Securities Co., with their help, of a large majority of the shares of each of the defendant railway companies in exchange for its own shares.

The things so to be done or procured to be done (whether taken separately or together) are such as do not and cannot in any wise restrain interstate commerce, and hence a combination or conspiracy to do them or procure them to be done is not in restraint of interstate commerce.

The Circuit Court erred in holding (1) That the Securities Co., having acquired such majority of shares, has power to suppress competition between the railway companies; (2) that it obtained and holds such power by means of and as a party to the combination or conspiracy, and not as an incident of its ownership of the shares; (3) that the possession of such power to suppress competition is of itself, and irrespective of its exercise, a restraint of interstate commerce; and therefore (4) the combination or conspiracy in question was in restraint of such commerce.

I.

(1) If all the things which the parties to the conspiracy or combination conspired or combined to do or procure to be done would not, when done, restrain commerce, then, most certainly, their combination or conspiracy was not in restraint of commerce. A conspiracy to deprive a man of life or health by means of a wax figure representing him, to be prepared by the conspirators and by them melted before a slow fire, or pierced with knives or pins, would not be, in law, today (however it might have been 300 years ago) a conspiracy to murder or to injure the health of the intended victim. An indictment for such conspiracy as a conspiracy to murder, or a declaration thereon in a civil action for injury to health, with proper averment of damage, would be thrown out by any court. The reason of course is that the things conspired to be done are incapable of injuring the intended victim in any way whatever, and it is quite immaterial that the conspirators thought otherwise, and meant to kill or injure, and supposed they could do so, by the means they conspired to use.

The *agenda* of the parties to the conspiracy in question were the formation of the Securities Co. and its acquisition of the railway shares. The final act, as planned and performed, was and is its acquisition of the last of a great majority of the shares of each of the railway companies.

Hence, if the acquisition and holding of such majority of shares by the Securities Co. is not a re-

straint of interstate commerce within the meaning of the Anti-trust Act, the conspiracy or combination in question here was not a combination or conspiracy in restraint of such commerce, within the meaning of that act.

(2) Taking the Government's case on its own showing, or rather on the perhaps better showing made for it by the Circuit Court, and it amounts to this: Certain persons have combined to organize the Securities Co. and to sell to it, or help it to buy from others, (paying in all cases with its own shares,) a large majority of the shares of two competing railway companies engaged in interstate commerce.

The Government claims and the Circuit Court has held, that the Securities Co. has thereby acquired the power to suppress the competition theretofore existing between the companies; that its possession of such power (irrespective of any exercise of it) is a restraint of the commerce of the railways; and therefore the combination was a combination in restraint of commerce and under the ban of the Anti-trust Act.

It is not alleged or found in terms that this stock ownership by the Securities Co., in and of itself, without farther action on its part, suppresses competition, but merely that such ownership gives the Securities Co. power to suppress. But the possession of this power to suppress is claimed and held to be in itself a suppression—although it would

seem that the exercise of the power must involve a precedent act of intelligence and volition on the part of the Securities Co., without which it will not occur—as, in point of fact, it has not yet occurred.

A pertinent question is, how can this power to suppress competition be exercised? To this there can be but one answer,—by voting for and electing the boards of directors of the railway companies, who conduct their commerce. And the Securities Co., having a majority of the shares of each railway company, and hence a majority of votes, can elect for each railway company such board as it pleases, subject to the statutes which require the membership of each board to be entirely distinct from that of the other.

That is to say, the Securities Co. has the power to suppress competition because of its ownership of the majority of the stock and the voting power which is an incident—and an inseparable incident—of such stock ownership.

And that any power of the Securities Co. to suppress competition has its source in and is an incident of its ownership of a majority of the shares of each railway company, is, in one portion of its decision, expressly conceded by the Circuit Court, which says (II, 1705):

> "The scheme which was thus devised and consummated led inevitably to the following results: First it placed the control of the two roads in the hands of a single person, to-wit, the Securities Co., *by virtue of its ownership* of a large majority of the stock of both companies."

See p. 153 supra

The case then is one where large purchases have resulted in the ownership by one person of a great majority of shares—enough, as the Government says, to give the owner power to suppress competition—that power being only capable of exercise, and being exercised, if at all, by use of the voting power which is an incident of the stock ownership.

Now these matters of stock purchases or exchanges and stock ownership, and the incidents of such ownership, whether the companies are or are not competing for interstate commerce, are not, any more than purchases or exchanges or ownership of other property, matters of interstate commerce, or embraced within the Anti-trust Act. They do not touch in any way the commerce of the companies. This is true whatever the company a majority of whose shares are thus acquired. And this being so where the shares of one railway company only are acquired, it is not easy to see how the purchase of a majority of the shares of two railway companies, though doing (as every railway, great or small, does) interstate business, and though competing with each other for such business, should not be equally apart from interstate commerce and outside of the Anti-trust Act and of the commercial power of Congress, as the purchase of shares of either one of them or the shares of any other company.

That such purchases are outside of the Anti-trust Act has been expressly held by this court in *U. S. v. E. C. Knight Co.*, 156 U. S. 1, where it is said, p. 16:

"Congress did not attempt (by the Anti-trust

> Act) * * * to limit and restrict the rights of corporations created by the states, or of citizens of the states, in the acquisition, or disposition of property, * * * or to make criminal the acts of persons in the acquisition and control of property which the States of their residence or creation sanctioned or permitted."

[The last clause was, of course, not intended to make the federal jurisdiction over property purchases, etc., depend on their validity under State law].

(3.) It is no answer to this to say that the stock purchases were made and ownership of the shares was acquired by the Securities Co in furtherance of a conspiracy to restrain interstate commerce. This does not alter the fact that in order to suppress competition the alleged power must be exercised, and that such power was not derived from the conspiracy. The ownership of a majority of the shares was obtained from persons not parties to the conspiracy, and the voting power of the shares was created and annexed to them by the charter of the company. This voting power and the right to exercise it is as inseparable an incident of ownership as the right to sell. And neither the right to vote nor the right to sell is in any way conditioned on the source from which or the manner in which the absolute ownership of the shares was obtained.

Undoubtedly if the holder of this voting power conspire with others to restrain interstate commerce by the use of it, such use may be restrained by in-

junction. But no such case is presented here. It is not claimed that the conspiracy charged included the making of such new conspiracy, or that it was part of the conspiracy that the Securities Co. should exercise this power to stifle competition.

The Securities Co., then, must exercise its supposed power to suppress competition before there will be any suppression of it or any restraint of trade. But the defendants did not conspire to cause or procure the Securities Co. to exercise the power. According to the petition and decision the things they were to do ended with the Securities Co's. acquisition of shares. In the use and disposition of them, or of any power incident to the ownership, the Securities Co. and its members were left absolutely untrammelled, and necessarily so, since the acquisition of the great majority of the shares marked the end of the conspiracy.

This conclusion is not weakened by the finding of the Circuit Court (without evidence to support it, as we have already pointed out) that the Securities Co. at its creation became a member of the conspiracy—was born into it. But it is not found that this addition to the combination made any addition to the things which the members of it combined to do. The last act still continued to be the acquisition of a large majority of shares by the Securities Co. And the Circuit Court itself does not hold to the contrary.

And hence it cannot be said that any acts the Securities Co. may do in the way of suppressing com-

petition are acts done in pursuance of the conspiracy, or in carrying out its scheme.

(4) To the authoritative decision quoted from the *E. C. Knight Case*, may be added some additional reasons showing that even if the Securities Co. has the power to suppress competition, still this case is not within the Anti-trust Act.

That act does not define "restraint of commerce." Undoubtedly the common-law criterion is to be adopted in construing the act, though it brushes aside the common-law distinction between lawful and unlawful restraints and makes both kinds illegal and criminal.

"Restraints of trade" at common law were in almost if not quite every case, restraints imposed by a contract or combination upon one or more of the parties to it, the common instances being restraints as to the place of carrying on trade, or as to the amount of trade to be done or the prices to be charged, or as to the use of trade secrets, etc. In each case the restraint was imposed on the person's freedom to carry on his business at his own will, or to carry it on at all. Now, in this case there is no contract between the Securities Co. and anyone else —indeed no contract at all between any parties—requiring either railway company to cease or diminish its competition with the other, nor did the conspiracy or combination in question provide for any such contract.

At common law a cessation or diminution of com-

petition springing from a unity of ownership—as where one competitor sold his business to another, or both sold out to a third person, etc.—was never regarded as a restraint of trade, such cessation or diminution being incident to the union of property or business in one ownership, and not a restraint imposed by contract.

And so such purchases, or agreements to purchase, have never been held contracts in restraint of trade.

In two recent and important cases the validity of such purchases was upheld.

In *Trenton Potteries Co. v. Olyphant*, (1899) 58 N. J. Eq. 507, the court say:

> "A person engaged in any manufacture or trade, having the right to acquire and possess property and to do with it what he chooses, may lawfully buy the business of any of his competitors."

In *Oakdale Mfg. Co. v. Garst*, (1894) 18 R. I. 484, a number of competing manufacturers of oleomargarine agreed to form a corporation to which they should convey their respective plants, assets and good-will. All this was done, payment being made by the new company in shares of its own stock. The preliminary agreement contained a covenant by each party to it not to engage in any like business for five years. One of them sold his stock, and at once engaged in the oleomargarine business in competition with the corporation, which sued for an injunction.

The covenant and, of course, the preliminary

agreement and the formation of the corporation, and the sales to it for its own shares, were sustained—the covenant as not in unreasonable restraint of trade, and the rest as not in restraint of trade at all.

The court say of the transaction:

> "It is the common occurrence of a consolidation of firms. It is not illegal on the ground of reducing competition."

And so this Court, while holding that *every* contract or combination in restraint of trade, whether the restraint be reasonable or unreasonable, is condemned by the Anti-trust law, yet holds that such transactions among competitors as we are considering, though they may suppress competition, are not in restraint of trade, saying:

> "The formation of corporations for business or manufacturing purposes has never to our knowledge been regarded in the nature of a contract in restraint of trade or commerce. The same may be said of the contract of partnership." Joint Traffic Ass'n. v. United States, 171 U. S. 505, 567.

That partnership, etc., between competitors must have been meant by the court seems plain. It is hardly conceivable that the counsel to whose argument this declaration is a reply could have suggested or supposed that a partnership between persons not yet in business, or whose business was not competitive, had been declared in the Freight Association Case, then being re-examined, to be in restraint of trade.

And it is almost inconceivable that any other rule should be law among a liberty-loving and a commer-

cial people, especially a people so given as are those of this country to changing from one locality and one business to another, and so requiring and demanding the largest liberty and the widest market for disposing of any business they may wish to relinquish. It seems an absurdity to say that a wholesale merchant in New York, wishing to retire, may not sell out his business to any one of his 25 or 50 or maybe 100 competitors—and this because competition would be thereby lessened; but that he must find, if he can, a purchaser who is a stranger to the trade, or else submit to the delay, expense and loss of a liquidation. And it is equally absurd to say that no two or three of those commercial houses may form a partnership or corporation to take over and own and carry on the business of each one of them; or that an individual, partnership or corporation, whether already existing or formed for the purpose, and whether already in the trade or not, may not lawfully buy the business of any two or three or more of these commercial houses, notwithstanding the suppression or diminution of competition that may ensue.

(5) And the liberty enjoyed by merchants cannot be denied to carriers. The rule of the common law and of the Anti-trust law is uniform and impartial. If the sale of a merchant's property and business does not restrain trade though suppressing competition, neither does a like sale by a carrier.

Take the case of two stage lines, each owned by an

individual, and operated between towns ten miles apart, one in New Hampshire and the other in Vermont. There is a vast difference, it is true, between a ten-mile stage line and a transcontinental railway; but the Anti-trust Act puts them both on the same footing, just as the same law of commercial paper is applied to a note for ten dollars and a note for a million.

Of course any contract between the owners of these stage lines, by which either of them restrains his own freedom of making rates, etc., while still carrying on the business, is a contract in restraint of interstate commerce, and in direct restraint, for it operates directly on the commerce by depriving the carrier of his freedom. Such a contract is clearly a crime under the Anti-trust Act.

But there can be no doubt but that one of the stage-owners may agree to sell his business to the other, and may sell. And the buyer may discontinue one of the lines or may operate both. In the first case competition perishes for want of a competitor. In the second case the buyer has more than all the power attributed to the Securities Co. to suppress competition between the two lines, which the Circuit Court considers the decisive fact in this case.

Instead of a sale by one to the other, the two owners may form a partnership or corporation to which they may transfer the property, business and good will of their respective lines.

Or a third person, or a partnership or corporation

formed for the express purpose, may buy both lines, their property, business and good will.

The actual or potential suppression of competition in these cases would not make the sales or the buyers' ownership in restraint of commerce; nor would the agreements for the sales, or the formation of partnerships or corporations to buy, be contracts, combinations or conspiracies in restraint of interstate commerce.

The reasons of this are not far to seek.

(a) The transactions touch not interstate commerce but property. They are purchases and sales of property—the very transactions which this court, in the passage quoted from the E. C. Knight case, declares not to be in restraint of interstate trade or commerce so as to be forbidden by the Anti-trust Act.

(b) In the various cases supposed, of sales of one or both of the stage lines, etc., resulting in placing both lines, their property, business and goodwill in a single ownership, and a suppression of competition or power to suppress it, this actual or potential suppression of competition is not effected by a contract operating either directly or indirectly on the commerce of the lines, or by any contract at all.

The power to suppress competition—indeed the suppression itself where it takes place—is an incident of the ownership of the property. It is the necessary and inevitable result of the unity of ownership. It is as much an incident of ownership as the right to sell, and is not, any more than the right

to sell, affected by the source of the owner's title.

And because any such suppression is not made by contract but results from the unity of ownership, the agreements to buy and to form partnerships and corporations for that purpose are not contracts or combinations in restraint of commerce, and are not crimes under the Anti-trust Act. The above quotation from the E. C. Knight Case is directly in point.

(c) The only difference between the cases cited and the present is that in those the property itself, and all of it, engaged in interstate commerce was united in the ownership of a single person, firm or corporation, which had direct, immediate and absolute control over the commerce, and power to suppress competition. In this case not the property engaged in commerce—not the two railways—but the shares of stock of the railway companies, and not all of the shares, have passed under a single ownership. And we shall show that the owner—the Securities Co.—has not the power possessed by the buyer of the stage lines to suppress competition; that it has no power at all, and certainly no direct power.

In the cases supposed, the suppression of competition and the power to suppress it are the result of the unity of ownership resulting from the purchases, and are incidents of such ownership. The same is true here, except that the power of the Securities Co. —not a power to act directly on the commerce of the companies, but only to elect directors—is an incident of its ownership of the shares; a voting power inseparably incident to the shares.

(d) In this case as in those supposed, the source of title, the guilt or innocence of the agreements in pursuance of which the shares have been acquired, in no way affect the powers and rights incident to ownership, and which the owner has and exercises by virtue of his ownership.

And the Circuit Court itself, in a passage already quoted, recognizes that the power of suppressing competition which it attributes to the Securities Co., that company has not by reason of the conspiracy or anything done in execution of it, but solely because of its ownership.

(e) Should it be said that in the cases supposed the purchases of the stage lines are made for legitimate purposes, while here there is a conspiracy to suppress competition, the answer is plain. The only question in this regard under the Anti-trust Act is, does the contract or combination itself, or do the things the parties contracted to do, restrain commerce? If they do, the parties are criminals, however good their motives. If they do not, the parties are innocent, however reprehensible their designs. U. S. v. Freight Ass'n., 166 U. S. 290, 341; Addyston Pipe Co. v. United States, 175 U. S. 211, 234.

II.

Power to Suppress Competition not of Itself Suppression.

The Circuit Court's decision rests on the proposition that the power to suppress competition and its actual suppression are identical—an agreement to put into some one's hands the power to restrain commerce is an agreement to restrain commerce. The act must be construed as if it read that "every contract, combination or conspiracy in restraint of commerce, or to put into any one's hands the power to restrain commerce, is hereby declared to be illegal," and is made a crime.

The reasoning which makes the Securities Co. a suppressor of competition because of its power to suppress it, is not unlike that by which the learned Increase Mather proved (to his own satisfaction, at least) that Satan was a principal author of the thunder-storms which terrified the New England people in his day. For, as he says, no one can doubt the power of Satan in such case. He is the prince of the powers of the air, and has full access to all the ingredients from which thunder storms are made, and well knows how to mix and use them; and of his will to do all the harm in his power there can be no doubt.

But Mather's reasoning, though it may provoke a smile today, was sounder than that of the Circuit Court. Even in the case of the arch-enemy of mankind he did not assume that a will to do evil was in-

volved and inherent in the power to do it. His argument does not rest on the mere existence of the power, but he postulates also the existence of an independent will apart from the power.

The Circuit Court's theory of the identity of the potential and the actual smacks of those transcendental metaphysics in which the ego and the non-ego are one, being and not being are the same, "and naught is everything and everything is naught," rather than of the plain common sense of the common law. And thought the adoption of the theory would be a great help to all having notes to pay and contracts or other legal obligations to perform, it has not as yet, so far as we are advised, been adopted into our jurisprudence.

And if adopted it would not help the Government's case; for if the Securities Co. has power to suppress competition, it has equal power to abstain from suppressing it, and of the two courses the latter is the easier and safer. On what ground should the court hold that the Securities Co. suppresses competition because it has power to suppress, rather than hold that it abstains from suppressing because it has power to abstain? Certainly, in this proceeding in equity, the Court should not read backward the ancient rule, and presume that to be done which ought *not* to be done—and because it ought not to be done.

Should it be said that it is for the interest of the two companies that competition be suppressed, and therefore the two boards of directors will join (con-

spire) to suppress it, we ask how can the Court judicially know that such suppression would be even for the pecuniary interest of the companies or would be so considered by the two boards, or by the officers or stockholders of the Securities Co.? And if they think it for their pecuniary interest, how can the Court say that they would set the money thus to be gained above their duty as citizens to obey the laws?—to say nothing of the penalties of the law as a motive to obedience. And is it certain that the railway directors would be such devoted trustees as to risk imprisonment in behalf of the shareholders? And if, as the Circuit Court erroneously holds, the directors are the mere agents of the majority shareholders, where is the presumption that an agent will commit a prison offence at the bidding of his principal? Unless the directors and shareholders of corporations can be differentiated in this respect from the rest of the community, the Circuit Court, in thus holding that they will commit any crime it is within their power and for their interest to commit, has done what Edmund Burke said he could not do—drawn up an indictment against a whole people. If that indictment stands—if its charges are true,—why may not our President well describe us in the language of the Dey of Algiers, to whom an English officer complained of some act of rapine. "Sir, my subjects are a band of robbers and I am their captain."

The extract from an opinion of Judge Lochren, of the same Circuit Court, printed at the end of the discussion of this fourth point, renders superflous

any further refutation of this novel doctrine of his colleagues.

And certainly a criminal statute cannot be amended as required by the decision of the Circuit Court. The words "power to restrain" cannot be substituted for "restraint," the word "restraint" cannot be held to include or to be equivalent to "power to restrain" in the declaratory sentence of section 1, without applying the same treatment to the next following penal sentence. No rule of construction and no practice in construing criminal statutes permits any such dealing with them. This court has refused to read the word "unreasonable" into this statute to narrow its operation, because "no exception or limitation can be added without placing in the act that which has been omitted by Congress." 166 U. S. 290, 329.

Nor can the Court broaden the statute as asked for by the Government without a like unwarranted addition to it, an addition that would also have to be made to every other criminal statute, so that every railway company and every individual would be a perpetual criminal because of their undoubted power to violate one or more criminal statutes.

In the E. C. Knight Case, the American Co., as owning refineries with 98 per cent of all the refining capacity in the United States, and owning their product, sugar, an article that was inevitably destined, in the natural course of things, to enter largely into interstate commerce, had the unquestioned power to control such commerce and to restrain it.

But this court held that such *power* did not amount to a restraint of commerce.

It is apparent how enormously the scope of the act would be widened, what countless agreements would be made criminal, if every contract which, among its other tendencies, has a tendency to restrain interstate trade or empower some one else to do so, or which in its operations results in somebody's acquisition of power to restrain interstate trade or commerce, should be held to be within the Anti-trust Act. There is no reason to suppose that Congress meant any such extension of its already sweeping provisions.

III.

Securities Co. without Power to Suppress Competition.

And even were it conceded that power to suppress competition, is in itself a restraint of commerce, and that a combination to clothe some one with that power is a combination in restraint of commerce, that would not help the Government's case; for even then the combination would still be merely one to make the Securities Co. the owner of a large majority of shares, which ownership, however, would *not* give it power to restrain the commerce of the railways.

This position of the Government rests on a wholly erroneous view of the relations of the shareholders of a railway company to the commerce of the com-

pany, and of the power of a majority of the shareholders to restrain or otherwise control that commerce.

(1) The business of a railway company is managed by the board of directors. Its interstate and other commerce is conducted by the board and by officers, agents and servants appointed by the board. The stockholders do not, still less do the majority of them, carry on any part of the company's business.

But the directors are more than mere managers—mere agents of the corporation. They are its governors, as they are indeed called in some old charters. They are elected, it is true, by the shareholders, just as the governing bodies of a State or the United States are elected directly or indirectly by the people. Like "the Government of the United States," or that of a State, the government of a corporation is strictly representative. The people in the one case and the shareholders in the other do not directly govern. They elect their governors, but have no control over them during their term of office. Members of a State or of the Federal Government cannot be removed by popular vote, but only in the mode constitutionally provided. And so directors cannot be removed by the stockholders, not even for misconduct. To remove them resort must be had to the courts.

And in one respect the governing body of a corporation is farther removed from the shareholders than that of the Union or of a State is from the

people. The latter not only derive their offices from the people, but the office itself is created and its powers conferred by the people in their constitution. But the office of director is not created, nor are its powers conferred by the stockholders. It is created and its powers are conferred by the State, either in its special charter or by the general corporation statute.

Even more, then, than the high officers of the Government elected for fixed terms are the directors of a corporation free from control by their constituents during their term of office.

The difference between the board of directors and mere agents is admirably stated by Judge Comstock in Hoyt v. Thompson, 19 N. Y., 207, 216, as follows:

> "The board of directors of a corporation do not stand in the same relation to the corporate body which a private agent holds toward his principal. In the strict relation of principal and agent, all the authority of the latter is derived by delegation from the former. But in corporate bodies the powers of the directors are in a very important sense, original and undelegated. The stockholders do not confer nor can they revoke those powers. They are derivative only in the sense of being received from the State by the act of incorporation."

And see, to the same effect, Burrill v. Nahant Bank, 2 Met. 163, per Shaw, C. J.

(2) The relation of the shareholders of a corporation to its governing board, and their want of control of the operations of the company, is nowhere better stated than by Chief Justice Waite, in

Pullman Car Co. v. *Missouri Pacific Ry. Co.*, 115 U. S. 587.

The Pullman Car Co. had contracted with defendant's predecessor in interest for exclusive use of its cars on the latter's road, and on all roads "controlled" by it. Plaintiff claimed that the contract was binding on defendant, and that defendant had violated it by refusing to allow the use of plaintiff's cars on the railroad of the Iron Mountain Company, nearly all the stock of which company had been acquired and was held by defendant. Assuming the contract to be binding on the defendant, and in answer to plaintiff's claim that defendant by such stock ownership, "controlled" the Iron Mountain road, the Chief Justice says (pp. 596-7):

> "We are also of opinion that the railroad of the St. Louis, Iron Mountain and Southern Company is not controlled by the present Missouri Pacific Company in such a way as to require that company to haul the Pullman cars over it, if the contract is binding on the new company to the same extent it would be on the old were that company still in existence and standing in the place of the new. Confessedly the St. Louis, Iron Mountain and Southern Company keeps up its own corporate organization. It operates its own road. It has its own officers and makes it own bargains. The Missouri Pacific owns all, or nearly all, its stock, and in that way can determine who shall constitute its board of directors, *but there the power of that company over the management stops.* The board when elected has controlling authority, and for its doings is not necessarily answerable to the Missouri Pacific Company. The two roads are substantially owned by the same persons and operated in the same interests, but

that of the St. Louis, Iron Mountain and Southern Company is in no legal sense controlled by the Missouri Pacific.

"It is true the bill avers in many places and in many ways that the purchase of the stock of the St. Louis Iron Mountain and Southern Company was made by the Missouri Pacific Company for the purpose and with the intent of getting the control of the road of the St. Louis, Iron Mountain and Southern, and that the case is before us on demurrer to the bill. A demurrer admits all facts stated in the bill which are well pleaded, but not necessarily all statements of conclusions of law. What was actually done is stated clearly and distinctly. The effect of what was done is a question of law, not of fact. It is a matter of no importance what the purpose of the parties was if what they did was not sufficient in law to accomplish what they wanted. When there is doubt, the purpose and intention of the parties may sometimes aid in explaining what was done, but here there is no need of explanation. The Missouri Pacific Company bought the stock of the St. Louis, Iron Mountain and Southern Company, and has effected a satisfactory election of directors, but this is all. It has all the advantages of a control of the road, but that is in law not the control itself. *Practically it may control the company, but the company alone controls its road.* In a sense, the stockholders of a corporation own its property, but *they are not the managers of its business or in the immediate control of its affairs. Ordinarily they elect the governing body of the corporation, and that body controls its property.* Such is the case here. This Missouri Pacific Company owns enough of the stock of the St. Louis, Iron Mountain and Southern to control the election of directors, and this it has done. *The directors now control the road through their own agents and executive officers, and these agents and*

officers are in no way under the direction of the Missouri Pacific Company. If they or the directors act contrary to the wishes of the Missouri Pacific Company, that company has no power to prevent it, except by the election, at the proper time and in the proper way, of other directors, or by some judicial proceeding for the protection of its interest as a stockholder. Its rights and its powers are those of a stockholder only. It is not the corporation, in the sense of that term as applied to the management of the corporate business or the control of the corporate property." * * *

The foregoing decision of this court and the above quoted opinion of Judge Comstock, and that of Chief Justice Shaw, were pressed upon the Circuit Court at the hearing, and the Pullman Car Co. case is thus disposed of in the opinion (II, 1707):

> "In that case the meaning of the word *controlled*, as used in a private contract, was the point under consideration; and what was said on the subject cannot be held applicable to cases arising under the Anti-trust Act when the point involved is whether the ownership of all" [but the Securities Co. does not own all] "of the stock of two competing and parallel railroads vests the owner thereof with the power to suppress competition between such roads. We entertain no doubt that it does."

Of course, we rely on the decision of this Court, with which we shall not attempt to reconcile that of the Circuit Court.

But assuming them both to be law (for the latter is unreversed) and the relation of a majority shareholder to the corporation and its operations is something like this:

He has no control whenever control will make him liable on a contract.

He has absolute control whenever control will make him a criminal liable to fine and imprisonment.

(3) The charter of each of the railway companies gives to the board of directors all the powers attributed to it by Judge Comstock and Chief Justice Waite. The Northern Pacific directors "are hereby invested with all the powers of the corporation" (I, 412), and the Great Northern charter gives them the conduct of "all the affairs and business of said company," with sole power to make by-laws, etc. (I, 441).

The Northern Securities Co. exhausts its powers as a stockholder in electing a board of directors for each company. They are independent of it and cannot be controlled by it. If it aims to induce them to violate the Anti-trust law, it must do so by persuasion or corruption; it cannot compel.

And it is not only a single body of men that must be corrupted. The Statute of Wisconsin provides:

> "No officer of any railroad corporation shall be an officer of any other railroad corporation which owns or controls a parallel or competing line." (Rev. Stat. 1878, c. 87, §1804).

That of Minnesota provides:

> "Nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having the control of a parallel or competing line." (Gen. St. 1894, §2717).

The word "officer" in these statutes includes "director," and has always been so construed—as for instance when Mr. Hill, presumably under advice of counsel, resigned from the directorate of the Northern Pacific Co. (I, 24). The powers and duties of the board are but slightly, if at all, legislative. They are executive and administrative, such that the persons performing them are properly called officers.

The foregoing sufficiently exposes the error of the view which the Government seems to have taken in the conduct if not in the inception of this suit, viz: that the Securities Co., as majority stockholder, would hold the directors in its power, could elect the same individuals as directors of both companies, and could turn them out at pleasure (See cross-examination of Col. Clough, I. 841-4).

(4) It is no doubt true that the directors would naturally desire to carry out the wishes of the stockholders in all lawful things—perhaps even to the extent of being in a measure "controlled" by such wishes. But the case is very different where obedience to the wishes—yielding to the control—of a majority of the stockholders means the violation—perhaps a daily violation—of a criminal statute, under which, for each offense, every director is punishable by a $5,000 fine and a year's imprisonment. There is no conclusive nor any presumption that the directors of either railway company, much less the directors of both companies, will violate the Anti-

trust act and risk these penalties by combining to restrain the commerce of the companies or suppressing competition between them. The presumption is the other way. The purchaser of the majority of the shares of a railway company does not buy therewith and own, as an incident of his purchase, the intelligence, the will and the conscience of the directors.

(5) There is nothing in any claim that the Securities Co.'s stock ownership *tends* to a restraint of commerce.

As to "tendency": Undoubtedly, at common law, certain agreements are held void because of their tendency. But this case rests on a statute, and a penal statute. By the first section certain contracts, etc., are declared unlawful, and "every person who shall make any such contract * * * shall be deemed guilty of a misdemeanor." Everything declared unlawful by the first clause is made criminal by the second, and nothing is criminal under the second clause which is not unlawful under the first. The words "or tending to restrain" cannot be read into the declaratory clause, for reading them into that reads them also into the criminal clause.

And, besides, the holding of a majority of shares cannot be said to tend to restrain commerce, when any such restraint requires as a condition precedent the concurrent action of two independent boards of directors to violate a highly penal statute.

Moreover, conspiracies and acts which "tend" to

restrain commerce are conspiracies and acts which do not actually reach it and restrain it. Hence acts which merely *tend* to restrain interstate commerce are not within the regulative power of Congress. Otherwise the *E. C. Knight Case* would have been differently decided.

(6) Since the Securities Co., no matter how large its holding of stock in the two railway companies, cannot by reason or by means of such holding, or without debauching two boards of directors to violate the Anti-trust act and incur its penalties, restrain the interstate commerce of either railway, it necessarily follows that the holding of a majority of the shares of each railway company by the Securities Co. does not restrain such commerce; and does not make the Securities Co. a combination in restraint of interstate commerce; and that a combination or conspiracy to form the Securities Co., and transfer to it a majority of the shares of the two railway companies, is not a combination or conspiracy in restraint of their interstate commerce; and therefore that no conspiracy or combination to restrain interstate commerce is either alleged in the petition or shown by the evidence.

Of course, if the Securities Co. should hereafter conspire or combine with directors of one or both of the railway companies to restrain their commerce by suppressing competition or by other means, or if the directors of the railway companies should make such a combination or conspiracy with-

out the Securities Co., in either of these cases the Government could restrain the carrying out of the conspiracy and punish the conspirators. But until the Securities Co. engages in some such conspiracy or combination—and no charge or claim is made that it contemplates anything of the kind—it is in no way under the ban of the Anti-trust act.

IV.

Judge Lochren's Decision.

The positions of the Circuit Court in those portions of the decision that have been discussed under this our fourth point, could not receive a sounder or more destructive criticism than they have been subjected to by Judge Lochren of the same court, in the case of State of Minnesota v. Northern Securities Co. (123 Fed. Rep. 692), in which the decision now under review was pressed upon him as an authority to be followed. In the course of an opinion of marked ability and independence of outside influences, Judge Lochren says on this point:

> "The decision of the case last cited (i. e. State v. Securities Co.) as I read it and understand it, does not specify or point out any contract, agreement or act on the part of the defendants, or of any of them, which is directly in restraint of trade or commerce, or which has any direct reference to trade, commerce, transportation or rates; nor even any threat or avowed purpose on the part of any defendant to do any such act, or enter into any such contract or agreement.'
>
> "It is argued that because the Northern Se-

curities Company has become the owner of a large majority of the stock of each of the two railroad corporations, it will be for its interests to suppress competition between them, by causing the two boards of directors of these railroad corporations, which it can fill by election, to enter into arrangements or agreements in restraint of trade which will suppress competition; and as a corollary to this reasoning (or conjecture) the decision holds that the formation of the Northern Securities Company and purchase by it of a majority of the stock of each of these railroad companies are acts or contracts in restraint of trade, though of themselves, and without further action (not yet taken, and perhaps never to be taken) by the directors of the two railroad companies, the formation of the Northern Securities Company and its holdings of stock have and can have nothing to do directly or indirectly with trade, commerce, transportation or rates.

"To epitomize this decision: It is held that it will be for the interest of the Northern Securities Company to restrain trade by suppressing competition between these two railroads, and that by coercing or persuading the two boards of directors whom it has the power to elect, it will certainly cause them to commit highly penal offenses by entering into combinations, contracts and arrangements in restraint of trade, in violation of the Anti-trust Act, and hence the Northern Securities Company is already guilty of these offenses that have never been committed or thought of by its officers or promoters, so far as appears, and it must be suppressed or destroyed.

"I am compelled to reject the doctrine that any person can be held to have committed, or to be purposing and about to commit a highly penal offense, merely because it can be shown that his pecuniary interests will be thereby advanced, and that he has the power, either directly or indirectly through persuasion or coercion of his agents, to compass the commission of the offense."

FIFTH.

The Petition does not allege, nor do the Proofs disclose, any facts showing a Monopoly or a conspiracy or attempt to monopolize, any Interstate or Foreign Commerce.

A monopoly of interstate commerce, however it be defined, is but one form or species of restraint imposed thereon—a species which Congress, in the second section of the Anti-trust Act, has segregated from other kinds of restraint and subjected to special provisions.

And therefore what has been said under the foregoing points to the effect that the Securities Co's. holding of the majority of the shares of the two railway companies does not restrain commerce or suppress competition, or give that company power to do either, is equally applicable in reference to the charge of monopoly. If such holding does not restrain commerce at all, it does not monopolize commerce, monopoly being but one sort of restraint.

And so what will be said under the following (sixth) point, to the effect that even though the Securities Co's. holding should restrain commerce, yet it does not *directly* restrain it, and hence is not forbidden by the Anti-trust Act, applies with full force to the subject of monopoly, for a monopolizing like any other restraint of commerce must be direct to be within the act.

I.

In the primary meaning of the word, a monopolist is one who has the exclusive sale of a thing. And in law a monopolist is one who has the exclusive right to carry on a business, etc., under a franchise which prohibits others from engaging in it. And so a patent or a copyright confers a true monopoly. And an exclusive franchise for a bridge, a ferry or a railway within a defined territory creates a monopoly within that territory.

In popular, and sometimes even in judicial speech, one is said to monopolize a thing when he possesses all of it. A man who carries on all the trade of a certain class in a town or city is said to monopolize it. And so it has been said in this Court: "From the very nature of the case, therefore, railroads are monopolies." (Per Shiras, J., in *Texas & Pacific Ry. v. Interstate Commerce Com'rs*, 162 U. S. 197, 210). "It is true that as to a majority of those living along its line a railway is a monopoly." (Per Peckham, J., in *U. S.* v. *Freight Ass'n.*, 166 U. S. 290, 335). "Owing to the greater speed and cheapness of the service performed by them, railways become necessarily monopolists of all traffic along their lines." (Per Brown, J., in *Pearsall* v. *Great Northern Ry. Co.*, 161 U. S. 646, 676). Elsewhere in the last-cited case, Mr. Justice Brown uses the word in the same sense, when he speaks of the monopoly of the railway traffic in northern Minnesota, should the Great North-

ern Co. become owner of the stock of the Northern Pacific Co., or be consolidated with it.

In none of these cases were the remarks in regard to the monopoly of railways necessary to the decision, nor any part of the reasoning on which the decision was based. Thus in the last case there were two questions. The first was whether a statute of Minnesota forbidding a railway company to own stock in a competing company was inoperative as to a projected purchase of Northern Pacific stock by the Great Northern Co. because of a provision in the latter company's charter (earlier than the statute) empowering it to own stock in other companies. The second was whether the particular transaction in question was a purchase by the Great Northern Co. itself, or a purchase by its stockholders.

It is obvious that the questions whether the charter provision was a contract, and, if it were, whether the subsequent statute impaired its obligation, and whether the proposed purchaser was the company or its stockholders, must have been decided in the same way whether railways are or are not monopolies, and whether a purchase of the Northern Pacific shares by the Great Northern would or would not monopolize traffic.

In none of these cases was the Court called on to give a legal definition of monopoly, the cases did not turn on any question of monopoly, the attention of the Court was not directed to the difference between a monopoly in common parlance and a monopoly in law. The former was what was in the mind of

the Court, and so the word was used in its common and not its technical meaning.

And the same is true of many cases that might (and perhaps will) be cited, where courts have used the word under like circumstances in this popular sense.

And in *U. S. v. E. C. Knight Co.*, 156 U. S. 1, it being argued for the Government that a monopoly of interstate commerce would be created, the Court says (p. 10) that "the conclusion *to be assumed* on this record is that the result of the transaction complained of was the creation of a monopoly in the manufacture of a necessary of life," and then goes on to consider and decide the case *on this assumption*, and without deciding or even considering (it was unnecessary to do either) whether there was any monopoly or not, for, if there were, it was of manufacturing and not of interstate commerce.

A definition of monopoly that would make all railway operation criminal could hardly have been that in the mind of Congress when it penalized, in the second section of the act, all monopolizing and attempts or conspiracies to monopolize—and this though Congress was doubtless not ignorant of the widely published fact that the railways of the country, and notably those of the Northwest, have for years been engaged in a persistent attempt to ruin the producers along the lines by carrying their products at lower rates and furnishing better facilities therefor than can be had in any other country on the face of the earth—an attempt so far successful that the lands of these same producers bring

only four or five times the price they would have brought half a dozen years ago.

II.

In the Circuit Court, the counsel for the Government, in their brief and argument, defined monopoly as

> "the concentration, in the hands of one or a few, of a business or employment theretofore in the hands of several, so as to control competition."

And just as they had argued that the power to restrain trade was in itself a restraint, so they contended that the possession of power to monopolize is itself a monopolizing. On this subject we refer to what is said under our last (fourth) point without repeating it.

The definition quoted assumes that the business concentrated is competitive, otherwise the effect would not be to control competition. And so, in the petition, the only basis of the charge of monopolizing made against the Securities Co. is that it has acquired a majority of the shares of each railway company, and thereby the control of the competitive interstate commerce of both.

There is no ground for holding that the Securities Co. monopolizes, or has conspired or attempted or is conspiring or attempting to monopolize commerce, even though this or any like definition of monopoly be accepted.

It has no control of the commerce of either rail-

way company, and hence no control of their competition. This has already been shown under our last (fourth) point.

The monopolizing denounced by the act is a monopolizing of trade or commerce *by persons engaged in either of them*. The acquisition and ownership of property—in this instance railway shares—not the subject of interstate trade or commerce, is not a monopolizing, nor within the Anti-trust Act, even though such acquisition and ownership should put it in the owner's power to monopolize, or otherwise control or restrain interstate commerce.

And any power that might exist, in such case, to monopolize commerce, whether by controlling competition or in any other way, would be simply an incident of a purchase and ownership of property—a purchase made and ownership held by virtue of rights which Congress, even if it had the power to do so, has not attempted, in the Anti-trust Act, to limit or control. That act becomes operative on the owner of the stock when (and not until) he attempts or conspires to monopolize commerce, whether by using his property for that purpose, or by other means.

This definition does not come quite so close as the former to making the Anti-trust law an enactment of Proudhon's "property is robbery," but comes perilously near it. For if this is the monopoly meant by the act when it penalizes the monopolizing or attempt to monopolize "*any part*" of trade or commerce among the states, many of the common-

est business transactions are made criminal, and shackles are placed upon the freedom of trade and commerce far heavier than any monopolies impose.

Take the illustration heretofore given of one of 25 or 50 merchants engaged in interstate trade, and competitors, selling out to another, or the two forming a partnership or corporation, or both selling to an individual, a partnership, or a corporation.

Or take the case of the little 10-mile stage lines, and the various transactions instanced.

Now this definition of monopoly would make every one of these transactions criminal, and the result of them also criminal, because "a concentration in the hands of one or a few of a business theretofore in the hands of several, so as to control the competition theretofore existing among them," and so a monopoly of "a part"—however small a part—of interstate trade or commerce.

The claim of this or any like definition to express what Congress meant by monopolize, may be further tested by the following transactions, every one of which were or are criminal under this definition:

Before the days of railways there was a great interstate commerce by coach and wagon on the highways between the different States—for instance between Boston and Albany, Boston and New York, on the great Cumberland Road, etc. Enterprising and far-seeing men—the Hills and Morgans of those days—projected railways for the express purpose of acquiring the commerce so carried on by horses, and acquiring the whole of it, for the railway must

necessarily take it all, and could not prosper with less than all. They built the railways, drove the coach and wagon-carriers out of all interstate commerce, acquired—monopolized—it all. They were regarded at the time and have been regarded since as public benefactors, who had rendered inestimable service to the commerce of the country. Had this Anti-trust act been then in force would they have been criminals for monopolizing interstate commerce *which had theretofore been competitive?*

Should it be said that their acts, though otherwise criminal, were protected by state charters, the answer is plain and is furnished by the Circuit Court (II. 1708;) in its negative response to the question put by it, "Whether a charter granted by a state can be used to defeat the will of the national legislature as expressed in a law relating to interstate trade and commerce, over which Congress has absolute control." Indeed, those men, by getting a state charter and acting under color of it, would, according to the Government and the Circuit Court, be doubly guilty—guilty of violating the act of Congress and guilty of procuring the state to violate the Federal Constitution—making it a partner in their illegalities if not in their crime.

Other instances readily suggest themselves:

Two shopkeepers in competition with each other do all the business in a small town. The business falls away, owing to the decay of the town or for any other reason, until there is not enough to support both shops. One of them must close or both must. They agree that one shall retire and sell his

business to the other, who thereby has all the trade —"monopolizes" the *formerly competitive* trade of the town. Now does the purchaser monopolize the trade he has thus acquired, in the sense which that word bears in the Anti-trust Act? If the business thus dealt with included interstate trade, would he, under that act, be a criminal?

Although no single dealer monopolizes all the interstate trade of any city, each has exclusive possession of the part he has secured to himself—monopolizes that part. Each enterprising merchant aims and bends all his energies to enlarge his business to the fullest extent. By larger capital and superior business capacity one such merchant is able to and does continually encroach on the business of his rivals until he acquires nearly all or all of it. He does to other merchants in interstate trade what the department store does to small retailers. Does he "monopolize" the interstate trade he has thus acquired, and is he a criminal, according to the Anti-trust act?

In all these instances, whether of carriers or traders,—and in the instances before cited of merchants or stage-line owners selling out to one another or to third prsons or uniting in partnerships or corporations,—the individual or company which has thus acquired exclusive possession of a certain portion of the interstate commerce or trade of the country, *competitive or non-competitive*, is just as fully a violator of the Anti-trust law as the Northern Securities Co. could be if it actually con-

trolled and operated the two defendant railway companies and their railways.

And these instances are enough to show that the Anti-trust act is not violated—interstate trade or commerce is not, nor is any part of it, monopolized, within the meaning of the act—by the mere acquisition and exercise of exclusive control of some portion of the interstate trade or commerce of the country, *whether competitive or non-competitive.*

In the words of Judge Ricks:

> "If these acts are illegal and in restraint of trade, and if they constitute a monopoly under this act, it may well be denominated an act to restrain legitimate enterprise, and limit and qualify the ownership in property."
>
> *In re Corning*, 51 Fed. Rep. 205, 211.

This Court has not, in any of the cases under the Anti-trust act, settled the meaning of the word monopolize as used in that act. But in *Addyston Pipe Co. v. United States*, 175 U. S. 211, monopolizing was (as in this case) a principal charge, though coupled with restraint of trade. A "monopolizing," or "conspiracy to monopolize" in the sense against which we contend, was clearly made out. But the court disregarded that charge, and held the contract and combination simply to be in restraint of trade, which would seem to indicate that the court did not consider the word "monopolize" to include even such cases as that.

III.

The true criterion of a monopoly of trade or commerce is thus stated by Circuit Judge Sanborn in *U. S. v. Trans-Missouri Freight Assn'n.*, 68 Fed. 58; 7 C. C. A. 15:

> "A monopoly of trade embraces two essential elements: (1) The acquisition of an exclusive right to or the exclusive control of the trade; and (2) the exclusion of all others from that right and control."

The learned judge cites *In re Greene*, 52 Fed. Rep. 103, 115, where Justice Jackson, of this Court, then a Circuit Judge, says, in an opinion the whole of which should be read:

> "An 'attempt to monopolize' any part of the trade or commerce among the states must be an attempt to secure or acquire an exclusive right to such trade or commerce by means which prevent or restrain others from engaging therein."

And in *Oakdale Mfg. Co. v. Garst*, 18 R. I. 484, the Supreme Court of Rhode Island says:

> "Monopolies are liable to be oppressive, and hence are deemed to be hostile to the public good. But combinations for a mutual advantage which do not amount to a monopoly, but leave the field open to others, are neither within the reason nor the operation of the rule."

But the so-called "control" of the two railway companies and their interstate commerce by the Securities Co. does not preclude any other railway company, existing or to be formed, from engaging in such commerce in competition with them. Be-

fore the formation of the Securities Co. it was open to any persons desiring to compete for such commerce to form a company to do so, and it is equally open to them since the organization of the Securities Co. The policy of free trade in railway construction and operation has at all times held full sway in all the states through which these railways extend. The ten-years' "monopoly" of the Northern Pacific did not preclude the Great Northern from building a rival line to Puget Sound. And there is no pretence that the defendant railway companies or the Securities Co. have placed, or intend to or will place, any obstacle in the way of such construction of rival lines; or that they have any greater power or means of obstructing the building of any competing line than the railway companies themselves had before the Securities Co. was formed.

Within the definitions of Justice Jackson, Judge Sanborn and the Supreme Court of Rhode Island, this record discloses no violation of the second section of the act.

On a plain common-sense view of the situation all these charges of monopoly and suppression of competition—huge as be their dimensions—have little if any substance. Much has been said in the Circuit Court, and many cases were cited, about monopolies being against public policy, and about competition being required by that policy. But when as in this case the whole subject is regulated by statutes, there is no public policy outside the statutes. And even at common law there was no

policy requiring any body to compete. True, a man could not bind himself not to compete, just as he could not restrict his freedom of trade in other respects, and for the same reason; he must be left free to compete or not.

The policy of the Statute—the Interstate Commerce Law—is that railways shall not compete, shall not use any of the many arts and methods by which one trader gets business away from another, for this is competition. The railway must not give better terms or greater favors to one shipper than to another. It can only charge a rate that has been and is kept published, open to all the world. A reduction of rates may well be made by two companies, not in the interest of one as against the other, but to develop some particular traffic or section of country for the benefit of both. But this is not competition. Suppose that one company wishes to get business away from another by reducing rates. His reduced rates must be published three days before they can be put in force. Its competitor at once knows of the reduced rate as soon as published and at once reduces its own. The first has had the benefit of any increased traffic by reason of the reduction for one or two days, hardly long enough for the reduction to become generally known. After the three days it simply has to carry at the reduced rate, with no better chance of getting business away from its rival than it had before the reduction. It is worse off—both are worse off—than before. Hence there is no inducement for any company to reduce rates as a matter of competition.

or otherwise than in concert with its so-called "competitor," to help the business of both.

However the Interstate Commerce law may have failed to meet some of the objects of its authors, it could not be more effective to destroy railway competition. No company has any interest to compete (as that word is understood in ordinary trade) unless it be to engage in what has been called "piratical competition"—competition of a strong road against a weak by reducing rates to a point where the latter is sure to be ruined whether it meets the reductions or goes without business by not doing so. The outcome being that the strong road directly or indirectly acquires the weak either by a forced arrangement of some sort or by a purchase at a receiver's sale,—perhaps at a sacrifice great enough to save it from the necessity of compelling the public to make good its losses in the competition.

And so railway consolidations, or railway "mergers," do not restrain or control any but a fictitious or "piratical" competition. And that they are a public benefit we have the statement of Interstate Commerce Commissioner Prouty at the examination of Mr. Harriman (I, 644:)

> "I think as you do that unless these consolidations and unifications result in the over capitalization of our railroads, they are good for the country and a good thing for the carriers," even though they may sometimes impose on the public an unjust rate.

Now, it would be a hard thing to say of public policy or of the law that it favors any such piratical

competition as has been described. And looking at facts as they are, and not as they were before the Interstate Commerce act, it must be conceded that ordinary fair competition—such competition as obtains between merchants or ship-owners—is not today the policy of the law as to railway companies, nor does the statute permit such competition, nor does it exist.

In the examination of Mr. Harriman, it was stated by Mr. Prouty of the Interstate Commerce Commission: "You know, Mr. Harriman, that competing rates have to be practically the same between the same points." (I, 642, and see supra, p. 105.)

And it appears in evidence that the rates to and from all points on the road of either company and points on the line of any other railway are the result, not of an agreement, (which would be criminal,) but of acquiescence on the part of a very large number of companies, each one "competing" with some if not all of the others. See the "Westbound Tariff", Deft's. Exhibit 5. (I, 965.)

And when it is considered that of the so-called competitive commerce of these railways, the Securities Co., if it has the power to control competition or rates at all, can control the rates or the competition on only 3 per cent of that commerce, (supra, pp. 106-8) it must be conceded that the Circuit Court's picture of the Securities Co.'s power over competition, and of the stifling of competition, is to say the least, overdrawn.

SIXTH.

This case is not within the Anti-trust act, for in any view of the matters complained of, their effect upon commerce—whether much or little, for good or ill—is indirect and remote. The Anti-trust act and the regulative power of Congress under the commerce clause of the Constitution are alike strictly confined to matters which directly and immediately affect interstate or foreign commerce.

Assuming that the promoters of the Securities Co. combined, as the Circuit Court says, with a view to having it obtain by purchase and exchange a majority of the shares of both railway companies, (and not of the Northern Pacific alone, as shown under our third point,) and that the mere ownership of the shares thus acquired operates as a restraint of, or gives it power to restrain, the interstate commerce of the two roads, (and that it does not is shown under our fourth point,) then we submit that any such restraint of commerce is not a *direct* restraint, nor is the combination or conspiracy found by the Circuit Court a combination or conspiracy in *direct* restraint of commerce.

That the Anti-trust act is so limited to combinations, etc., in *direct* restraint of commerce has been reiterated by this Court, and with increasing emphasis, in each successive case under the act that has been decided by it.

In *U. S. v. E. C. Knight Co.*, 156 U. S. 1, it was claimed by the United States that the so-called Sugar Trust was a combination in restraint of and to monopolize interstate commerce, because of its monopoly of the manufacture of sugar, a necessary of life, used throughout the United States, so that the manufacture must to a moral certainty be followed by shipments by the Trust to other states, or sales for shipment to other states. But the court *held* that an *inevitable* tendency to such result did not make the Trust a combination or conspiracy to restrain or monopolize interstate commerce, since its effect on such commerce, *however inevitable*, would be *indirect* only.

And it would be indirect because the manufacture of sugar was not and did not touch (any more than the acquisition of railway shares) interstate commerce; that besides the manufacture, one of two other things had to be done, each involving the exercise of volition on the part of one or more persons, before interstate commerce could be affected—that is, the sugar must be shipped to another state by the Trust itself on its own account, or be sold or contracted for shipment to another state.

And so in this case, the alleged conspiracy could not affect interstate commerce until after (1) the Securities Co. had acquired a majority of stock of both railway companies by the voluntary acts of the Great Northern shareholders in transferring their shares to it—they not being parties to the conspiracy; nor until after (2) the boards of directors of the two railway companies should have taken the

action required to restrain their competitive commerce; action which the conspirators did not conspire to take or to have taken; action which the directors alone had power to take, and which action alone could act *directly* on their commerce.

Upon the points here involved, the Court, by the Chief Justice, says:

> "The argument is that *the power to control* the manufacture of refined sugar is a monopoly over a necessary of life, to the enjoyment of which by a large part of the population of the United States interstate commerce is indispensable, and that, therefore, the general government, in the exercise of the power to regulate commerce, may repress such monopoly directly and set aside the instruments which have created it. But this argument cannot be confined to necessaries of life merely, and must include all articles of general consumption. Doubtless the power to control the manufacture of a given thing involves in a certain sense the control of its disposition, but this is a secondary and not the primary sense; and although the exercise of that power may result in bringing the operation of commerce into play, it does not control it, and affects it only incidentally and indirectly."
>
> (p. 13). "It will be perceived how far-reaching the proposition is that the power of dealing with a monopoly *directly* may be exercised by the general government whenever interstate or international commerce may be *ultimately* affected. The regulation of commerce applies to the subjects of commerce and not to matters of internal police."
>
> (p. 15). "In *Gibbons v. Ogden*, *Brown v. Maryland* and other cases often cited, the state laws, which were held inoperative, were instances of *direct* interference with interstate or international commerce; yet in *Kidd v.*

Pearson the refusal of a State to allow articles to be manufactured within her borders even for export was held not to *directly* affect external commerce; and state legislation which, in a great variety of ways, affected interstate commerce and persons engaged in it, has been frequently sustained because the interference was *not direct.*

(p. 16). "Contracts, combinations, or conspiracies to control domestic enterprise in manufacture, agriculture, mining, production in all its forms, or to raise or lower prices or wages, might unquestionably *tend* to restrain external as well as domestic trade, but the restraint would be an *indirect* result, however *inevitable* and whatever its extent; and such result would not necesarily determine the object of the contract, combination, or conspiracy."

(p. 16.) "It was in the light of well-settled principles that the act of July 2, 1890, was framed. Congress did not attempt thereby to assert the power to deal with monopoly directly as such; *or to limit and restrict the rights of corporations created by the States or citizens of the States in the acquisition, control, or disposition of property;* or to regulate or prescribe the price or prices at which such property or the products thereof should be sold; *or to make criminal the acts of persons in the acquisition and control of property which the States of their residence or creation sanctioned or permitted.*"

In *U. S. v. Freight Ass'n.*, 166 U. S. 291, as well as in *Joint Traffic Ass'n. v. United States*, 171 U. S., 505, the contracts challenged were executory agreements, made between railway companies to regulate their competitive interstate commerce, and in terms restrained—indeed, took away—the independent rate-making power of each company.

Each contract was therefore in its terms and in the making of it a *direct* restraint of interstate commerce, since it operated by its own force, as soon as made, to restrain or destroy the freedom of each party to it in carrying on such commerce.

And the Court holds each contract unlawful because in terms, and by its *direct*, *immediate* and *necessary* effect it imposes such restraint, and holds also that if such restraint were not the *direct* effect of the contract, the contract would be lawful.

In the first case (166 U. S. 291), the Court says, by Mr. Justice Peckham:

> (p. 313). "An act which prohibits the making of *every* contract, etc., in restraint of trade or commerce among the several States, would seem to cover by such language a contract between competing railroads, and relating to traffic rates for the transportation of articles of commerce between the states, *provided* such contract *by its direct effect* produces a restraint of trade or commerce.
>
> (p. 341-2). "While in force, and assuming it to be lived up to, there can be no doubt that its *direct*, *immediate* and *necessary* effect is to put a restraint upon trade or commerce as described in the act.

It will be observed that the Court recognizes that even a contract between competing railway companies, relating to rates for interstate commerce, may be of such a nature as to restrain such commerce only indirectly, and so be valid.

In *Joint Traffic Ass'n. v. United States*, 171 U. S., 505, the Court, by the same Justice, after stating

the terms and effect of the agreement in question, says:

> (p. 568). "In Hopkins v. U. S. (171 U. S. 578), decided at this term, we say (p. 592) *that the statute applies only to those contracts whose direct and immediate effect is a restraint upon interstate commerce*, and that to treat the act as condemning all agreements under which, as a result, the cost of conducting an interstate commercial business may be increased, would enlarge the application of the act far beyond the fair meaning of the language used. *The effect upon interstate commerce must not be indirect or incidental only.*
>
> "We also repeat what is said in the case above cited, (171 U. S. 600) that, 'The act of Congress must have a reasonable construction or else there would scarcely be an agreement or contract among business men that could not be said to have, indirectly or remotely, some bearing upon interstate commerce and possibly to restrain it."

Each of the cases of *Hopkins v. United States*, 171 U. S. 578, and *Anderson v. United States*, Id. 604, was the case of a live-stock exchange in Kansas City, in each of which the Exchange, though it did no trading itself, imposed various restraints upon the commerce of its members—such as a prohibition to employ agents to solicit consignments, except at a stipulated salary, or to send prepaid telegrams giving information as to the market. In the first case the members did an exclusively commission business, in the second they traded on their own account. In both cases the cattle dealt in came largely from other states.

In the first case the court says, by the same Justice:

> (p. 587). "We come therefore to the inquiry as to the nature of the business or occupation that the defendants are engaged in. Is it interstate commerce in the sense of that word as it has been used and understood in the decisions of this court? Or is it a business which is an aid or facility to commerce, and which, if it affect interstate commerce at all does so only in an indirect and incidental manner?"
>
> (p. 591). "Even all agreements among buyers of cattle from other states are not necessarily a violation of the act, *although such agreements may undoubtedly affect that commerce.*"
>
> (p. 592). (Passages quoted in Joint-Traffic Case).

(p. 594). After instancing combinations affecting transportation—among others one of engineers, firemen and trainmen not to work for less than specified wages, and asking would any of these "be illegal because the cost of transporting interstate freight would be thereby enhanced?" the Court says:

> "In our opinion these queries should be answered in the negative. The indirect effect of the agreements might be to enhance the cost of marketing the cattle, but the agreements themselves would not necessarily for that reason be in restraint of interstate trade or commerce."
>
> (p. 599). "An agreement among business men not to send telegrams in regard to their business in certain contingencies, when the agreement is entered into only for the purpose of regulating the business of the individuals, is not a *direct* attempt to affect the business of

the telegraph companies, and has no *direct* effect thereon."

(p. 600). (Passage quoted in Joint Traffic Case, *supra*).

The decision in the *Anderson Case* is in strict accord with that in the *Hopkins Case*.

Addyston Pipe Co. v. United States, 175 U. S. 211, was the case of a combination of manufacturers, each doing business in several states in competition with the others. The agreement by its terms took away from each party to it the right to compete for business except in territory and at rates regulated by the agreement.

In holding the combination a violation of the Anti-trust law, the court, again by the same Justice, says:

(p. 229). "We think * * that the power of Congress to regulate interstate commerce comprises the right to enact a law prohibiting the citizens from entering into those private contracts which *directly* and substantially, *and not merely indirectly*, remotely, incidentally and collaterally, regulate to a greater or less degree commerce among the States."

"While unfriendly or discriminating legislation of the several States may have been the chief cause for granting to Congress the sole power to regulate commerce, yet we fail to find in the language of the grant any such limitation of that power as would exclude Congress from legislating on the subject and prohibiting those private contracts which would *directly and substantially and not as a mere incident*, regulate interstate commerce."

(p. 234). "If the *necessary*, *direct* and *im-*

mediate effect of the contract be to violate an act of Congress *and also* to restrain and regulate interstate commerce, it is manifestly immaterial whether the design to so regulate was or was not in existence when the contract was entered into. In such case the design does not constitute the material thing. The fact of a *direct* and *substantial* regulation is the important part of the contract, and, that regulation existing, it is unimportant that it was not designed. Where the contract affects interstate commerce only *incidentally* and not *directly*, the fact that it was not designed or intended to affect such commerce is simply an *additional reason* for holding the contract *valid* and not touched by the act of Congress. Otherwise the design prompting the execution of a contract pertaining to and *directly* affecting, and more or less regulating, interstate commerce is of no importance.

(p. 234). "We conclude that the plain language of the grant to Congress of *power to regulate commerce among the several States* includes power to legislate upon the subject of those contracts in respect to interstate or foreign commerce which *directly* affect and regulate that commerce. * * *

"We are thus brought to the question whether the contract or combination proved in this case is one which is either a *direct* restraint or a regulation of commerce among the several States or with foreign nations contrary to the act of Congress."

And the court holds, upon a review of the facts, that such was the character of the combination, adding that, in determining the effect of a combination,

(p. 245). "All the facts and circumstances are, however, to be considered in order to determine the fundamental question—whether

the *necessary effect* of the combination is to restrain interstate commerce."

II.

In none of the foregoing cases has the Court defined the words "direct" and "directly"—probably because their meaning is so plain, as will appear from the following:

What is a combination in direct restraint of commerce?

For answer we repeat what is said supra, p. 133, in commenting on the Act:

> "To constitute a combination in direct restraint of interstate commerce, the parties must combine to do acts which, if performed, *will of themselves restrain* such commerce, and will *directly* restrain it—that is, acts which *operate directly on such commerce*.
>
> "If the acts which the parties combine to do fall short of this, if they are not such as *operate directly* on the commerce, and by such operation *directly* restrain it, then the combination is not within the Act."

And when the acts to be done operate in the first instance and directly on something other than commerce, (as on the company's property,) though the effect of such operation be so transmitted as to reach commerce, such acts affect commerce only *indirectly*.

Thus the contracts in the Freight Association Case, the Joint Traffic Case and the Addyston Pipe Case acted directly on commerce—restrained the liberty of each party to them by the mere making of

them. A probable result of the contracts would be a raising of rates or prices.

But a combination of railway engineers, firemen and trainmen to get better wages, though it accomplish the purposes of its formation in raising wages, does not operate *directly* and of its own force on the commerce of the railroad, by raising rates or otherwise. True, rates may be and very likely will be raised as a consequence of a rise in wages, just as they might be in consequence of a rise in fuel and supplies, the result of a combination among dealers. But in either case, the combination does not strike *directly* at the rates—*does not reach* the rates. Between the end of the work of the combination and the raising of rates must come the independent action of the directors of the company before rates can be affected. Hence such a combination of wage-earners is not within the Anti-trust Act. *Hopkins v. United States*, 171 U. S. 578, 594.

Though the increased cost of labor and supplies consequent on and caused by the combinations be regarded as a cause of the increase in rates, it is not the proximate cause. And it may not be wholly inaccurate to say that a contract or conspiracy is in direct restraint of commerce only when the doing of the acts which the parties contract or conspire to do will be the proximate cause of a restraint of commerce.

The distinction between direct and indirect regulations of commerce becomes important in those cases where the power of Congress to regulate di-

rectly is exclusive, and the question is on a state statute charged with encroaching on that power. And the cases hold that

A state may not tax railway earnings from transportation as such, for that is taxing the commerce and is a direct regulation of it.

Fargo v. Michigan, 121 U. S. 230.

Phila. Steamship Co. v. Pennsylvania, 122 U. S. 326, 338.

But it may tax the same money received from transportation (provided it is taxed as money and not as earnings) or any property that may have been bought with it, and, in fact, all the railway company's property in the state, whether used in trnsportation or not.

In the two cases, should the receipts from transportation be on hand, either in cash or in property bought, when the tax is levied, the effect on the company would be the same—so much money would be taken from its treasury by taxation of moneys that had been earned by transportation.

But the difference is that in one case the tax, *being laid on the commerce*, is a *direct* regulation of it. In the other case the tax is laid primarily on property, and if it operates at all on commerce to regulate it, does so indirectly.

And though a state may not tax earnings from interstate traffic, it may tax the tolls received by a local railroad company for the use of part of its road by another company engaged in interstate commerce; for this is a tax on property and not on

commerce. Any increase of rates by the carrying company consequent on a raising of the tolls because of the tax is "too remote and indirect" to make the act a regulation of commerce.

Erie R. R. v. Pennsylvania, 158 U. S. 431.

This is the same distinction between property and commerce on which we have all along insisted.

A state may tax the franchise of a foreign corporation upon a valuation measured by gross receipts from interstate and foreign as well as domestic commerce. This is not a *direct* regulation; the tax is not laid *on the commerce itself.*

Maine v. Grand Trunk Ry. Co., 142 U. S. 217.

So a law imposing a privilege tax of $50 on every sleeping car running over the railroads of the state is void as to cars used in interstate transportation, for it is a *direct* regulation of commerce.

Pickard v. Pullman Southern Car Co., 117 U. S. 34.

But the state might tax the same cars, not (as in the Pickard Case) because used in commerce, but because within the state—as property in the state; and the tax may take the form of a tax on the company's capital. Here the tax is laid *directly* on *the property* of the company—its cars—and *not on the use* of the cars in interstate commerce, and if it regulates such commerce at all, does so *indirectly.*

Pullman's Car Co. v. Pennsylvania, 141 U. S. 18, 25.

And so with the taxation of other property.

A state may not tax United States bonds as such. It may not tax an individual or corporation on the value of the bonds held by him, for this would be to tax the bonds *directly*. But shares in a national bank are taxable by a state at their full value like other property, no matter how much of the bank's capital is invested in United States bonds. Such tax does not fall *directly* on the bonds. Van Allen v. Assessors, 3 Wall .573, where the majority of the court held that the tax did not fall on the bonds at all, the minority that it did, though *indirectly*.

In the Circuit Court, it was argued for the Government:

1. "Direct means in a straight line. It don't mean to touch or come in actual contact with. It means legislation which is in the direct or straight line of commerce."

But *direct* legislation on commerce is something quite different from this. And as to the "straight line," a cannon-ball shot at a target and striking and smashing it, strikes it *directly* and not indirectly, whatever its trajectory.

2. The action of shareholders in choosing directors is "directly related to commerce."

3. If Mr. Morgan bought the railways, and thus gained power to suppress competition, "such a purchase would have a direct relation to commerce."

4. But no one can buy a railway. The stock only can be bought. Only by buying the stock of the companies could he get the power of suppressing competition, and if he bought the stock he would have the same power as if he purchased the railways, and hence his power "relates just as directly to commerce" as if he bought and took actual possession of the roads and rolling stock.

These positions have already been fully answered under our fourth point.

III.

(1). In all these declarations of the limitations of the Act and of the power of Congress, the court has merely repeated what has always been its settled doctrine.

Matters which affect interstate or foreign commerce, whether by way of regulation or otherwise, (excluding those of merely local concern) fall naturally into two classes—those whose effect is direct and immediate, and those whose effect is indirect and mediate or remote.

Those whose effect is direct and immediate are within the regulative power of Congress. Those whose effects are not direct and immediate are without the limits of that power. Their regulation is for the States; and whether the States regulate them or not, whether the States permit, proscribe or ignore them, in no way affects the impotence of Congress to regulate them. And the power of Con-

gress under the Commerce Clause is confined to direct regulation.

The reason of this restriction on the power of Congress is this: If Congress could indirectly regulate interstate commerce, there would be no limit to the distance it might go from direct regulation; and as there is hardly any transaction of any magnitude, hardly any state legislation (—even the laws and their machinery for protection of property, authorizing and regulating the business of insurance, providing judicial remedies upon contracts, including contracts involving interstate trade, and countless others—) that does not in an indirect or remote way affect interstate commerce, pretty nearly the whole internal government of the States would be displaced by or made subordinate to Congressional regulations. As held in *Hooper v. California*, 155 U. S. 648, 655 per White, J.:

> "If the power to regulate interstate commerce applied to all the incidents to which said commerce might give rise, and to all contracts which might be made in the course of its transaction, that power would embrace the entire sphere of mercantile activity in any way connected with trade between the states, and would exclude state control over many contracts purely domestic in their nature."
>
> (Quoted with approval by the Chief Justice in *Williams v. Fears*, 179 U. S., 270, 278, which was a case of a tax on agents employed in hiring laborers to be employed beyond the limits of the State).

(2). The grant of power to Congress is "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

The accepted definition of interstate commerce, early made and often repeated, is thus stated in *Addyston Pipe Co. v. United States*, 175 U. S., 211, 241:

> "Interstate commerce consists of intercourse and traffic between the states or inhabitants of different states, and includes not only the transportation of persons and property and the navigation of public waters for that purpose, but the purchase, sale and exchange of commodities." *Addyston Pipe Co. v. United States*, 175 U. S. 211, 241.

As incidental to the power to regulate commerce, Congress may pass all laws necessary or proper to carry that power to effect, and within wide limits Congress is the judge of such necessity or propriety.

In the exercise of this incidental power, Congress may legislate and has legislated by way of regulating the instruments and subjects of such commerce, and the persons engaged in it.

But the incidental power of Congress to legislate on such subjects, instruments and persons, does not make them or any of them interstate commerce, does not bring any of them within the definition above quoted or within the term "commerce among the several states" as used in the Anti-trust act.

(3). The acts which are charged to restrain and monopolize interstate commerce or to directly, im-

mediately and necessarily effect that result so that a combination to do them would be a combination in restraint of commerce, are (1) the formation of a corporation under the laws of New Jersey, for the purpose of investing in corporate shares and securities, a purpose sanctioned by its laws—though it would in no wise affect the character of the defendants' acts as violating or not violating the Anti-trust law, should it appear that those acts were prohibited alike by New Jersey, Wisconsin and Minnesota. (2) The acquisition by that company, whether by purchase for cash or in exchange for its own shares, or by both means, of a majority of the shares of each of the two railway companies.

(4). Now the ownership of these railway shares cannot posibly be a *direct* restraint on commerce, nor can the combination found by the Circuit Court—a combination for the purpose of having the Securities Co. obtain the shares by purchase and exchange—be a combination in *direct* restraint of commerce. How can the mere ownership of shares, *and nothing more done*, *directly* restrain the commerce of the companies or affect it at all? Something further must be done by somebody before commerce can be *directly* restrained, and it must be done by the only persons who can act *directly* on the commerce—by the boards of directors.

And even if the Securities Co. a mere stockholder, though a majority stockholder, could of itself *directly* restrain the commerce of the companies,

could do any act operating directly on the commerce, still it has done nothing of the kind. And the petition does not charge nor has the Court found that the conspirators ever meant or conspired to have the Securities Co. do anything more than buy the shares. It is not charged or found that they meant or conspired that the Securities Company should ever use its power as owner (if as owner it had any) to suppress competition or otherwise restrain commerce, directly or indirectly, whether by its own direct action, or by compelling the two boards of directors to engage in a criminal conspiracy.

It has been pointed out under our fourth point that between the Securities Co. and any act restraining or in anywise affecting the commerce of the two companies, must intervene the action of two independent boards of directors. We insisted there and insist now that this precludes any power of the Securities Co. to restrain the commerce of the companies either directly or indirectly. But surely it precludes any power of *direct* restraint. The acts restraining commerce which operate *on the commerce itself* to restrain it, and so *directly* restrain it, must be the acts of the two boards of directors, conspiring to commit a crime. We had thought (being instructed to that effect by this and other courts) that the board of directors of a corporation are quite different from agents and servants of the stockholders, seeing that agents and servants derive their office as well as every one of their powers from the principal or master, can act only in his

name, and can be discharged by him at pleasure. But even in case of agents or servants, we never heard that the principal or master was conclusively presumed to have the power to compel them to commit crimes. And the decision of the Circuit Court, that the directors of corporations are little if anything more than puppets in the hands of the stockholders—at least when the commission of crimes is involved—is without support in principle or authority.

Of course, we concede, once for all that a conspiracy may contemplate the doing of acts by agents and servants of the conspirators, and that in this case had the conspiracy included the doing, by an agent or servant, of an act operating *directly* on commerce and *directly* restraining it, it would (if a conspiracy at all) be a conspiracy in restraint of commerce.

And so a conspiracy may well be taken to include not only the acts which the parties agree to do, but the *necessary* consequences of those acts, or the consequences that ensue without the intervention of any other independent cause. Thus if the conspiracy were to obstruct commerce by starting a huge rock in a high bank alongside the track as a train was approaching, the headlong descent of the loosened rock would be as much within the conspiracy as the act of loosening it.

But nothing of the kind is found here. After the last act to be done by the conspiracy (if as the court finds, the Securities Co. was a member of it) should have been completed by the making of the

last stock purchase, no act could be done *directly* restraining the commerce of the companies except by persons not parties to the conspiracy nor subject to the control of the conspirators. Indeed, the Securities Co. itself was not subject to their control, the large majority of its stock (all above 140 millions) being held by the 1300 shareholders who were not conspirators, but who and their large holding, as well as the 600 existing Great Northern shareholders with their 30 millions of stock, are not taken into account by the Circuit Court. But it is these 1300 shareholders who have power to elect the board of directors of the Securities Co., and it is this board which has power to elect the boards of the two railway companies. And before it can be assumed that because of the conspiracy the Securities Co. will compel the railway boards to suppress competition, it might be well to inquire whether the 1300 shareholders who are not yet conspirators are going into any such conspiracy.

IV.

That the purchase and ownership of shares in railway companies are, even more than purchasers and sales of other property, matters not within the regulative power of Congress, is further shown by the following considerations:

Such property is of a somewhat peculiar nature. It is not an instrument of interstate commerce. It is neither visible nor tangible and cannot be transported from one State to another and

so be the subject of interstate commerce. A share of stock is the interest of the holder in the company, and—

> "The interest of each stockholder consists in the right to a proportionate part of the profits whenever dividends are declared by the corporation during its existence under its charter, and to a like proportion of the property remaining upon the termination or dissolution of the corporation after payment of its debts. *Gibbons v. Mahan*, 136 U. S. 549, 557.

And it is property created by the State creating the corporation. The property of the company may be any natural or manufactured product of earth, air or sea, but that of the shareholder is always the same intangible "right," the same chose in action.

As incident to his stockholding, the holder has the right to vote for directors. This right, too, is created by the State.

The corporation being the creature of the State, the shares being property created by the State, the voting right annexed to them being created by the State, it necessarily follows that the power to determine who shall be original holders of shares in any corporation, and who may thereafter purchase and hold them, and the extent of the holding permissible to any individual or combination or corporation, and what voting power shall attach to the shares, and whether the individual or corporate holder of stock in one company may acquire any, and,if any, how many shares in a competing company,—the power to determine every one of those things be-

longs to the State which created the corporation and can belong no where else.

2. All this is denied by the Government in this case. Its contention is—must be—that Congress may not only regulate the interstate commerce of State corporations, (a power undisputed,) but *may also regulate the holding of stock* in all state corporations doing an interstate business. It would make the act read (so far as this case is concerned) thus:

> "The holding by an individual, partnership or any combination of individuals, of the majority of the shares in each of any two railway companies incorporated by any state or states, and competing with each other to any extent whatever for interstate business, is hereby declared to be unlawful, anything in any state statute authorizing such holding notwithstanding."

And Congress might go farther and provide who may hold shares in any railway company, (for there is hardly a railway in the country, however insignificant, but carries on *some* interstate commerce) how many shares any one person or association may hold, what voting power the holders may have, what shall be necessary to a transfer of shares *inter vivos* or by will, and to whom they shall go in case of intestacy. And it could incidentally regulate the management if not the creation of all stock-exchanges in which shares are dealt in.

And if the power to regulate directly the commerce of a company includes the regulation of its

composition and internal constitution, Congress could certainly deal with stockholders and their shares in the manner just suggested.

But the *commerce* of a corporation is an utterly different thing from its *composition*, or its *property* or the property of its shareholders, and the power to regulate the one is entirely distinct from the power to regulate the others. And the whole case of the Government rests on a confusion of these two things—commerce on the one hand and composition and property on the other.

3. The claim of the Government in this case asserts for Congress the broadest power over the composition of state corporations, and asserts that Congress has exercised that power in the Anti-trust act by prohibiting an investment company, chartered by one state, from holding a majority of the shares of each of two railway companies engaged in interstate and local commerce, and created respectively by two other states.

Now, if this power exists in Congress, and has been exercised by the Anti-trust act, it is and has always been an exclusive power.

The Anti-trust act declares a uniform regulation throughout the United States. Any contract or combination that is within its scope is equally unlawful, equally criminal, whether made or formed in Minnesota or Massachusetts.

And it is perfectly well settled that where subjects for commercial regulation are of a nature to require or admit of one uniform system or plan of

regulation, the power to regulate them is exclusive in Congress, and any attempted regulation by a State, whether to enlarge or to restrain, is simply *ultra vires*, for it is the usurpation of a power vested exclusively in Congress.

Wabash etc. Ry. Co. v. Illinois, 118 U. S. 557, 574-5, *per* Miller, J.

Robbins v. Shelby Taxing District 120 U. S. 480, 492, *per* Bradley, J. and cases cited.

Phila. Steamship Co. v. Pennsylvania, 122 U. S. 326, 336, *per* Bradley, J.

Bowman v. Chicago, etc. Rd. Co., 125 U. S. 468, 480-1, *per* Matthews, J.

As the matters embraced in the Anti-trust act all admit of and require a uniform rule to which they are subjected by the act, they are all within the exclusive jurisdiction of Congress. Anything not within its exclusive jurisdiction is not within the act. If the act forbids such a holding of shares as that of the Securities Co., the three States which chartered these three companies could not authorize it.

The Government says in its petition that the Anti-trust act forbids such holding because effecting a "virtual" consolidation of the two railway companies and so a restraint of interstate commerce. If such is the effect of a mere "virtual" consolidation, an actual consolidation would be yet more obnoxious to the Anti-trust law, and must be as clearly within that law as is a "virtual" consolidation, and, like the "virtual" consolidation, a sub-

ject for Congress alone to regulate, and the Circuit Court so holds (II, 1708).

And if a State cannot authorize a consolidation of competing lines chartered by it and doing an interstate as well as local business, it cannot authorize the consolidation of connecting and non-competing lines. It is no answer to this to say that one would and the other would not *restrain* commerce. Both are or neither is a *regulation* of commerce. If it is a *direct* regulation (and unless it is, it is not with the power of Congress), then it is in the exclusive power of Congress, and the State is powerless to make it. If it is not a regulation of commerce at all (and this is its true character), or if it is an *indirect* regulation of interstate commerce, then it is within the power of the State and outside the power of Congress.

That such actual consolidations (and a *fortiori* mere "virtual" consolidation) are within the power of a state to authorize or forbid, has been expressly held by this Court. They do not, nor does the state law authorizing or forbidding them, *directly* affect interstate commerce. *And the existence of such right in the State to legislate on the subject is conclusive against the Government's claim that such consolidations are within the Anti trust law* because necessarily restrainining commerce, *for that law is confined to those subjects only which Congress has exclusive power to regulate*, and to those only which *directly* affect interstate commerce.

A "virtual" consolidation is no more within the law than an actual one.

And it is enough that the State *has power* to authorize or forbid consolidations of its corporations. Its jurisdiction and the want of any in Congress do not depend on its exercise of the jurisdiction in one way or another. So far as regards congressional power over any consolidation, the case is the same whether the state has authorized, forbidden or merely tolerated it.

4. A complete bar to the Government's attempted encroachment on the rights of the States and their citizens is found in *Pearsall v. Great Northern Ry. Co.*, 161 U. S. 646, and *Louisville & Nashville R. Co. v. Kentucky*, 161 U. S. 677.

In the former case a Great Northern shareholder brought suit to enjoin the carrying out of a contract between that company and the bondholders of the old Northern Pacific Railroad Co., by the terms of which, on the organization of the present Northern Pacific Co. (then about to tke place), one-half the capital stock of the Northern Pacific Co. was to go to the shareholders of the Great Northern Co. or to a trustee for their use.

The agreement was attacked as effecting a "virtual consolidation," because though in form the Northern Pacific shares were to go to the Great Northern shareholders, they were really to go to the Great Northern Co., which was to furnish all the consideration for them; and because it was in viola-

tion of the statutes of Minnesota of 1874 and 1881, forbidding two competing railway companies to consolidate and forbidding each of them to hold ny stock in the other.

On the other hand the company claimed that the unrestricted right to consolidate with any company which was given by its charter was not and could not be limited by the subsequent acts of 1874 and 1881.

The case showed that the lines of each company extended from St. Paul to Puget Sound, but it does not seem to have occurred to counsel on either side that the charter grant of a right to consolidate with a railway engaged in interstate commerce was beyond the power of the legislature, and that the general restriction of stock ownership and consolidations was also unconstitutional as applied to such railways. But the court must have had these points in mind, for they were made and ruled in the *Louisville & Nashville Case*, decided at the same time. The decision sustained the Minnesota legislation, on the ground that the stock was really to go to the Great Northern Co., and not to its shareholders, and, after stating this ground of decision, Mr. Justice Brown thus expressed the further decision of the Court as to the right of the shareholders to do what the company was prevented from doing by the Minnesota statute.

> "Doubtless these stockholders could lawfully acquire by individual purchases a majority, or even the whole, of the stock of the reorganized company, and thus possibly obtain its ultimate control; but the companies would still remain

separate corporations with no interests, as such, in common."

The Court that made this decision could hardly have supposed that such a holding of stock would be a restraint of interstate commerce. They may not have had in mind the Anti-trust law, but a combination or conspiracy that is declared to be unlawful by that act was just as unlawful before and without it.

In *Louisville & Nashville Rd. v. Kentucky*, 161 U. S. 677 (decided at the same time with the *Pearsall Case*), the State sought to enjoin the railway company from purchasing the property of a competing railway company at a judicial sale, contrary to the constitution of the State. Both railways were engaged in interstate commerce. In the first of the following paragraphs the right of the State to determine who shall and who shall not own stock in her corporations, is fully recognized. The rest of the quotation is a complete answer to the claim that Congress has any jurisdiction to regulate the stock-holding of a State corporation, or to authorize or prohibit the consolidation, actual or "virtual" of State railway companies, whether competitive or not, and whether engaged in interstate commerce or not.

The Court says (per *Brown*, J.):

(P. 693):

"It is true, as was observed in *Pearsall v. The Great Northern*, that the stockholders of the L. & N. Co. may individually become the

purchasers of the Chesapeake Co. at a judicial sale, and may organize a new corporation but it would be still a corporation separate and distinct from that of the L. & N. Co. The inhibition of the Constitution *is not against the sale to individuals, though they may chance to be stockholders in a competing line*, but against the acquisition by a railway, in any form, of a parallel or competing line. If this could be evaded by going through the form of a judicial sale, the constitutional provision would be of no value. * * *

"But little need be said in answer to the final contention of the plaintiff in error, that the assumption of a right to forbid the consolidation of parallel and competing lines is an interference with the power of Congress over interstate commerce. * * * In the division of authority with respect to interstate railways *Congress reserves to itself the superior right to control their commerce* and forbid interference therewith; while *to the states remains the power to create and regulate the instruments of such commerce*, so far as necessary to the conservation of the public interests.

"If it be assumed that the states have no right to forbid the consolidation of competing lines, because *the whole subject*" (i. e. the whole subject of consolidations, whether to authorize or forbid), "is within the control of Congress, *it would necessarily follow that Congress would have the power to authorize such consolidation in defiance of state legislation—a proposition which only needs to be stated to demonstrate its unsoundness.*" * * *

"While the constitutional power of the state in this particular has never been formally passed upon by this court, the power of state legislatures to impose this restriction upon the general authority to consolidate has been recognized in a number of cases."

This case is cited with approval in *Louisville & Nashville Rd. v. Kentucky*, 183 U. S. 503, 518.

This decision cannot be limited so as to uphold only such legislation concerning the consolidation of competing railroad companies or the purchase of stock in one by the other, as is prohibitory. The State may forbid such consolidations, etc., because it has *the general power over all consolidations and stock purchases of railway companies of its own creation*, to authorize or prohibit. And *because it has this general power*, it may, while authorizing one consolidation or one class of consolidations, forbid another or another class.

And such was the opinion of this Court in the case cited. The issue was, in its own language, whether "the *whole subject* is within the control of Congress"—that is, the whole subject of consolidations, what to authorize as well as what to forbid. And in the last sentence quoted the Court recognizes the power of the State to grant "general authority to consolidate," with or without restrictions, and, *because of such general authority* "to impose this restriction upon the general authority."

The Circuit Court takes no notice of this decision, but leaves no doubt tht it was fully aware that its own decision was a denial of the right of a state to authorize the consolidation of two of its own railway companies. After holding that the essence of the restraint of commerce was the suppression or restraint of competition, and that whatever combination (in corporate form or otherwise) effects

this result is prohibited by the Anti-trust Act, it says (p. 1708):

> "Competition, we think, would not be more effectually restrained than it now is under and by force of the existing arrangement, *if the two railroad companies were consolidated under a single charter.*"

The Court was perfectly aware of the far-reaching effect of its decision—that it denied to the states powers that had been exercised without question for two generations, and by the exercise of which the railway system of the country had reached its present form, and awarded to Congress powers over the acquisition and ownership of property within the states, and over the constitution and composition of corporations created by the states, which no one ever imagined it to possess before the bringing of this suit. And it is due to that court to acknowledge that in this momentous decision there is no paltering, no attempt to minimize its far-reaching effect; the Court certainly had the courage of its convictions.

5. The application of the rule so clearly stated in the case cited is this:

The interstate commerce of any corporation is exclusively subject to congressional regulation.

The composition and internal constitution of any corporation (whether engaged in interstate commerce or not) including all matters of its government and control, and all relating to the creation, acquisition, holding and transfer of its shares are

subject to the exclusive regulation of the State, none of them being matters of interstate commerce.

If persons who have acquired a majority of the stock of each of two interstate railways conspire with the directors of either or both of the railway companies to restrain their interstate commerce, this will be a violation of the Anti-trust law and may be restrained by a proceeding like this.

But the mere acquisition and holding of a majority of the stock of two competing interstate railway companies by the same person or persons, individual or corporate, or any combination for that purpose, does not of itself restrain interstate commerce, or constitute a combination to restrain it, and does not render such persons subject to congressional regulation, or to proceedings under the Anti-trust act.

SEVENTH.

The very general language of the Anti-trust Act was not intended to include combinations to purchase railways or railway shares, competing or non competing, nor consolidations actual or "virtual" of railways or railway companies. Congress, when passing the Act, knew that the railway system of the country rested on such combinations authorized by State laws, some of them having existed many years. If Congress had meant to declare such consolidations and stock purchases of competing companies to be illegal, the securities issued by them void, and the State legislation unconstitutional, it would have said so in plain, specific and apt language.

The construction put on the Act by all branches of the Government and by everybody down to the commencement of this proceeding, has been in full accord with our position that the act has nothing to do with combinations to own railways or railway shares.

I.

1. From the infancy of railroads in this country,—before and since the passage of the Anti-trust act—the States have assumed and exercised the power of authorizing one railway company to pur-

chase or lease a competing line, or to acquire a majority or all of the shares of a competing company, or to acquire all or the majority of the stock of two companies competing with each other though not with the purchaser, or to lease the competing lines of such companies, or to effect an out-and-out consolidation with the competing company.

And in the exercise of this power they have made no distinction between lines doing an interstate business and those (few, if any) purely local.

During all this period while questions had, from time to time arisen as to whether a particular consolidation, lease or purchase of railway or stock was authorized by the laws of a state, there never was any question as to the power of the State to authorize them. Nowhere in the law reports, the text-books, the writing upon railways and commerce, or the proceedings of the legislative bodies, State or Federal, is there to be found a suggestion or intimation that such leases, purchases, or consolidations were restraints (much less *direct* restraints) upon interstate commerce, or that the legislation authorizing them was *ultra vires* of the States and an encroachment on the exclusive power of Congress to regulate such commerce.

Now when Congress passed the Anti-trust act, it must be presumed that in so far as it intended to legislate in regard to railways and railway companies, it did so with full knowledge of the subject-matter of its legislation. Chesapeake & Ohio Tel. Co. v. Manning, 186 U. S. 238, 245. The railway

interest was then as it has ever since been the most important of all those conducted by combined capital. Moreover the business of the companies is to perform for the sovereign a duty of the sovereign—to furnish highways for transportation—and to that end they are delegates of a prerogative of the sovereign. Congress knew, as the court must judicially know, the location and nature of that great highway the New York Central Railroad, and of other railways connecting the principal cities of the country, as well as it knew as those of the Mississippi River or any other natural highway.

Moreover, Congress had for some years been engaged in regulating the interstate commerce of all these roads, and its commission had reported to it some, at least, of these various instances of purchases, leases and consolidations of, and stock ownership in, competing companies.

3. While there can be no doubt that this court takes judicial notice of the formation of the great railway systems of the country by the processes mentioned and under State authority, and takes judical notice that such exercise of State authority was never questioned, and that all this was known to Congress when passing the Anti-trust law, we have produced for the information of the Court a mass of information on this subject extracted from the standard work on the subject of railways, a work at once contemporaneous and historical, (published as it is from year to year,) and of wide cir-

culation and in general use by all persons interested in the history or present condition of the railway companies of the country and their lines, as the one recognized authority on the subject.

The proof of the character and wide circulation and accuracy and recognized authority of this series of books known as "Poor's Manual," is found in the testimony of Capt. Meany, (I, 876, 886-892) and is plenary.

In addition to Poor's Manual, we have also produced the reports of the Interstate Commerce Commission, made directly to Congress, in the year 1889 and subsequent years.

The extracts from Poor's Manual are Defendants' Exhibits 18 A to 18 E, inclusive, (II, 1013-1120).

Those from the Interstate Commerce Commission reports are Defendants' Exhibits 20 A—20 L, inclusive, (II, 1125-1615,) with an explanatory note by the Commission, Exhibit 20, (II, 1121).

These exhibits, when offered, were objected to, and an argument was had on the objections, to which we refer, without repeating it. (I, 876-886).

That all the matters for which these Exhibits are produced, are within the judicial knowledge of the Court, is we think beyond question. This was in effect admitted by the Solicitor General in the argument above refered to (I, 884, fol. 3509). And see

Ohio Life & Trust Co. v. Debolt, 16 How. 416, 435, where the Court (by Taney, C. J.) says: "It is a matter of public history, which this court cannot refuse to notice, that almost every bill for the in-

corporation of banking companies, insurance and trust companies, railroad companies or other corporations, is drawn originally by the parties who are personally interested in obtaining the charter."

Railroad Co. v. Maryland, 21, Wall. 456, 469, where the court (per Bradley, J.) says of the Washington branch of the Baltimore & Ohio railroad: "That the road is one of the principal thoroughfares in the country for interstate travel is conceded, and indeed may be judicially assumed."

Brown v. Piper, 91 U. S. 37, 42, where the court (by Swayne, J.) quotes with approval the above passage from 16 How. 435, enumerates various classes of facts that need not be proved, among them those "of universal notoriety," and says: "Courts will take notice of whatever is generally known within their jurisdiction; and if the judge's memory is at fault he may refresh it by resorting to any means for that purpose which he may deem safe and proper."

Phillips v. Detroit, 111 U. S. 604, 606.

Lehigh Valley Rd. v. Pennsylvania, 145 U. S. 192, 201, where the question was on the validity of a state tax on receipts for transportation by rail between points in the State of Pennsylvania, a part of the railway over which the transportation was had being outside of the state. The court takes judicial notice that the Nashville, Chattanooga & St. Louis Ry. Co. is a Tennessee corporation, but through freight and passengers carried by it from

Nashville to Chattanooga pass over a few miles in Alabama and perhaps two in Georgia; and that the Erie Ry. Co. does not escape taxation in respect of its business between New York and Buffalo because some miles of its road are in Pennsylvania, while the New York Central is taxed on its business between the same places because its rails are wholly within the State of New York.

In *Louisville & Nashville Rd. v. Kentucky*, 161 U. S. 677, 699, where the question was upon the validity, under a Kentucky statute, of the purchase of the railroad of one company by a competitor, the court takes notice of the "familiar instance of the three north and south railways through the State of Connecticut, one from Bridgeport to Pittsfield in Massachusetts, another from New Haven to Springfield, and another from Norwich to Worcester, and, of its own judicial knowledge, says: "These are strictly parallel lines, but only in a limited sense competing."

See also

Preston v. Browder, 1 Wheat. 115, 121.
U. S. v. Union Pacific Rd. Co., 91 U. S. 72, 79.
Platt v. Union Pacific Rd. Co., 99 U. S. 48, 55.
Chesapeake & Ohio Tel. Co. v. Manning, 186 U. S. 238, 245.

And these documents are offered not in proof of issuable facts, but to aid the Court in the construction of a statute. While it is not necessary to offer proof of matters of which the court takes judicial

notice, there is no rule excluding it. And there is certainly no impropriety in furnishing the court, in a condensed statement admitted to be correct (I, 894, 917), what the court would have a right to seek in the many volumes from which the statement is made.

The Interstate Commerce reports, made to Congress, are of course primary evidence of the facts stated in them and that such facts were known to Congress. Poor's Manuals are also, as standard records and histories of the time, competent evidence of the matters stated in them, and certainly are the best evidence of their own contents and of the publication and repetition, year after year, of the statements we have extracted from them.

The Interstate Commerce Commission refused to furnish the documentary evidence in its possession which would have been primary evidence (I, 873-5, 984). And this refusal raises the presumption that such evidence, if produced, would have told in favor of the defendants, and removes any objection that might be made to Poor's Manual as not primary evidence.

4. The matters in Poor's Manual and the Interstate Commerce Commision Reports, are summarized in the following statement, which includes purchases, leases, etc., made since as well as those made before the passage of the Anti-trust act.

Boston & Maine Railroad Company.

The Eastern R. Co. of Mass., the Eastern R. Co. of N. H., and the Portland, Saco & Portsmouth R. Co. were respectively chartered by the States of Massachusetts, New Hampshire and Maine to build railroads in those states, connecting with each other and forming a continuous line of interstate railway from Boston to Portland. The whole line was completed in 1842, and the Eastern R. Co. of Mass. thereupon became the lessee of the roads of the other two companies. (II, 1014-5).

The Boston & Maine R. Co. was formed in 1842 by consolidation of three companies chartered by the same states to build from Boston to Portland. At an early date it built as far as South Berwick, Me., reaching Portland over the tracks of another company. In 1873, it completed its own line from Boston to Portland, adjacent to and parallel and competitive with that of the Eastern R. Co. (II, 1013).

On December 22, 1883, the Eastern R. Co. of Mass. leased to the Boston & Maine R. Co. all its property and franchises of every description, assigning its lease of its connecting roads (II, 1013).

Ever since that time the Boston & Maine Co. has operated as well for local as for interstate business, these two parallel and competing lines between Boston and Portland.

On May 9, 1890, the Boston & Maine and the Eastern of Mass. were consolidated, the stock of

the Eastern being replaced by stock of the Boston & Maine (II, 1020-1), and on June 1, 1899, the Boston & Maine acquired in like manner all the shares of the Eastern of N. H., and, on January 1, 1900, all the shares of the Portland, Saco and Portsmouth, in exchange for its own shares created and issued for that purpose (II, 1024-5).

In 1887, the Boston & Maine Co. leased for 99 years the property and franchises of the Boston & Lowell R. Co., including its leased lines, among them the line of the Boston, Concord and Montreal Co. (since reorganized as the Concord & Montreal Co.), thus acquiring a line from Boston via Lowell and Concord to Groveton in New Hampshire, and connecting near that point with the line of the Maine Central R. Co. leading into Canada and connecting with lines to Quebec and Montreal (II, 1017-8). A majority of the stock of the Maine Central Co. was acquired by the Boston & Maine as early as 1890 (II, 1021) and has ever since been held by it.

In the same year, 1887, under its lease of the Boston & Lowell, the Boston & Maine Co. also acquired a lease for 99 years of the Connecticut & Passumpsic Rivers R. R. extending from White River via Wells River and St. Johnsbury to Newport, Vt., and also the Newport and Richmond R. R. extending from Newport to the Canada line and there connecting with railways reaching Montreal and also Quebec (II, 1018); and also a lease for 99 years of the Northern R. R. of N. H., extending

from Concord on the line of the Boston, Concord & Montreal R. R. to a junction with the Conn. & Passumpsic Rivers R. R. at White River Junction (II, 1018), those three roads, thus forming a parallel and competing line with that by way of the Maine Central to Montreal and Quebec.

So that, at the date of the Anti-trust act, the Boston & Maine, by lease or stock ownership of competing lines, controlled all the rail lines from Boston ta Portland and all between Boston and Montreal and Quebec. The only other route was by steamer from Boston to Portland, and thence by the Grand Trunk Railway of Canada to Montreal and Quebec.

In 1889 the Boston, Concord & Montreal Co. was consolidated with the Concord R. Co., under the name of the Concord R. Co., and on June, 29, 1895, a new lease of its road from Nashua to Groveton Junction, for 91 years, was made to the Boston & Maine Co. (II, 1024).

New York, New Haven & Hartford R. Co.

The New York & New Haven R. Co. was chartered prior to 1850 to build and operate a railroad from New York to New Haven, Conn. It built from Williamsbridge on the New York and Harlem road, 14 miles from New York, to New Haven, 62 miles, securing a perpetual right over the Harlem road to New York. Its road was opened in 1849 (II, 1026-7).

In 1870 it leased for 99 years the Shore Line

Railway, extending from New Haven to New London (II, 1027-8).

In 1872 it consolidated with the New Haven & Hartford R. Co. owning a line from New Haven to Springfield, Mass., which had been opened in 1839, the new company being named the New York, New Haven & Hartford R. Co. (II, 1027).

In 1885 the Company had acquired the majority of the stock of the New Haven & Northampton R. Co. whose line, extending from New Haven to Northampton, Mass., had been operated since 1857, and was directly parallel to and in close proximity with the line from New Haven to Springfield (II, 1027, 1031). In 1887, it took a perpetual lease of that line (II, 1031).

In 1892 the company took a lease of the New York, Providence & Boston R. Co., whose line extended from New London, where it connected with the Shore Line, to Providence, where it connected with the Boston & Providence R. R. The lease was coupled with an agreement for an exchange of stock, which was carried out the same year, and it thus acquired all the shares of that company (II, 1031, 1034).

The New York, Providence & Boston R. Co. owned the majority of shares of the Providence & Stonington Steamboat line, operating steamboats between New York and Stonington, there connecting with the New York, Providence & Boston, and, with it and the Boston & Providence R. R., forming

a through line between New York and Boston (II, 1033-4).

In 1893, the company leased the lines of the Old Colony R. Co., acquiring thereby that company's lease of the Boston & Providence Railroad, extending from Boston to Providence (II, 1036-7, 1038).

The company had thus acquired an all-rail line from New York to Boston.

The Old Colony Co. owned a majority of the shares of the Old Colony Steamboat Company (II, 1038), which, in connection with its rail line from Boston to Fall River, made the well-known Fall River Line between Boston & New York.

The company thus held an all-rail line from New York to Boston, and two of the three rail-and-water lines, viz, the Stonington and the Fall River Line.

Of the other lines between those cities, the all-rail line via Springfield was made up for more than half its length by the company's line from New York to Springfield, the rest being the Boston & Albany Railroad.

The only remaining lines between the two cities were those of the New England R. Co. consisting of an all-rail line and also a rail and water line (the Norwich Line, so-called) made up of the Norwich and New York Transportation Co., the Norwich and Worcester R. Co. (which owned all the stock of the steamboat company and was itself leased by the New England Co.), and the main line of the New England (II, 1041, 1043).

In 1898, the New England road (with its lease of the Norwich & Worcester and that company's stock ownership of the Norwich and New York Transportation Co.) was leased for 99 years to the New York, New Haven & Hartford Co., with an arangement for an exchange of stock, under date of July 1, 1898. By the end of that year the company had acquired, by such exchange, substantially all the stock of the New England Co. (II, 1043-4).

Thus the company, besides its rail line from New York to Boston via New London and Providence, and the greater part of the Springfield line, acquired also the only other rail line, and each of the three subsisting rail and water lines.

These acquisitions were made partly by lease and in part by stock ownership, and, in most cases, the leases were followed by large stock acquisitions, even to the surrender and merger of all the stock of the lessor.

The result of this is that one cannot go from New York to Boston by rail or water without going over one of several parallel and naturally and originally competing lines, but which are now operated by the New York, New Haven & Hartford R. Co. having been acquired in the manner above stated.

New York Central & Hudson River Railroad Co.

This company was formed by a consolidation of the New York, Central Railroad Company and the Hudson River Railroad Company, the former being

itself a consoldidation fo a number of small companies (II. 1058, 1060).

Its line extends from New York City along the Hudson River to Albany, thence westward to Buffalo, connecting there and forming through lines with the principal roads to the west and southwest.

On November 24, 1885, it leased for 475 years from January 1, 1886, the West Shore Railroad, which had been opened for travel in 1884, and which extends from Weehawken, N. J., up the Hudson River to the Mohawk River, and thence alongside the New York Central to Buffalo to a like connection with railroads to the west and southwest, and with ferry connection between Weehawken and New York, by reason of its stock ownership and lease of the West Shore and Ontario Terminal Company (II, 1061-2).

Each railroad passes through Utica, Syracuse, Rochester and the other principal cities of central and western New York, and they are strictly parallel and competing lines for interstate business. At the time of taking the lease, the New York Central also acquired all the stock (being 10 million dollars) of the West Shore Co., and has ever since used that road for interstate business between New York and Weehawken and all points on its line and west or southwest or northwest of Buffalo (II, 1061-2, 1063, 1064, 1066).

On March 14, 1891, the New York Central Co. leased in perpetuity the lines of the Rome, Watertown & Ogdensburg Railroad, which are parallel

and competing lines with its own for local and interstate commerce (II, 1066-7).

The Lake Shore & Michigan Southern Railroad Co. has for many years owned and operated a railway extending from Buffalo, N. Y. (where it connects with the lines of railroad leading from that city to New York, Boston and other eastern points), to Chicago (II, 1069).

In 1882, the New York, Chicago & St. Louis Railway Company (familiarly known as the "Nickel Plate") completed and put in operation a railway from Buffalo to Chicago, with like connections at each city as the Lake Shore & Michigan Southern Co., and it was a strictly parallel and competitive railway with the road of that company (II, 1074-5). Later in the same year a majority of the stock of the Nickel Plate Co. was acquired by the Lake Shore (II, 1070, 1075). In 1887 the road was sold under foreclosure and was reorganized with a reduced capital of 30 millions, a majority of which has ever since been held by the Lake Shore Co. (II, 1073, 1074, 1075).

The Michigan Central Railroad Company completed its line from Detroit to Chicago in 1852, using the Illinois Central road for the last 14 miles into Chicago. In 1883, it assumed the operation of the Canada Southern Railway under a sort of partnership agrement (II, 1077), thus giving a through line from Buffalo to Chicago with eastern and western connections at both cities. These three roads, the Michigan Central and Lake Shore and

the Nickel Plate constituted and were operated as competing roads for interstate business between Buffalo and Chicago and points east and west of those cities. In 1898, the New York Central & Hudson River Co. acquired about 45 millions of the 50 millions of capital stock of the Lake Shore (II, 1064, 1072) and about 15 millions of the 19 millions capital stock of the Michigan Central Co. (II, 1064, 1078). And these holdings have since been largely increased (II, 1064-5).

The result of these various acquisitions is that the New York Central Co. controls by stock ownership (and in case of the West Shore by lease also) two parallel and competing lines of railway between New York and Buffalo connecting there with three parallel and competing lines from Buffalo to Chicago of which it owns nearly all the stock—lines having perhaps the largest traffic of any in the United States.

Not long after its acquisition of the stocks of the Lake Shore and the Michigan Central, the New York Central Co. also acquired a majority of the capital stock of the Cleveland, Cincinnati, Chicago & St. Louis Railway Company (known as the Big Four) and also of the Lake Erie & Western R. Co. The lines of these companies are shown in II, 1078, 1080, and it will be seen that they are parallel and competitive with each other and with the other lines controlled by the New York Central, as before stated.

Pennsylvania Railroad Company.

At an early date in the railroad history of the country, the State of New Jersey chartered the Camden & Amboy Railroad Company and the Delaware & Raritan Canal Company, the former of which built a road from Camden, N. J., opposite Philadelphia, with which it connected by ferry, to Perth Amboy, N. J., subsequently continued to Jersey City. This road was completed in 1838. In 1836, these companies, which had been in a measure united and were known as the United Companies, acquired a controlling interest in the Philadelphia & Trenton R. Co., the line of which last company, with that of the New Jersey Railroad & Transportation Company and those of the United Companies, formed another through line between Philadelphia and New York. In 1867 the United Companies and the Transportation Co. consolidated their interests by authority of a statute of the state printed *infra*, in the appendix.

In 1871, the Penn. R. Co. took a perpetual lease of these two parallel and competing lines of railway between New York and Philadelphia and has ever since operated them (II, 1083-4) 1087, 1089, 1090, 1092-3).

Since 1885, the Penn. R. Co. has owned substantially all the stock of the Philadelphia, Wilmington & Baltimore Railrorad Company, whose lines extend fom Philadelphia to Baltimore, and the Baltimore & Potomac R. Co., whose line extends from Balti-

more to Washington (II, 1091-2). These two lines constitute, with the New Jersey leased lines before mentioned, a through line, and operated as such between New York and Washington.

The Penn. R. Co. also owns and operates a line from Harrisburg along the Susquehanna River to Williamsport, where it connects with the Philadelphia and Erie R. Co., connecting at Erie with the lines of shipping on the lakes and the lines of railroad running westward through Ohio and other states. It also controls the Erie & Pittsburgh Railroad Company with a line between these cities, which with the company's main line between Harrisburg and Pittsburg, constitutes a second parallel and competing line between Harrisburg and Erie, having at Erie the same lake and rail conections as the Phila. & Erie.

Prior to 1871, the Pennsylvania Railroad Company leased the roads of various companies and owned a majority of the stock in other railroad companies, all west of Pittsburg. In that year it organized a "holding and operating company," by the name of the Pennsylvania Company, under a charter obtained the year before, and transferred to the new company its interest in these leased lines and the shares owned by it in other companies. Among the lines leased by the Penn. R. Co. and the leases of which were transferred to the Pennsylvania Company, was the Pittsburg, Fort Wayne & Chicago Railway, extending from Pittsburg, via Alliance, Mansfield and Fort Wayne, to Chicago,

commonly known as the Fort Wayne Line. This road had been built and put in operation prior to 1869, and in that year was leased to the Penn. R. Co. for 99 years, with a provision for issuing to the lessee special stock to the amount of the cost of all betterments made by it. As a result of this provision the lessee has become the owner of 22 million dollars of such stock being a majority of the stock of the company (II, 1085-6, 1098, 1100).

At the time of the organization of the Pennsylvania Company, the Penn. R. Co. held a majority of the stock of the Pittsburg, Cincinnati & St. Louis Ry. Co., extending from Pittsburg to Columbus, Ohio, and also to Cincinnati and other points, and of the Chicago, St. Louis & Pittsburg R. Co., whose line extended from Columbus to Indianapolis, and also, via Bradford Junction, to Chicago (II, 1100, 1103).

The Pittsburgh-Chicago line thus constituted is a parallel and directly competing line with the Fort Wayne between Pittsburg and Chicago, and is known as the "Pan Handle Line." The two companies which united in its ownership, were consolidated in 1890 as the Pittsburg, Cincinnati, Chicago & St. Louis Ry. Co., the Pennsylvania Co. keeping the same "control through ownership of stock." (II, 1102, 1104).

The capital stock of the Pennsylvania Company was all issued to the Penn. R. Co. in consideration of the transfer to it of the leases and stockholdings of the latter company in roads of companies west of Pittsburg, and for no other consideration, and the

whole of it has at all times been held by the Penn. R. Co. (II, 1087, 1901, 1097-8).

The Baltimore & Ohio R. Co. for many years owned and operated a very extensive system of railways competitive with that of the Penn. R. Co. It owned a line from Washington via Baltimore to Philadelphia (II, 1105-6), and in connection with the Philadelphia & Reading, operated the well known Blue Line between New York & Washington in direct competition with the Penn. R. Co. By means of this and its other lines, it operated a direct route between Philadelphia, New York, Washington and Chicago, and reached Pittsburg and most of the lake and river cities reached by the Pennsylvania Company. The Chesapeake & Ohio Ry. Co. owned and operated a line from Washington and from the seaboard at the mouth of the Chesapeake Bay, traversing the states of Virginia, West Virginia and Kentucky, reaching Louisville and Cincinnati, and forming a competing line with the Pennsylvania Company between these places, and also, by water transportation, a competing line to New York, especially for the carriage of bituminous coal. The lines of the Norfolk & Western Ry. traverse much of the same territory and were competing lines with the Chesapeake & Ohio. About the year 1899 or 1900, the Penn. R. Co. and the Pennsylvania Company acquired a very large holding of the shares of each of these companies (II, 1108-1112), which has since been increased to a majority.

The Reading Company.

The Reading Company is a holding Company. It was incorporated as the Excelsior Enterprise Company in 1871. Its name was changed to the National Company in 1873, and to the Reading Company in 1896. In the latter year it acquired all of the capital stock of the Philadelphia & Reading Railroad Co. and of the Philadelphia & Reading Coal & Iron Co., and has ever since held them. The Reading Railroad Co., as is well known, is one of the principal coal carrying roads. A close competitor of it, and paralleling its lines at nearly all points, has been the Central Railroad of New Jersey, also a coal mining and coal carrying road. In 1901, the Reading Co. owned all the stock of the Philadelphia and Reading Railroad, and had acquired more than 53 per cent of the capital stock of the Central Railroad of New Jersey "and together with that company owns or controls about 63 per cent of all the unmined anthracite coal in the State of Pennsylvania." It would seem that, the Reading Company being a holding company pure and simple, we have here a case "on all fours" with that of the Securities Co., which, during the taking of testimony in this case, counsel for the Government were so anxious to have produced that they might prosecute it. (II, 1113, 1120).

5. The above statement includes one or more specimens of each of the various forms of transactions by which the operation of each of two competing interstate railways was placed under the same management, or where the stock ownership of two or more competing companies was placed in the same hands before and at the date of passage of the Anti-trust Act.

The Boston and Maine first leased the Eastern, and the lease was reported to Congress in the first report of the Interstate Commerce Commission, in 1889 (II, 1128). Before the following year the two companies had been consolidated by the greater absorbing the less, which went out of existence, so that in 1890 and following years the Eastern of Mass. makes no appearance in the Commission's reports (II, 1154).

The lease of the West Shore by the N. Y. Central was coupled with a transfer of the entire capital stock (10,000,000) of the former to the latter.

The Penn. R. R. Co.'s lease of the New Jersey railways was a lease of lines not competing with its own, but naturally competitive with each other, and which had for many years been in a measure consolidated under express legislative authority.

The Lake Shore Co.'s relation to its competitor, the Nickel Plate, was that of purchaser and owner of a majority of its stock.

Of the two competing lines from Pittsburg to Chicago—the Fort Wayne and the Panhandle—the Penn. R. Co. originally operated the first as lessee and held all or a majority of the stock of the other.

It transferred its holdings of stock and its lease, with other like property, to its creature the Pennsylvania Co., which it caused to be chartered for that purpose, and which paid for such transfers only by exchanging its own shares therefor (much like what is charged as showing bad faith when done by the Securities Co.), and all which shares—the entire capital stock of the Pennsylvania Co.—were thus obtained and have always been held by the Penn. R. Co.

As stated, all these transactions had necessarily been done under legislative authority. A railway company would have no power to do any of them without such authority. A few of the laws—or the material part of them—are printed as an appendix to this brief, to show that the States claimed and exercised the power to authorize such purchases, leases, consolidations, etc. And that such power and the lawfulness of the purchases, etc., authorized by it had never been questioned, was conceded by everybody, at the time the bill for the Anti-trust Act was presented to Congress.

6. We have attempted to show that even such intimate alliances as those of which then existed and were known to Congress, being matters of the composition of the companies or the ownership of the roads, whether in fee or for a long term of years, are not matters of interstate commerce, and do not regulate it—certainly do not *directly* regulate it, and that such was the prevailing—the uni-

versal—opinion in 1890. Is there any reason to suppose that Congress was of a different opinion, or, if it differed with the States on the question of power, that it had any objection to such purchases, leases, consolidations, etc., in themselves?

There is certainly no ground for either supposition. And if Congress shared the prevalent opinion, under which the States had legislated and railway systems had been built up, that these matters were matters to be regulated by the States and not by Congress, that such regulations did not *directly* regulate *commerce*, and such consolidations, leases and purchases, etc., did not *directly* affect (much less restrain) interstate commerce, then Congress considered that these matters were not within its jurisdiction, and certainly did not mean to include them in an act which embraces only *direct* restraints, and combinations in *direct* restraint, of commerce.

And Congress know that in aid of these railway and stock purchases and consolidations, stocks and other securities to the amount of tens—indeed, hundreds—of millions of dollars had been authorized by the States and had been issued, every one of which, if such purchases and consolidations were unlawful, was issued in aid of illegal transactions, for illegal considerations and purposes, and was utterly void.

And even if Congress failed to share the general opinion as to the seat of power to authorize such consolidations, stock purchases, leases, etc., of interstate railways, could it have meant by the gen-

eral terms of the act to strike a ruinous blow at the railway systems of the country, and at the holders of their securities?

Had the bill for the act specified these various classes of consolidations, etc., declared them to be combinations in restraint of commerce and illegal, declared all the State laws authorizing them to be usurpations of the power of Congress, and contained also the existing 4th section requiring the Attorney General to proceed against them, can it be believed that Congress would have passed it? And had such a bill been passed, can there be any doubt of the panic that would have followed? Is it conceivable that Congress should have passed such an act to overturn past transactions? Would it not have limited its provisions to future cases?

But the language of the act has no such limit, and this is one of the many cogent reasons for confining it to executory and continuous agreements for carrying on trade or commerce. It includes *all* existing combinations in restraint of commerce. It does not purport to *make* them illegal, but declares them to be so. And there can be no question but that every combination declared illegal by the act, would have been equally so—no more, no less—before the act. And if not illegal before the act, it is not made illegal by the act. Combinations *not directly* restraining interstate commerce were not illegal before the act, and are not made so by the act. Combinations *directly* restraining that commerce are declared illegal by the act, but they were equally illegal before the act; and every one of the

various consolidations is just as subject to a prosecution like the present as if it had been formed at any time since the passage of the Anti-trust law —as if it had been formed during the past six months.

That combinations in *direct* restraint of interstate commerce were illegal before the passage of the Anti-trust law, and whether authorized or not by State statutes, is pointed out by Justice Brewer in the *Debs Case*, 158 U. S. 564, 581, in a passage repeated with approval in *Addyston Pipe Co. v. United States*, 175 U. S. 211, 229.

II.

1. The foregoing argument drawn from the history and situation of the principal railway systems of the country before and at the time of the passage of the Anti-trust Act and known to Congress when passing it, is reinforced by the contemporaneous construction that has been placed upon the act by all branches of the Federal Government—including the department specially charged with its enforcement—by the State Governments, by the railway companies, and by the public at large.

The abstract of extracts from Poor's Manual shows that since the passage of the Act, the building up of great railway systems by the processes already described has been continued on a vaster scale.

The Boston & Maine Co. has enlarged its holdings in other companies and systems, until it controls by ownership of the stock of such companies, com-

peting with it or with each other, not only the only two rail lines between Boston and Portland, but every line between either of those cities and Montreal or Quebec, save only the Grand Trunk Railway of Canada, running from Portland to the two last named cities.

The New York & New Haven operates by ownership and lease the Shore Line from New York to Boston; by lease and ownership of all the stock of the company, the competing New England road; by ownership, about two-thirds of the Springfield line. By its lease and ownership of the New England road, and ownership of the stock of the Norwich Steamboat Co., it operates the Norwich rail-and-water line between New York and Boston. Its absorption of the New York, Providence and Boston Co., and consequent ownership of all the stock of the Stonington line of steamers, enables it to and it does operate the Stonington rail-and-water line between New York and Boston. And it operates the celebrated Fall River rail-and-water line between the same cities by lease of the Old Colony railroad (in which company it has also a large stock interest) and by virtue of its ownership of a majority of the stock of the steamboat company.

Every one of these six lines is a naturally competing line with each of the others. If there is any other way of going between New York and Boston by rail or rail and water (except by way of Albany) it is not known to the writer.

The New York Central, while still holding its lease of the West Shore, and all the stock of that

company, has leased perpetually the Rome, Watertown & Ogdensburg road (a corporation doing a competing interstate business), and has acquired directly nearly all the stock of two (and indirectly a majority of the stock of a third) interstate competing lines, each extending and doing an immense business between Buffalo and Chicago, viz: the Michigan Central, the Lake Shore and the Nickel Plate.

It has also acquired a majority of the shares of two other interstate roads competing with the two last mentioned and with each other, viz: the "Big Four" and the Lake Erie and Western.

The Pennsylvania R. Co. has not been behind its great rival. It has acquired the stock control of the Baltimore and Ohio, the Chesapeake and Ohio and the Norfolk and Western Companies, and has unified competing interests to an extent surpassing anything done by any other company in that direction. And by its stock ownership of the Baltimore & Ohio, with its "Royal Blue" competitor of the Pennsylvania line between New York and Washington, and of the other lines, it has come to pass that no officer of the U. S. Government—no member of this Court—can go by rail to or from Washington except upon one of several lines, originally competing, but now either owned or leased by the Pennsylvania, or operated by a company in which the Pennsylvania owns a majority of the stock.

A reference to the extracts from Poor and the Interstate Commerce Reports will show other instances, but these are enough.

It would, however, be invidious to pass over two

instances, one directly connected with this case, the other furnished us by the Government's evidence in this case.

In May, 1901, the Oregon Short Line purchased a majority of the stock of a competing railroad—the Northern Pacific—held it till November, 1901, when its majority was about departing from it, and then disposed of it. It was the acquisition of this stock —this "raid" on Northern Pacific—that brought on the panic of May 9, 1901.

By the testimony of Mr. Harriman, given before the Interstate Commerce Commission in January, 1901, in an investigation of "Consolidations and Combinations of Carriers * * * including the Community of Interest Plan," and which testimony was introduced in evidence by the Government in this suit (I, 598 et seq), it appears that the Union Pacific Ry. Co., besides owning all the stock of the Oregon Short Line, and, jointly with the Short Line, all the stock of the Oregon Railway and Navigation Co., owns also $75,000,000 of the stock of the Southern Pacific Co. (I, 608), and its voice usually controls the action of the latter's directors (I, 605). One man, Mr. Stubs, traffic manager of the Union Pacific, can make the rates on the Southern Pacific and the other lines (I, 650).

In effecting these and other like combinations hundreds of millions of corporate stocks and securities have been created and issued, and are now held by hundreds of thousands of persons in every walk of life. These holders bought them, sharing the general belief in the lawfulness of the transac-

tions in which they were issued, and the validity of the State legislation by which they were authorized.

All these stocks and securities were, however, (like those issued in the combinations effected before the Anti-trust Act) illegal in their inception, and are utterly void, if the transactions in or in aid of which they were issued were combinations in *direct* restraint of interstate commerce, and so prohibited by the Anti-trust Act.

2. These various transactions were not done in a corner. They were had openly, one after another, during all the years that have followed the Anti-trust law. They were reported and commented upon in all the principal newspapers; appeared year after year in Poor's Manual, the history and terms of each transaction being repeated in each subsequent year; were included in the annual reports of the companies to the Interstate Commerce Commission, copies of which were requested of the Commission by the defendants and were by the Commission refused; were reported year after year in an abridged and condensed form by the Commission to Congress. They were known to every department of the Government.

The Oregon Short line purchase and the crash of May 9, 1901, which followed it, were as widely advertised and as well known as almost any event that has occurred in this country.

And their lawfulness was universally acquiesced in. The duty of restraining all violations of the Anti-trust act is laid by the act in express terms

upon the Attorney General, but not one suit has been instituted in any of these cases. There can have been but one reason for this. The present incumbent of that office and his predecessors are not to be charged with neglect of sworn and plain duty in their abstention from prosecuting. They abstained, one and all, because in their judgment the act had no application; because, in their judgment, such combinations, whether formed before or after the act, were not combinations in *direct* restraint of interstate commerce, did not act *directly* upon it. Had the present Attorney General thought otherwise he could not have failed to prosecute in the Oregon Short Line Case. It is not to be imagined that even now, the Attorney General, if he considered such combinations to be infractions of the law, would shut his eyes to those doing business at the very capitol of the nation, at the city of his own residence, between the greatest cities of the country, everywhere east of the Mississippi River, should turn his back on them, and go half way across the continent in search of a violation of the act.

The judgment of the Attorney General and his predecessors, that none of the consolidations, purchases, leases, etc., that have been mentioned are within the act, is clearly right.

But if they are not within the act, the Securities Co. certainly is not. And if the act can be held to apply to the Securities Co., it applies far more directly to each and every of the companies that have been mentioned, and the Government's failure to prosecute them is without excuse.

3. The petition says (I, 8 a, par. VI):

> "By making the stockholders of each system jointly interested in both systems, and by practically pooling the earnings of both systems for the benefit of the former stockholders of each, and by vesting the selection of the directors and officers of each system in a common body, to-wit: the holding corporation, with not only the power, but the duty to pursue a policy which would promote the interests, not of one system at the expense of the other, but of both at the expense of the public, all inducements for competition between the two systems was to be removed, a virtual consolidation effected, and a monopoly of the interstate and foreign commerce formerly carried on by the two systems as independent competitors established."

Premising that the only stockholder of each system that is interested in both (except such holders of stock in each as have not come into the Securities Co.) is the Securities Co., we ask, what is there in this statement as to the Securities Co. and its shareholders, and the effect of the Securities Co. holding a majority of stock of both railway companies, which is not equally true of the New York and New Haven Co. and its stockholders, and the effect of its shareholding in other companies?

Or which is not true of the New York Central and its shareholders, and the effect of its holding directly nearly all the shares of the Lake Shore and of the Michigan Central, and, indirectly, nearly all the shares of the Nickel Plate?

Or which is not true of the Reading Co. and its shareholders, and the effect of its holding of *all* the stock of the Reading R. Co., and more than a major-

ity of the stock of the Central R. Co. of New Jersey?

Or which is not true of the Penn. R. Co. and its purchases of shares in the Baltimore and Ohio, the Chesapeake and Ohio and Norfolk & Western, companies competing with it as well as with each other?

But the things alleged in this passage do not make a violation of the Anti-trust law when done by any of these companies. How do they violate it when done by the Securities Co.?

In paragraph VIII (I, 10 a), it is said that the Securities Co.:

> "Is now holding, as owner and proprietor, substantially all of the capital stock of the Northern Pacific Railway Company, and, as complainant believes and charges, a majority of the capital stock of the Great Northern Railway Company, but if not a majority, at least a controlling interest therein, and is voting the same, and is collecting the dividends thereon, and in all respects is acting as the owner thereof in the organization, management, and operation of said railway companies, and in the receipt and control of their earnings, and will continue to do so, unless restrained by the order of this court. By reason whereof, a virtual consolidation under one ownership and source of control of the Great Northern and Northern Pacific Railway Systems has been effected, a combination or conspiracy in restraint of the trade or commerce among the several States, and with foreign nations formerly carried on by the defendant railway companies independently and in free competition one with the other has been formed and is in operation, and the defendants are thereby attempting to monopolize, and have monopolized, such interstate and foreign trade or commerce, to the great and irreparable damage of the people of the United

States, in derogation of their common rights, and in violation of the act of Congress of July 2, 1890, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies."

What is there in any of these things charged against the Securities Co. which is not equally true of the companies just mentioned in respect of their holdings of stock in companies theretofore competing?

But each and every of these things when done by either of the companies just mentioned are innocent of any violation of the Anti-trust Act. How then can it be that when done by the Securities Co., they are "in violation of the Act of Congress," etc., as charged in the foregoing passage?

In Paragraph XII (I, 13 a), it is said:

"If the Government fails to prevent the carrying out of the combination or conspiracy aforesaid, and the defendant, the Northern Securities Company, is permitted to receive and hold and act as owner of the stock of the Northern Pacific and Great Northern Railway Companies as aforesaid, not only will a virtual consolidation of two competing transcontinental lines, with the practical pooling of their earnings, be effected, and a monopoly of the interstate and foreign commerce formerly carried on by them as competitors be created, and all effective competition between such lines in the carrying of interstate and foreign traffic be destroyed, but thereafter, to all desiring to use it, an available method will be presented, whereby, through the corporate scheme or device aforesaid, the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies,"

> may be circumvented and set at naught, and all trans-continental lines, indeed, the entire railway systems of the country, may be absorbed, merged, and consolidated, thus placing the public at the absolute mercy of the holding corporation."

Aside from the expressed foreboding lest the Securities Co. absorb all the railways of the country, what is there in this passage which is not as true of each of the railway companies just mentioned as of the Securities Co., but which is wholly innocent in the case of those companies? Why are they any less innocent in the case of the Securities Co.?

As to the foreboding: What means has the Securities Co. of absorbing the entire railway system of the country which is not possessed by the New York Central, the Pennsylvania, or any powerful system? It may be said that these companies are not authorized by their charters to make unlimited purchases. Judging from what they have done and are doing, this would not seem to be true. But the whole matter of purchase and sale of railways and railway shares is in the hands of the states chartering the companies. If they deem it wise policy (and of this they and not Congress are sole judges), why may they not prohibit any person or company from hereafter acquiring shares in each of two competing companies, just as many of them forbid a railway company from holding stock in a competing company?

4. The Securities Co. is a mere shareholder in two competing lines. It *directly* controls the commerce of neither. The Pennsylvania Co. in its majority holding of Panhandle stock, controls that line as much as the Securities Co. can control the line of either defendant railway company. As lessee of the Fort Wayne it *directly* and absolutely controls that line, and it also holds a majority of its stock.

The Boston and Maine, by its own board of directors, *directly* and absolutely controlled the Eastern of Mass. and its leased lines until recently, when it absorbed them, issuing its stock in place of theirs (seemingly as reprehensible an act as the exchange made by the Securities Co.) and now directly operates them as its own.

The New York & New Haven seems to have a settled policy for leasing competing lines, and then absorbing them by replacing their shares by its own—notably in the case of the New England Co. Here, too, one board of directors directly operates several competing lines.

Under the New York Central's lease of the West Shore, its board of directors directly operates both roads.

Every one of these cases of absorption or lease of a competing line, with the result that a single board of directors directly operates both lines and makes rates for both, is far more obnoxious than the Securities Co. to the charges which it has pleased the Government to bring against that company. Yet in none of these cases is there any direct re-

straint of commerce, even if there is any restraint at all.

But if it is not a *direct* restraint of commerce or suppression of competition for one railway company to operate by its own board of directors both its own and a competing line, how can it *directly* restrain commerce for the Securities Co. to hold a majority of stock in two competing lines, neither of which it operates, and each of which is and must be operated by its own separate and independent board of directors?

5. It has been intimated that the fault of the Securities Co—a fault not shared by the companies that have been reviewed—is that it was formed for the purpose of taking over the shares of the two railway companies, and hence the Securities Co. is guilty while the Reading Co. and others are innocent. That if, instead of forming a new company, the promoters had got hold of an old charter as was done in the Reading case, and the company thus chartered had done just what the Reading Co., the N. Y. Central, and the Securities Co. have done, there would have been no cause for complaint.

And so, if instead of the Northern Pacific and Great Northern buying the Burlington shares, the Burlington had bought theirs, the combination would have been unobjectionable.

And that this difference explains the Attorney General's selection of the Securities Co. as a subject

of prosecution to the exclusion of any of the other companies mentioned.

To all this there are several answers.

(1) The Act proscribes *every* combination in direct restraint of trade, and does not distinguish between combinations. Whether the holding of shares by one company in two others in itself restrains commerce in no way depends on the origin of the former company.

(2) It makes no distinction between corporations—none between hunting up an old charter to use as a means of restraining trade and forming a new one for that purpose.

(3) If it was a conspiracy in restraint of commerce for the promoters of the Securities Co. to form and carry out a plan to have the shares in the Great Northern and Northern Pacific purchased and held by the Securities Co., why was it not equally a conspiracy for the individuals composing the board of directors of the New York Central (or the whole body of stockholders, if they took action) to form and carry out a plan by which the shares in the Lake Shore, Nickel Plate and Michigan Central should be bought and held by the New York Central Co.?

Or for the promoters of the Reading Co. to combine to hunt up and acquire an old charter of a holding company, and have the shares of the Phila. & Reading R. Co. and the Central R. Co. of New Jersey, transferred to it?

What possible difference can it make in law whether in either case the purchasing company pays for the shares bought in its bonds (as was done by the New York Central) or in its own shares, as has been done over and over again by the Boston & Maine and the New York and New Haven and other companies?

6. Every difference between the Securities Co. and any of the railway companies mentioned is in favor of the Securities Co. And one great—in some respects the most important—difference remains to be mentioned. Those companies' lines are all in the East, in a fully-developed country. They combined to unite in one control an existing business. The Great Northern and Northern Pacific, fully as much as other far western lines, have had to create, and still have to create, the business by which they must live. They combined in the purchase of the Burlington, not to unite in one control an existing business, but to enlarge existing and create a far greater traffic. And their shareholders have combined to protect this enterprise. And yet the Government would have it that the Eastern combinations are wholly laudable, while this is wholly base and bodes ruin to the entire country.

EIGHTH.

Even though the Government were entitled to any injunction the decree goes far beyond what the Government was entitled to receive, or the Circuit Court authorized to grant.

The only authority for the Attorney General to bring this proceeding or for the Circuit Court to entertain it, or for the one to ask or the other to grant any decree whatever is found in the fourth section of the act (supra, p. 132), which clothes the Circuit Court with jurisdiction "to prevent and restrain violations of this act," and requires "proceedings in equity" to be brought under direction of the Attorney General, "to prevent and restrain such violations;" and "such proceedings may be by way of petition, setting forth the case, and praying that such violation shall be enjoined or otherwise prohibited."

The Circuit Court, in its decree, adjudges and decrees as follows:

1. The defendants entered into a combination or conspiracy in restraint of interstate commerce, denounced as illegal by the Anti-trust Act.

2. All the stock of either railway company claimed to be owned or held by the Securities Co. was acquired and is now held in virtue of such combination or conspiracy.

3. The Securities Co., its officers, etc., are enjoined,

(a) From acquiring or attempting to acquire any more of the railway shares.

(b) From voting any such shares.

(c) From controlling or attempting to control, etc., the corporate acts of either railway company by virtue of its stockholding.

4. The railway companies, their officers, etc., are enjoined—

(a) From permitting the stock held by the Securities Co. to be voted by it.

(b) From paying any dividends to the Securities Co. on account of such stock.

(c) From permitting the Securities Co., or its officers, etc., to exercise any control whatever over the corporate acts of either railway company.

In its petition (I, 14 a) the Government asks that the Securities Co. be required by mandatory injunction to recall and cancel all certificates of stock issued by it in purchase of or exchange for shares of the defendant railway companies, surrendering in return therefor the certificates of railway stock in exchange for which they were issued.

The Circuit Court was not authorized by anything in the Anti-trust law (its sole source of authority) to take away the property of the Securities Co. and give it to other people, or to compel the company to sell that property to, or exchange it with, other people. And if the Court had any such authority, the absence of the 1300 shareholders of the Securi-

ties Co. holding a majority of its shares for which the railway shares were to be exchanged, would be an insurmountable obstacle to the exercise of it.

The decree, however, whether that were its aim or not, succeeds in forcing the Securities Co. to do the very thing which it could not compel the company to do by mandatory injunction.

The Securities Co. is the absolute owner of the shares held by it. The decision itself says as much (II, 1705). But the decree divests it, if not of the naked ownership, yet of every use and every profit and every incident of ownership. It may not vote the stock, nor exercise any of the powers or rights of ownership, nor receive dividends, nor dispose of the shares except as permitted in the decree. There is no difference in law between stripping one's property of everything that gives it utility or value and depriving one of the property altogether. It is true there is a permission, if not an invitation, to the Securities Co. (an invitation of the royal kind, with all these injunctions in case of non-acceptance) to turn back its railway shares to their former owners in exchange for its own shares held by them—but not for cash; the Securities Co. may not sell the railway shares to others.

And all this under an authority to prevent and restrain violations of the act—i. e., to prevent and restrain combining and conspiracy to restrain commerce, and to prevent and restrain monopolizing commerce, or attempting or conspiring to monopolize it. The injunctions are against a single person, the Securities Co. The finding of fact in the

decree does not state that the company is combining and conspiring or monopolizing, but only that at some time in the past it did enter into a combination or conspiracy and thereby got its shares. So far as appears there is no conspirator but the Securities Co., which can neither combine nor conspire with itself. The injunctions against exercising its ownership of the stock, by voting, etc., have no relation to any combining or conspiracy to restrain commerce. The company is not enjoined from conspiring or from carrying out any conspiracy, or even, by a narrower injunction, from using its shares in furtherance of a conspiracy or combination. It is enjoined from every use and benefit of its property, and is enjoined *not as conspirator, but as owner*. And see page 153, *supra*.

The injunction against receiving dividends (or, what is the same thing, against the railway companies to restrain payment of them) is even less justifiable. What possible restraint of commerce can be found in the payment by each of the two railway companies to its principal shareholder of the dividends on the latter's shares? How does the holding-up of these dividends (amounting in the aggregate to about $16,000,000 per year) relieve interstate commerce from restraint?

Of course, it is a most powerful reinforcement to the invitation to the Securities Co. and its shareholders to re-exchange their railway and investment shares; but the court can hardly be supposed to have intended to decree the injunction for any such purpose, as certainly it had no power to do so.

Other patent objections to the decree, among them that it turns over the control of the Northern Pacific Co. to directors chosen by the holders of two per cent of the stock (if so small a percentage could, under its charter and by-laws, take action at a corporate meeting), and of the Great Northern to a board chosen by the holders of 24 per cent need not be particularized.

The whole decree seems to go on the theory, already refuted, that whereas the individual defendants combined to form the Securities Co. and help it get a majority of the railway shares, and the Securities Co. was formed and got the shares, and so the work of the combination and the combination itself came to an end, yet, because (as the court says) the Securities Co., when born, was born into the combination as a member of it, and although it has survived that defunct combination, it is now a combination by itself, having the power to restrain commerce, and therefore to be deemed a restrainer of it, and to be stripped of everything but its corporate existence.

The decree appealed from should be reversed, and the cause remanded with directions to dismiss the petition and proceeding.

GEO. B. YOUNG,
Of Counsel for Northern Securities Co. and others, Appellants.

APPENDIX.

Laws, New Jersey, 1867, Chapter LXIX.

"An act to validate and confirm certain agreements between the Companies owning the railroad lines between New York and Philadelphia.

"Whereas, it is desirable that the Railroad lines between New York and Philadelphia, forming by their connection essentially one line, should be more closely united in interest and management, whereby great advantages would accrue to the public as well as to the stockholders; and whereas, the Delaware and Raritan Canal Company, and Camden and Amboy Railroad and Transportation Company, known as the joint companies, owners of one portion of said lines, and the New Jersey Railroad and Transportation Company owners of another portion thereof, have made or are about making an agreement for a consolidation of interests and an equality of dividends, therefore:

"1. Be it enacted, by the Senate and General Assembly of the State of New Jersey, That the said companies be and they are hereby authorized to make such agreement for consolidation of interests, as they may deem proper and expedient; and that any such agreement or agreements heretofore made or hereafter to be made for the purposes aforesaid, by and between the said companies or by and between them or any of them, and the Philadelphia and Trenton Railroad Company, be and the same are hereby validated, ratified and confirmed; * *

"2. And be it enacted. That when such agreement for consolidation is or shall be made, the said companies entering or having entered into the same shall be consolidated and united in interest according to the terms of such agreement or agreements, and shall be authorized to transact, manage and conduct the business, property and affairs of the said companies respectively as a joint concern, and by a joint board of directors, to be composed of the directors of the said several companies, a majority of which joint board shall form a quorum for the transaction of business; but the organization and election of directors of the several companies shall remain distinct, and the provisions of their respective charters, with all the restrictions and liabilities therein contained, except as necessarily modified by such consolidation, shall continue in force. * * *

"Approved February 27, 1867."

Private Laws, New Jersey, 1887, c. 50.

"An act granting the consent of the legislature to the leasing of the railroad and franchises of the West Shore railroad company to the New York Central and Hudson River Railroad Company.

"Whereas, The West Shore railroad company has submitted to the legislature of this state for its consideration the lease of the said road and its franchises to the New York Central and Hudson River railroad company, dated December the fifth

one thousand eight hundred and eighty-five, a copy of which lease was filed in the office of the secretary of state on the fifth day of January, one thousand eight hundred and eighty-seven; now therefore

"1. Be it Enacted by the Senate and General Assembly of the State of New Jersey, That the said lease is hereby approved and the consent of the legislature of this state is hereby given to the leasing of the road and franchises of the West Shore railroad company to the New York Central and Hudson River railroad company, upon the terms set forth in said lease submitted and filed as stated in the preamble of this act.

"2. And be is enacted, That * * * this act shall be subject to alteration, amendment or repeal at the will of the legislature.

"3. And be it enacted that this act shall take effect immediately.

"Approved March 29, 1887."

Laws Mass., 1880, c. 205, p. 157.

"An Act in relation to the Leasing of Railroads.

"Be it enacted, etc., as follows:

"Section 1. The roads of two railroads shall be deemed to enter upon each other, connect or intersect within the meaning of section 170 of chapter 372 of the acts of the year 1874, if one of such roads enters upon, connects with, or intersects a road

leased to the other railroad, or operated by it under a contract as authorized by said section. But the Eastern Railroad Company and the Boston and Maine Railroad may make with each other such contract or lease for the operation of their roads for such period of time as the directors of said companies may agree to, and as shall be approved by a majority in interest of the stockholders of each company at meetings called for that purpose; provided, that the facilities for travel and business on either of the roads of the said companies shall not be diminished; and provided further, that the income arising from such contract or lease shall be subject to the provisions of law in regard to the right of the state to purchase the said roads, or reduce their tolls in the same manner as that arising from the use of the roads.

"Section 2. No railroad corporation shall lease or contract for the operation of its road for a period of more than 99 years without the consent of the legislature; provided, that this act shall not apply to any corporation whose stockholders have already acted or voted upon a lease.

"Section 3. This act shall take effect on the first day of July next.

"Approved April 21, 1880."

Laws Mass., 1888, c. 250, p. 201.

"An act to authorize the Boston and Maine Railroad to purchase the franchises and property of

the Eastern Railroad Company, and the Eastern railroad in New Hampshire, and the Portsmouth, Great Falls and Conway railroad.

"Be it enacted, etc., as follows:

"Section 1. The Boston and Maine Railroad is hereby authorized to acquire by purchase the road, franchises and property of the Eastern Railroad Company, on such terms as may be agreed to by the respective boards of directors of said corporations and as shall be approved, at meetings called for the purpose, by the votes of a majority in interest of the stockholders of said Boston and Maine Railroad, and by the votes of a majority in interest of the holders of the preferred stock, and of a majority in interest of the holders of the common stock of said Eastern Railroad Company, and by the board of railroad commissioners. After such acquisition and purchase from said Eastern Railroad Company, said Boston and Maine Railroad is authorized to acquire by purchase the road, franchises and property of the Eastern Railroad in New Hampshire, and of the Portsmouth, Great Falls and Conway Railroad, on such terms as may be agreed to by the respective boards of directors of the purchasing and selling corporation, and as shall be approved, at meetings called for the purpose, by the votes of a majority in interest of the stockholders of the purchasing corporation, and by the board of railroad commissioners, and by the votes of a majority in interest of the stockholders, other than said Bos-

ton and Maine Railroad, of the selling corporation. For the purpose of facilitating said purchases * * * the said Boston and Maine Railroad may increase and issue its capital stock to such amount and in such manner as may be required by such agreement or agreements, and as the board of railroad commissioners may determine to be necessary and expedient to carry into effect the provisions of this act. * * *

"Approved April 19, 1888."

Laws New Hampshire, 1889, c. 5.

"An Act amending chapter 100 of the laws of 1883, and authorizing certain railroad corporations to form corporate unions and to make contracts of lease.

* * * * *

"Section 10. The Boston and Maine Railroad is hereby authorized to acquire by purchase the road, franchises and property of the Eastern Railroad Company, and thereafter to acquire by purchase the roads, franchises and property of the Eastern Railroad in New Hampshire, the Portsmouth, Great Falls & Conway Railroad, the Portland, Saco & Portsmouth Railroad Company, the Wolfeborough Railroad, the Portsmouth & Dover Railroad, the Worcester, Nashua & Rochester Railroad Company, the Manchester & Lawrence Railroad, the West Amesbury Branch Railroad Company, the Dover & Winnipiseogee Railroad, and the Portland

& Rochester; * * * all on such terms and conditions as may be agreed upon by the board of directors of the purchasing corporation and the board of directors of the selling corporations respectively, and shall be approved by the votes of two-thirds of the stock of the purchasing corporation, and by the votes of two-thirds of the stock of the selling corporations respectively. * * *

"For the purpose of facilitating said purchases and to carry into effect the agreement or agreements made as hereinbefore authorized, the said purchasing corporations may purchase the stocks, bonds, and other obligations or any part thereof of any of said selling corporations; * * * may change their stock, bonds, or notes for the stock, bonds, property, rights and franchises of any of said selling corporations and in payment of the obligations of any of them; * * * After each of the purchases herein authorized, said purchasing corporations shall have and enjoy all the rights, privileges, and franchises theretofore had and enjoyed by the selling corporations, and be subject to all their duties, debts and liabilities.

"Approved July 24, 1889."

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Supreme Court of the United States

OCTOBER TERM, 1903.

No. 277.

NORTHERN SECURITIES COMPANY AND OTHERS,

Defendants,

vs.

THE UNITED STATES.

BRIEF FOR APPELLANT NORTHERN PACIFIC RAILWAY COMPANY.

C. W. BUNN,
Of Counsel.

C. G. Burkhardt, Walker and Gordon Streets, N. Y.

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 277.

NORTHERN SECURITIES COMPANY AND OTHERS,

APPELLANTS,

vs.

THE UNITED STATES.

Brief for Appellant Northern Pacific Railway Company.

On July 2, 1890, Congress passed an act, section 1 of which says :

> "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal."

Section 2 says :

> "Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several states, or with foreign nations, shall be deemed guilty of a misdemeanor."

In this suit the United States relying solely on said statute seeks to enjoin the Northern Securities

Company from owning and voting the stocks of the Northern Pacific and Great Northern Railway Companies, which are corporations, one chartered by Wisconsin, one by Minnesota, engaged partly in interstate commerce. A portion of their interstate traffic is competitive. The United States asserts, that the statute makes it unlawful for one corporation to acquire and own the stocks of two competing interstate railways, or at least that such holding is unlawful by a corporation, *the promoters of which organized it with the intent that it should acquire such stocks.*

It is the purpose of this brief to meet the contention of the United States assuming that the facts found by the Circuit Court are all true. To other briefs is left discussion of the facts.

I.

The language of the statute is remarkable for its generality. It denounces every contract, combination and conspiracy *in restraint of trade or commerce* among the States. Not every contract, combination or conspiracy is declared illegal, but only those *in restraint of trade.* The learned Attorney General cannot rest, therefore, on proof of combination or conspiracy, he must establish *restraint of commerce.* To do this he must prove that for one person or corporation to own the stocks of two competing carriers *is per se* a restraint of commerce.

The act does not define what is restraint of commerce. Notwithstanding, as the record shows,

extensive railway consolidation and merger had been going on for years before 1890, and this had been reported to Congress by the Interstate Commerce Commission, and had been publicly discussed in the press and elsewhere; notwithstanding Congress and the people were perfectly familiar with all this, there cannot be found either in the debates of Congress or in the press of the country, or in any public discussion contemporaneous with the act the slightest mention of railway mergers, or consolidations, or the qualifications of stockholders in parallel lines as among the things intended to be regulated by the statute. Considering this, and that the act introduces no new definition of restraints of trade, and that it is purely a penal statute, it is at the outset rather startling to be told that its very general language makes criminal, and therefore unlawful, combinations to consolidate two interstate railways, or to gather together in one hand the control of their stocks.

II.

The statute must be interpreted so as to fall within the Constitutional powers of Congress. Construed as the Circuit Court read it, or as the learned Attorney General asks to have it read, the act seems to us far beyond the scope of those powers. It is nothing less than an overturning of all settled rules upon the subject to say that the power of Congress extends to determining in what corporations stock may be held by citizens of the States; or that it extends to the regulation of the consolidation and merger of railway companies chartered by the States.

To the States belongs the power to regulate, and restrict as far as they may think advisable, the rights of their citizens and their corporations to own property. To Congress belongs the power to regulate the *use* of such property in commerce between the States.

The power of Congress has never been more accurately or completely described, than by Chief Justice MARSHALL in *Gibbons vs. Ogden*, 9 Wheat., 1 (189–190):

> "Commerce, undoubtedly, is traffic, but it is something more—it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches, *and is regulated by prescribing rules for carrying on that intercourse.*"

This definition has been frequently repeated by the Court; *The Passenger Cases*, 7 How., 283, 394, 462; *Henderson vs. Mayor*, 92 U. S., 259, 270; *Champion vs. Ames*, 188 U. S., 321, 346.

Commerce consists of intercourse, and the power of Congress to regulate consists in "prescribing rules for carrying on that intercourse," By no straining of language, or perversion of thought, can the rules by which property in the States is to be bought, held or sold be said to be among the *rules for carrying on intercourse* among the States.

Congress may pass an interstate commerce law, it may fix rates, regulate traffic and the ways and vehicles of traffic, but unless the States are to be shorn of many of the most important powers they have heretofore exercised, and been universally understood to possess, Congress cannot regulate the mere owning of property within the States, or the intents, aims and purposes with which it is acquired.

All the power of Congress is conferred by Section 8, Article I., of the Constitution :

> "To regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

And by the Tenth amendment all power not thus granted is reserved to the States.

We concede the full, absolute and supreme character of the power of Congress to regulate commerce. Within its sphere that power acknowledges no limitations other than those prescribed in the Constitution. But the power of Congress is only to *regulate*, and is, to use another phrase of Chief Justice MARSHALL in *Gibbons vs. Ogden* (p. 196), the power "*to prescribe the rule by which commerce is to be governed.*"

Congress has not the constitutional power, under the guise of regulating commerce, to prescribe the general rules by or under which either real estate, or personal property, stocks or bonds, may be bought, owned, sold, passed by descent, or willed within the States. Congress cannot regulate the manufacture of articles in a State, though they may be intended ultimately for shipment to another State. Much less can Congress say that I may not buy property within a State because I may intend to use it in a business carried on with the intent to monopolize or restrict interstate commerce. No more can Congress restrict the right of partnerships, or corporations organized by virtue of State laws to buy within the States, either real or personal property, including stocks and bonds.

Mr. Justice JACKSON, then Circuit Judge, said, *In re Greene*, 52 Fed., 104, 112 :

"But Congress certainly has not the power or authority under the commerce clause, or any other provision of the constitution, to limit and restrict the right of corporations created by the States, or the citizens of the States, in the acquisition, control and disposition of property. Neither can Congress regulate or prescribe the price or prices at which such property, or the products thereof, shall be sold by the owner or owners, whether corporations or individuals. It is equally clear that Congress has no jurisdiction over, and cannot make criminal, the aims, purposes and intentions of persons in the acquisition and control of property, which the states of their residence or creation sanction and permit. It is not material that such property, or the products thereof, may become the subject of trade or commerce among the several states or with foreign nations. Commerce among the states, within the exclusive regulating power of congress, 'consists of intercourse and traffic between their citizens, and includes the transportation of persons and property, as well as the purchase, sale, and exchange of commodities.' *County of Mobile v. Kimball*, 102 U. S., 691–702; *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S.. 203."

The case of *United States vs. E. C. Knight Company*, 156 U. S., 1, involved the question whether the power of Congress over commerce and the Trust Law of 1890 extended to making unlawful a combination of corporations and individuals engaged in manufacturing and selling sugar. The Court held that the act did not extend to prohibit a combination of sugar refineries within a state accomplished by transfer of stock in corporations, although the intention might be to export the manufactured sugar, or some part thereof, to other states. The case settles that the act cannot be

held to prohibit such a combination, whether of individuals or corporations, from owning the real estate or machinery, or the stocks and securities, necessary to form such a combination of factories. The Court said (p. 16) :

> "It was in the light of well-settled principles that the act of July 2, 1890, was framed. Congress did not attempt thereby to assert the power to deal with monopoly directly as such ; or to limit and restrict the rights of corporations created by the states or the citizens of the states in the acquisition, control or disposition of property ; or to regulate or prescribe the price or prices at which such property or the products thereof should be sold ; or to make criminal the acts of persons in the acquisition and control of property which the states of their residence or creation sanctioned or permitted. Aside from the provisions applicable where congress might exercise municipal power, what the law struck at was *combinations, contracts and conspiracies to monopolize trade and commerce among the several states or with foreign nations ;* but the contracts and acts of the defendants related exclusively to the acquisition of the Philadelphia refineries and the business of sugar refining in Pennsylvania, and bore no direct relation to commerce between the states or with foreign nations. The object was manifestly private gain in the manufacture of the commodity, but not through the control of interstate or foreign commerce. It is true that the bill alleged that the products of these refineries were sold and distributed among the several states, and that all the companies were engaged in trade or commerce with the several states and with foreign nations ; but this was no more than to say that trade and commerce served manufacture to fulfill its function. Sugar

was refined for sale, and sales were probably made at Philadelphia for consumption, and undoubtedly for resale by the first purchasers throughout Pennsylvania and other states, and refined sugar was also forwarded by the companies to other states for sale. Nevertheless it does not follow that an attempt to monopolize, or the actual monopoly of, the manufacture was an attempt, whether executory or consummated, to monopolize commerce, even though, in order to dispose of the product, the instrumentality of commerce was necessarily invoked. There was nothing in the proofs to indicate any intention to put a restraint upon trade or commerce, and the fact, as we have seen, that trade or commerce might be indirectly affected was not enough to entitle complainants to a decree. The subject matter of the sale was shares of manufacturing stock, and the relief sought was the surrender of property which had already passed and the suppression of the alleged monopoly in manufacture by the restoration of the *status quo* before the transfers; yet the act of congress only authorized the circuit courts to proceed by way of preventing and restraining violations of the act in respect of contracts, combinations or conspiracies in restraint of interstate or international trade or commerce."

From the definitions of the Congressional power to regulate, stated in *Gibbons vs. Ogden*, and from the fact that we have a dual system of government—power not granted to the United States being reserved to the States—it follows, that the power of Congress extends only to those things that *directly and immediately* pertain to commerce, while the powers of the States cover a large field, including a multitude of things which *indirectly*, though importantly, operate upon commerce (*Gibbons vs. Ogden*, p. 203).

And every case in this Court arising under the statute in question has reaffirmed and insisted upon this line of demarkation between National power and State power.

In the joint traffic case (*United States vs. Joint Traffic Association*, 171 U. S., 505) the Court said:

> "As examples of the kinds of contracts which are rendered illegal by this construction of the act, the learned counsel suggest all organizations of mechanics engaged in the same business for the purpose of limiting the number of persons employed in the business, or of maintaining wages; the formation of a corporation to carry on any particular line of business by those already engaged therein; a contract of partnership or of employment between two persons previously engaged in the same line of business; the appointment by two producers of the same person to sell their goods on commission; the purchase by one wholesale merchant of the product of two producers; the lease or purchase by a farmer, manufacturer or merchant of an additional farm, manufactory or shop; the withdrawal from business of any farmer, merchant or manufacturer; a sale of the good-will of a business with an agreement not to destroy its value by engaging in similar business; and a covenant in a deed restricting the use of real estate. It is added that the effect of most business contracts or combinations is to restrain trade in some degree.
>
> "This makes quite a formidable list. It will be observed, however, that no contract of the nature above described is now before the court, and there is some embarrassment in assuming to decide herein just how far the act goes in the direction claimed. Nevertheless, we might say that the formation of corporations for business or manu-

facturing purposes has never, to our knowledge, been regarded in the nature of a contract in restraint of trade or commerce. The same may be said of the contract of partnership. It might also be difficult to show that the appointment by two or more producers of the same person to sell their goods on commission was a matter in any degree in restraint of trade.

"We are not aware that it has ever been claimed that a lease or purchase by a farmer, manufacturer or merchant of an additional farm, manufactory or shop, or the withdrawal from business of any farmer, merchant or manufacturer, restrained commerce or trade within any legal definition of that term; and the sale of a good-will of a business with an accompanying agreement not to engage in a similar business was instanced in the *Trans-Missouri case* as a contract not within the meaning of the act; and it was said that such a contract was collateral to the main contract of sale and was entered into for the purpose of enhancing the price at which the vendor sells his business. The instances cited by counsel have in our judgment little or no bearing upon the question under consideration. In *Hopkins v. United States*, decided at this term, *post*, 578, we say that the statute applies only to those contracts whose *direct and immediate effect* is a restraint upon interstate commerce, and that to treat the act as condemning all agreements under which, as a result, the cost of conducting an interstate commercial business may be increased, would enlarge the application of the act far beyond the fair meaning of the language used. *The effect upon interstate commerce must not be indirect or incidental only.* An agreement entered into for the purpose of promoting the legitimate business of an individual or corporation, with no purpose to thereby affect or restrain interstate commerce, and which does

not directly restrain such commerce, is not, as we think, covered by the act, although the agreement may indirectly or remotely affect that commerce. We also repeat what is said in the case above cited, that 'the act of congress must have a reasonable construction, or else there would scarcely be an agreement or contract among business men that could not be said to have, indirectly or remotely, some bearing upon interstate commerce, and possibly to restrain it.' To suppose, as is assumed by counsel, that the effect of the decision in the *Trans-Missouri case* is to render illegal most business contracts or combinations, however indispensable and necessary they may be, because, as they assert, they all restrain trade in some remote and indirect degree, is to make a most violent assumption and one not called for or justified by the decision mentioned, or by any other decision of this court."

In the case of *Addyston Pipe & Steel Co. vs. United States*, 175 U. S., 211, the Court, on page 228, said that Congress has power to prohibit the performance of those contracts between individuals and corporations, the effect of which is "*to directly, and not as a mere incident to other and innocent purposes*, regulate to any substantial extent interstate commerce." And on page 229 the Court restricts private contracts subject to federal control under the Commerce Clause to those which "*directly* and substantially, and not merely *indirectly, remotely, incidentally and collaterally*, regulate to a greater or less degree commerce among the states." To the same effect are *Hopkins vs. United States*, 171 U. S., 592, and *Anderson vs. United States*, 171 U. S., 615.

The decisions of this Court are conclusive to the point that the interstate commerce power of Congress justifies only such regulations as act upon that com-

merce directly, and does not authorize regulations abridging the police powers of the States or the personal rights and privileges of individuals, if they affect that commerce only "indirectly, remotely, incidentally and collaterally."

It is submitted that the facts, even as found by the Court below, make a stronger case for the application of this principle than was presented in any of the previous litigations in this Court.

In addition to concert of action by several persons in the acquisition of a majority of the shares of two competing interstate railroads—before such acquisition can touch interstate commerce—various conditions must exist or must arise which may never exist or arise at all. Thus—the ordinary principles which govern human conduct being applied—

(a) There must exist or arise in the purchasers of such shares a motive to restrain commerce inspired by the conviction that their immediate pecuniary interests will be thus promoted.

(b) There must exist or arise in such purchasers a purpose to promote those special interests strong enough to overcome their sense of duty as law-abiding citizens, and to obscure their perception of their general interests as citizens.

(c) There must exist or arise an agreement between such purchasers—deemed binding in honor if not in law—by which each shall undertake that his stock shall be used so as to promote the unlawful purpose.

(d) Persons must be found for directors of the two competing interstate railroad companies who can be relied upon to restrain interstate commerce.

(e) Finally, the directors so chosen must actually do what is expected of them, and must violate the law—at the risk of the legal penalties involved—by using their power so as to restrain commerce.

It is plain, therefore, that concert of action in the acquisition of shares of two competing interstate railroads, so far from acting upon interstate commerce *directly*, is separated from such commerce by a variety of circumstances and conditions, the occurrence of any one of which is manifestly uncertain and contingent.

That the power of Congress over commerce does not extend to those things which operate *indirectly* on commerce may be variously illustrated.

That power does not include many things done locally within a State, or by its authority, notwithstanding they may have an influence and effect upon commerce, even to imposing burdens. For example, taxes levied on the property of an interstate carrier are valid, notwithstanding they render transportatien more expensive, and so restrict commerce. The same is true of inspection laws; health laws; laws regulating speed of trains and for the stopping of trains at towns or crossings; laws for the licensing of engineers; and other examples of the exercise of general police and governmental functions of the state. The Court said in *Gibbons vs. Ogden* (pp. 203-4) of such state laws that, while they had a considerable influence on commerce, a power to regulate commerce was not the source from which the right to pass them was derived.

The States make an infinite variety of regulations, all valid notwithstanding they have a bearing or effect upon interstate commerce. By either common law or statute law of the States, railway corporations and other carriers are subjected to all sorts of liabilities for the torts of their officers, agents and servants. Will the proposition be seriously advanced that Congress, under guise of regulating commerce, may enact that railways and other carriers shall not be liable for the torts of their officers or agents? Or suppose a State, by statute, abolishes railway crossings of highways and streets at grade; this would increase the expense of constructing the railways, and would therefore burden interstate commerce, but will it be contended that therefore Congress may overrule such State legislation and make grade crossings permissible?

It must be remembered that individuals and corporations engaged in commerce have other relations to the community. They are citizens of the States first, and as citizens owe certain duties to the States and to the people thereof, from the performance of which, the fact that they are engaged in interstate commerce, cannot absolve them, and for the violation of which their business cannot be an excuse. The busy merchant may find it a serious inconvenience to serve on juries, but no Court would excuse him from this duty because he was engaged in interstate commerce; nor would it be a defense to an indictment for swindling to set up that the goods were imported from another State; the owner of a warehouse may be compelled to put up a fire escape, although the building is used exclusively for interstate goods.

The States, as the protectors of the health, safety and general welfare of their citizens, may regulate the

conduct of all persons and corporations within their borders, and the manner of their using their property so far as may be necessary, and such laws, unless they are regulations of commerce in disguise, are valid, although they affect interstate commerce. And being valid, we know of no power in Congress to declare them void, because the power of Congress is restricted to *providing the rules by which intercourse between States and nations shall be carried on.*

The distinction is nowhere better drawn than in *Sherlock vs. Alling*, 93 U. S., 99. The State of Indiana had enacted a law that whenever a person was killed, under such circumstances that an action could have been maintained had he lived, an action might be brought by his representatives. The death in question was by a steamboat collision on an interstate navigable river. It was urged that as this law created a liability which did not exist, either by common or maritime law, it imposed an unlawful burden on interstate commerce. But the Court, by Mr. Justice FIELD, said that in all those cases where State laws had been held void, because regulations of commerce, the legislation condemned operated *directly* upon commerce. The opinion continues:

> "In the present case no such operation can be ascribed to the statute of Indiana. That statute imposes no tax, prescribes no duty, and in no respect interferes with any regulations for the navigation and use of vessels. It only declares a general principle respecting the liability of all persons within the jurisdiction of the state for torts resulting in the death of parties injured. And in the application of the principle it makes no difference where the injury complained of occurred in the state, whether on land or on water.

General legislation of this kind, prescribing the liabilities or duties of citizens of a state, without distinction as to pursuit or calling, is not open to any valid objection because it may affect persons engaged in foreign or interstate commerce. Objection might with equal propriety be urged against legislation prescribing the form in which contracts shall be authenticated, or property descend or be distributed on the death of the owner, because applicable to the contracts or estates of persons engaged in such commerce. In conferring upon congress the regulation of commerce, it was never intended to cut the states off from legislating on all subjects relating to the health, life and safety of their citizens, though the legislation might indirectly affect the commerce of the country. Legislation, in a great variety of ways, may affec commerce and persons engaged in it withou constituting a regulation of it, within the meaning of the Constitut on."

"It is true that the commercial power conferr d by the Constitution is one without limitation. It authorizes legislation with respect to all the subjects of foreign and inter-State commerce, the persons engaged in it, and the instruments by which it is carried on. And legislation has largely dealt, so far as commerce by water is concerned, with the instruments of that commerce. It has embraced the whole subject of navigation, prescribed what shall constitute American vessels, and by whom they shall be navigated, how they shall be registered or enrolled and licensed; to what tonnage, hospital and other dues they shall be subjected; what rules they shall obey in passing each other, and what provisions their owners shall make for the health, safety and comfort of their crews. Since steam has been applied to the propulsion of vessels legislation has embraced an infinite va-

riety of further details to guard against accident and consequent loss of life."

"The power to prescribe these and similar regulations necessarily involves the right to declare the liability which shall follow their infraction. Whatever, therefore, Congress determines, either as to a regulation or the liability for its infringement, is exclusive of State authority. But with reference to a great variety of matters touching the rights and liabilities of persons engaged in commerce, either as owners or navigators of vessels, the laws of Congress are silent, and the laws of the State govern. The rules for the acquisition of property by persons engaged in navigation, and for its transfer and descent, are, with some exceptions, those prescribed by the State to which the vessels belong; and it may be said, generally, that the legislation of a State, not directed against commerce or any of its regulations, but relating to the rights, duties, and liabilities of citizens, and only indirectly and remotely affecting the operations of commerce, is of obligatory force upon citizens within its territorial jurisdiction, whether on land or water, or engaged in commerce, foreign or inter-State, or in any other pursuit."

The same principle applies to State laws prescribing who may form corporations, and what property corporations may acquire and own, by whom and for what purposes joint associations may be formed, under what conditions real and personal property generally may be bought, held and disposed of. Although all such State laws may operate to a certain extent upon interstate commerce and restrain and burden it, yet none of them are regulations of commerce, or come within the power of Congress under the constitution. They have always been regarded as valid, notwithstanding they

ultimately and indirectly operate upon interstate commerce, and notwithstanding a holding of property within a State may put it into the *power* of someone to monopolize, or restrict competition in interstate commerce.

If power is actually used to make unreasonable interstate rates, or to regulate the prices of goods sold into other States, or otherwise to actually restrict or burden interstate commerce, such *use* of power or property and such *actual* restraint on commerce are contrary to the Federal law; but a case is not brought within the jurisdiction of Congress over commerce, simply because a corporation or individual may have *power* or influence over interstate rates, or because it or he *may* exercise an influence to reduce competition in trade among States. The question in this case is not what may be obnoxious to the common law, or to any regulations States have imposed, or may impose, but concerns only what is prohibited by the Constitution of the United States and the law of Congress. In order to bring a case within the Constitution and the law of Congress, the thing sought to be restrained must be an *actual* and *direct* restraint of commerce.

The case of *Louisville & Nashville Railroad Company vs. Kentucky*, 161 U. S., 677, 701, seems to us controlling. It was argued in that case that the State of Kentucky had no right to forbid the consolidation of competing interstate railways, because that was a subject pertaining to commerce and therefore subject to the jurisdiction of Congress under its power to regulate commerce. But the Court said (p. 702–3):

> "It has never been supposed that the dominant power of Congress over interstate commerce took

from the states the power of legislation with respect to the instruments of such commerce, so far as the legislation was within its ordinary police powers. Nearly all the railways in the country have been constructed under state authority, and it cannot be supposed that they intended to abandon their power over them as soon as they were finished. The power to construct them involves necessarily the power to impose such regulations upon their operation as a sound regard for the interests of the public may seem to render desirable. In the division of authority with respect to interstate railways congress reserves to itself the superior right to control their commerce and forbid interference therewith; while to the states remains the power to create and to regulate the instruments of such commerce, so far as necessary to the conservation of the public interests.

"If it be assumed that the states have no right to forbid the consolidation of competing lines, because the whole subject is within the control of congress, it would necessarily follow that congress would have the power to authorize such a consolidation in defiance of state legislation—a proposition which only needs to be stated to demonstrate its unsoundness."

The Court cites a number of decisions in which State statutes prohibiting or permitting consolidations had been enforced. They were obviously enforced erroneously, and the *Louisville and Nashville Case*, as well as the *Pearsall Case*, were erroneously decided if the things complained of fall within the power of Congress over commerce, *for that power, if it exists, is exclusive of all State action.*

If to regulate the consolidation of interstate railways chartered by the States and the qualifications of

their stockholders belong to the Commerce power of Congress, that power is capable from the nature of the subject to uniform regulation only. In its very nature the subject would be one not susceptible of treatment by Congress in the way of diverse local regulation. It would be impossible for Congress to authorize a consolidation of the appellant's railways in Wisconsin and to forbid it in Minnesota. It would be impossible to allow a joint holding of stock as to that part of the lines in a particular State only. Therefore, if the subject belongs to the Commerce power, it could be dealt with only by uniform regulation.

It is only as to matters capable of local regulation, like pilotage (*Cooley vs. Board of Port Wardens*, 12 How., 299) lights to be displayed by ships in harbor (*The James Gray vs. The John Fraser*, 21 How., 184) and dams of rivers wholly within a State (*Pound vs. Turck*, 95 U. S., 459) that the States may make certain local commercial regulations until Congress has acted.

The rule first definitely formulated in *Cooley vs. Board of Port Wardens*, was thus stated by Mr. Justice CURTIS in that case:

> "Whatever subjects of this power are in their nature national, or admit only of one uniform system or plan of regulation, may justly be said to be of such a nature as to require exclusive legislation by Congress."

Mr. Justice BRADLEY thus stated the doctrine in *Robbins vs. Shelby Taxing District*, 120 U. S., 492:

> "The constitution of the United States having given to congress power to regulate commerce, not only with foreign nations, but among the several

> states, that power is necessarily exclusive wherever the subjects are national in their character, or admit only of one uniform system or plan of regulation. * * * Another established doctrine of this court is, that where the power of congress to regulate is exclusive, the failure of congress to make express regulation indicates its will that the subject shall be left free from any restrictions or impositions, and any regulation of the subject by the states, except in matters of local concern only, as hereafter mentioned, is repugnant to such freedom."

The same rule was laid down in *County of Mobile vs. Kimball*, 102 U. S., 691; *United States vs. E. C. Knight Company*, 156 U. S., pp. 11, 12; *Addyston Pipe & Steel Company vs. United States*, 175 U. S., 230.

Therefore, if the decision of the Circuit Court is correct, all the State laws either forbidding or authorizing consolidations of interstate carriers are and always have been void. And this is as true in case of connecting and other non-competitive carriers as in case of competing carriers; every consolidation, every sale, every lease between interstate carriers, every holding of stock by one in another has been always illegal, though authorized by State laws, and whether accomplished before the passage of the act in question or since. There is no escape from this conclusion, if regulation of these matters forms part of the commercial power of Congress; for if the power of Congress covers the subject, it is, whether exercised or not, exclusive and prohibitive of State action.

III.

Except as it punishes contracts, combinations and conspiracies, the statute introduces no new rule of law. That is, whatever is a restraint of commerce now, was such before this statute. The act is new only in making the preliminary conspiracy a crime.

It was settled *In re Debs*, 158 U. S., 564, that the Constitution itself forbade all restraints of interstate commerce, whether by individuals or states. That was the very point of decision.

It was argued that the power of Congress was limited to preventing the states from imposing restraints on commerce, but the Court said (p. 581), by Mr. Justice BREWER:

> "If a state with its recognized powers of sovereignty is impotent to obstruct interstate commerce, can it be that any mere voluntary association of individuals within the limits of that state has a power which the state itself does not possess?"

The Court held that the power of the United States over interstate commerce was that of direct supervision, control and management, and was not limited to prevention of restraints imposed by state law; and that any restraint upon the free transaction of interstate commerce imposed by individuals, or associations, was as obnoxious to the control of commerce granted by the Constitution to Congress, as any state action could be. This doctrine was laid down without any reference to, or reliance upon, the Trust Act of 1890; see concluding paragraph of the opinion.

The doctrine was reaffirmed in the *Addyston Pipe Case* (p. 230) and followed logically from the principles laid down in *Gibbons vs. Ogden.*

It certainly cannot be disputed that any restraint of interstate commerce offends the power to regulate vested in Congress when accomplished by subtle and peaceful means as in the *Addyston Pipe Case* the same as when accomplished by threats and violence as in the *Debs Case.*

Therefore, if it be true that a consolidation of competing carriers to-day, or a common holding of their stock, is really a restraint of interstate commerce, it was equally so *before the Anti-trust Act* and from the beginning.

If a contract, arrangement or combination does restrain interstate trade, it is immaterial whether it has the sanction of State law or not. A State law would be contrary to the *power* vested in Congress. In the case at bar, or in any similar case, the transaction, if it in truth restrains commerce, could not be sustained though fully authorized by State law.

For a holding company to own the stock of competing interstate carriers is plainly *no more* prohibited by the act than for one interstate carrier to purchase, lease, or otherwise control the property of a parallel or competing carrier.

Railways have been bought, or leased, or controlled through stock ownership, by railway corporations owning parallel lines, the country over. So, the country over, have individuals, partnerships and corporations held stock in competing railway companies. These things have been done commonly, openly and notoriously during the past fifty years, both before and since the Act of 1890. Largely this has been done under the ex-

press sanction of State law; but whether so or not is immaterial. If these things are restraints on interstate commerce, they are and always have been invalid. We have pointed out that they were as invalid before the act as since, because contrary to the settled doctrine that, even in the absence of legislation by Congress, neither States nor individuals can restrain, or impose burdens upon interstate commerce.

No more serious or far-reaching question could be put, than whether such transactions are really the subject of State regulation, or whether they are restraints upon interstate commerce, and consequently within the exclusive power of Congress under the Constitution.

Parallel telegraph lines have been built and have been acquired by purchase, or otherwise controlled, so that to-day practically all the telegraphs of the country belong to two corporations. Have all such acquisitions of property been invalid because restraints upon interstate commerce?

If the owner of a steamboat, or of a stage line running between states, buys up, or leases, or acquires stock in, or consolidates with a competing steamboat or stage line, is that a restraint upon interstate commerce? If so, a State law cannot legalize it.

The same question may be put in innumerable forms. Is it a restraint of interstate commerce for a merchant or manufacturer, engaged in selling goods and shipping them to other States, to buy out or go into partnership with, another engaged in the same business? This Court said it was not in the case of the *Joint Traffic Association.*

If two or more individuals, owning stock in competing mercantile or carrying corporations engaged in

interstate traffic, unite in a co-partnership, turning in their stock as partnership assets, is that a restraint of interstate commerce? And is such a partnership, though authorized by State law, void as contrary to Federal law?

If the same individuals, instead of forming a co-partnership, form a corporation sanctioned by State law, is their doing so, or the corporation buying stock of them, obnoxious to the law of Congress and is it a subject of Federal control?

Suppose I combine with my neighbor to buy a piece of real property; is that contrary to the Federal law because our intention is to manufacture, ship, or receive upon that property goods in the transaction of a business, which aims to monopolize, or restrain interstate commerce? Is the mere right in such cases to take title to the real estate a subject of Federal control, or of State control, and is not Federal control limited to prevention of the *actual use of the property* to restrain interstate commerce?

The acts stated in all the supposed cases may have a tendency to reduce competition in interstate commerce, or to facilitate and make more easy restraints upon that commerce, but the acts themselves are not commerce and their effect upon and connection with commerce is indirect and remote.

If the Act of 1890 and the power of Congress over commerce are to be pressed to the extent of making such transactions void, Congress is by one stroke invested with the regulation of a large portion of those affairs hitherto supposed to belong exclusively to the States. It would place in Congress the general right to regulate who may and who may not buy, hold and sell real estate and personal property, including stocks

and other securities, within the several States; with the regulation of the law of partnership and of corporations, even although such partnerships and such corporations are not engaged in any kind of commerce.

IV.

If a thing restrains interstate commerce, it is immaterial with what innocent intent it may be done. On the other hand, if the thing complained of does not restrain interstate commerce, it is immaterial how evil may be the intent. As the Court said in *United States vs. Freight Association*, 166 U. S., 290, 341, the question is, does the agreement restrain trade or commerce in any way.

If an action be lawful, it is elementary that its purpose is immaterial; *Addyston Pipe & Steel Co. vs. United States*, 175 U. S., 211, p. 234, where the Court said:

> "If the necessary, direct and immediate effect of the contract be to violate an act of congress and also to restrain and regulate interstate commerce, it is manifestly immaterial whether the design to so regulate was or was not in existence when the contract was entered into. In such case the design does not constitute the material thing. The fact of a direct and substantial regulation is the important part of the contract, and that regulation existing, it is unimportant that it was not designed.
>
> "Where the contract affects interstate commerce only incidentally and not directly, the fact that it was not designed or intended to

affect such commerce is simply an additional reason for holding the contract valid and not touched by the act of congress. Otherwise the design prompting the execution of a contract pertaining to and directly affecting, and more or less regulating, interstate commerce is of no importance."

The following decisions support this conclusion:

"Bad motives in doing an act which violates no legal right of another cannot make that act a ground of action" (*Phelps vs. Nowlen*, 72 N. Y., 39, 45).

"The exercise of a legal right cannot be affected by the motive which controls it" (*Kiff vs. Youmans*, 86 N. Y., 324, 329).

An act which is not in and of itself a fraud, is not made so by alleging that it was induced by a desire to deceive and defraud the plaintiff (*Wood vs. Amory*, 105 N. Y., 278, 281).

"The purpose of an act which in itself is perfectly lawful or, under all the circumstances, reasonable, is seldom, if ever, material" (*Lough vs. Outerbridge*, 143 N. Y., 271, 282).

"An act legal in itself, and violating no right, cannot be made actionable on account of the motive which superinduced it" (*Adler vs. Fenton*, 24 How., 407, 410).

It is not sufficient to charge an unlawful intent, or to aver that a combination or a course of business is in restraint of trade, or a monopoly of trade, in order to constitute a crime. Acts relied upon to make the offense must be stated (*U. S. vs. Greenhut*, 51 Fed., 205, 211; the same thing is held *In re Greene*, 52 Fed., 104, 111, 112).

"No action can be maintained against one on account of the exercise of a legal right, whatever the motive that dictated such exercise" (*Randall vs. Hazleton*, 12 Allen, 412, 418).

To the same effect are *Brackett vs. Griswold*, 112 N. Y., 454; *U. S. vs. Isham*, 17 Wall., 496; *Dickerman vs. Northern Trust Co.*, 176 U. S., 181; *Fahrney vs. Kelly*, 102 Fed., 403; *Mogul Steamship Co. vs. McGregor*, App. Cas., 1892, pages 25, 41; *Allen vs. Flood*, L. R. App. Cas., 1898, p. 1.

Stress is laid upon the Securities Company being organized for the purpose and with the intent of acquiring the stock of the two railway companies. The authorities we have cited show that this intent, if conceded, is utterly immaterial. If the buying and voting the stock restrains interstate commerce, it is illegal. If it does not restrain interstate commerce, it is legal; and the conspiracy behind the formation of the company was a conspiracy to do a lawful thing; *Bohn Mfg. Co. vs. Hollis*, 54 Minn., 223, 234.

The intention to buy these stocks existing before the formation of the Securities Company, and the formation of the company for the purpose of buying these stocks do not make this case differ in the slightest from one, where a partnership or a corporation already organized primarily for other purposes should resolve on buying the same stocks. For, in the case of a partnership, or corporation primarily organized for other purposes, the conspiracy and combination to buy the stocks would have to exist before the stocks were bought. And such a combination to buy stock of competing railway companies is exactly as vicious and exactly as innocent, as a combination to form a corporation and have the corporation buy the same stock.

V.

The opinion of the Court below proceeds upon the proposition that a combination of two competitors is a *restraint of trade*, because it *lessens or tends to lessen competition.*

But the act says nothing about *competition.* It forbids combinations in *restraint of trade.* In order to bring the case within the act, it must be shown that, when competition is lessened by consolidation of two companies, or by their stock being acquired by one interest, a combination is formed in *restraint of commerce*, but the opinion below makes no attempt to prove this by any course of reasoning or reference to authorities.

The decisions of this Court in the *Trans-Missouri Freight Case*, the *Joint Traffic Case* and the *Addyston Pipe Case* are cited, but they prove only that a contract expressly and directly restraining the right of rival companies to compete is a restraint of trade. But here there is no agreement of any kind, certainly no agreement restraining or restricting the right or ability of either carrier to compete. The cases cited contain no intimation that a single person or corporation, or two or more persons jointly, may not own interests in rival carriers and exercise such rights as result from their ownership. This case is not, therefore, within those decisions.

The opinion below assumes that a contract or combination *restrains commerce* whenever it destroys or lessens the *motive for competition.* But a partnership does that; so does the organization of a corporation where its stock is held by more than one. But the

Court said in the *Joint Traffic Case* (171 U. S., 567): "The formation of *corporations* for business or manufacturing purposes has never to our knowledge been regarded in the nature of a contract in restraint of trade or commerce. The same may be said of the contract of *partnership*." In the *Addyston Pipe Case*, 54 U. S. App., 744, TAFT, J., says: "Again, when two men become *partners* in a business, although their union might reduce competition, this effect was only an incident to the main purpose of a union of their capital, enterprise and energy to carry on a successful business and one useful to the community." A combination may, therefore, *destroy competition* without *restraining trade.*

As was said by Mr. Justice PECKHAM in the case of *Trans-Missouri Freight Association*, 166 U. S., 328: "Contracts in restraint of trade have been known and spoken of for hundreds of years both in England and in this country." A clear and complete statement of the law regarding such contracts and its development is given by Judge TAFT in the *Addyston Pipe Company case*, 54 U. S. App., 741. It appears from the cases there collected that from early times various contracts by which parties undertook to restrain themselves in regard to their trade or business have been held by the Courts non-enforceable, although not otherwise illegal and not criminal. The policy of the law was to encourage trade, and the objection to these restraints was that, by excluding the persons making such contracts from the exercise of their trades, enterprise and industry were discouraged, competition prevented, and the public exposed to the evils of monopoly. Exceptions to the rule were gradually introduced, the principal one being that, when one sold his business, he

might lawfully restrain himself to a reasonable extent from carrying on a similar business, so as to compete with the purchaser. Such limited restraints were regarded as incident to the main purposes of the transaction, which was promotive of trade.

But among all the cases there is none in which it has been intimated that a contract restrains trade when competition is ended or lessened by the association in a common enterprise of two or more persons previously competitors, or when one, or two, or more jointly acquire such a controlling interest in competing enterprises that there is no longer a motive for competition between them. In the case of a partnership, although competition between the members is checked the exertions of all are employed for a common object, and trade on the whole is thereby promoted. The same is more clearly the case where one or more persons acquire a controlling interest in two competing corporations, for in that case every person interested in the corporations may compete with them; and each corporation may compete with the other.

The action of every corporation is directed, to a certain extent, by its own interest. When the stockholders of a corporation exercise their power against a certain course of competition with a rival they do not thereby restrain trade; they only direct the business of the corporation as a single trader would direct his own business. The exercise of this power does not become a restraint of trade, because their action is affected by a pecuniary interest which they may have in a rival. Indeed it is not necessary to destroy the motive for competition that the *majority* holder of shares in one corporation should also own a *majority* in a competing corporation. The ownership of any

substantial number of shares in both would be sufficient for that purpose and, therefore, to sustain the reasoning of the Court below it must be held unlawful for a single person, partnership or corporation to acquire *any* interest in two competing enterprises engaged in interstate commerce.

The law does not require that persons or corporations shall compete or conduct their business in opposition to one another, and it does not forbid the acquisition of such interests in different enterprises as lessens the motive for competition. All that it requires is that corporations and individuals competing in interstate commerce shall not restrain themselves from competing, but shall remain free to act as their interests shall dictate.

The business of a rival in trade may be purchased for the very purpose of being rid of his competition.

> *Gamble vs. Queens Co. Water Company*, 123 N. Y., 91, 104; *Diamond Match Co. vs. Roeber*, 106 N. Y., 473; *Rafferty vs. Buffalo City Gas Co.*, 37 N. Y. App. Div., 618, 621; *Trenton Potteries Co. vs. Oliphant*, 56 N. J. Eq., 680; *Oakdale Co. vs. Garst*, 18 R. I., 484.

In such a purchase there is nothing that has ever been understood as a restraint of trade or commerce. Indeed, it appears that during the discussion of the act in question by Congress an amendment was proposed that prohibited any contract for the purpose of *preventing competition* in the transportation of persons or property, and this amendment was rejected (166 U. S., p. 317). Nobody appears to have been bold enough to propose an amendment forbidding the purchase of such interests in different enterprises as would take away

the motive for competition or give the persons acquiring such interests the power to stop it.

The case is summed up by the Circuit Court in the sentence: "Competition, we think, would not be more effectually restrained * * * if the two railroad companies were consolidated under a single charter." But there is no reason for doubting that the two companies might have been consolidated without any violation of the Sherman Act. Consolidation in many similar cases has taken place under the authority of State laws, and it has never been doubted, we believe, that consolidations so authorized are valid. And yet in that case all competition would be absolutely destroyed. It is impossible, therefore, to maintain that the destruction of competition or the motive for competition, is equivalent to a restraint of commerce, for if that were so, as we have previously shown, every State law authorizing consolidation of competing enterprises engaged in interstate commerce must be held to have been a restraint of interstate commerce and void.

VI.

The question being whether there was any violation of the Anti-trust Act of 1890, it is to be noted that the Securities Company is neither alleged nor proved to have done or omitted anything which can be construed as such violation. If it has had the power to suppress or diminish competition between the Great Northern and Northern Pacific Companies, it has not used it. Hence, if the act has

been violated at all, the violation must be due to one of three things; to the mere existence of the Securities Company as a corporation, to its powers as applicable to Great Northern and Northern Pacific shares, or to something illegal in its origin and organization.

1. But the existence of the Securities Company as a legal person is, on the theory of the Court below quite immaterial, and is a fiction of which, in the interest of substantial justice, no account is to be taken.

In the view of the Circuit Court the company is simply a medium—an agency—through which the natural persons creating or represented by it act—to which they stand in effect in the relation of principals—and which in no way relieves them of responsibility for its acts.

To quote the language of the Court, the Securities Company is nothing but "a few men acting in concert in its name and under cover of its charter." So that in considering the decree of the Circuit Court the Securities Company may be dismissed from consideration unless it can be shown that the powers given or sought to be given it can not be exercised through any agent, or, if through any, not through such an agent as the Securities Company.

2. But it cannot be maintained—it is not indeed suggested—that the powers over the Great Northern and Northern Pacific shares conferred upon the Securities Company by the natural persons of which it is the organ must be exercised by them personally and not through an agent, or that the Securities Company for any reason lacks the corporate capacity to act as agent for the exercise of those powers.

There is indeed nothing peculiar or extraordinary in those powers. They are the same—no more or no less

—possessed by the owners of the shares before their sale to the Securities Company. Before such sale those owners were majority stockholders in both the Great Northern and Northern Pacific Companies, and thus could elect the directors and to that extent indirectly control the affairs and operations of both companies. The Securities Company now has exactly the same powers, and in accordance with the doctrine of the Court below is really the same "few men acting in concert in its name and under cover of its charter."

The powers of the Securities Company being those of "the few men acting in concert"—those powers being legally capable of delegation to the Securities Company and of performance by that company—and no violation of the Anti-trust Act by the "few men acting in concert" through the exercise of those powers by the Securities Company being even claimed—*the mere possession of those powers by the Securities Company—i. e., by "the few men acting in concert"*—is the thing upon which the Government must rely to establish a breach of the Anti-trust Act. That is, indeed, the precise position of the Court below, which rules that, if the power to suppress competition between competing interstate railroad companies is acquired and possessed by "a few men acting in concert," there is a necessary violation of the Anti-trust Act, and which holds that in its ruling it simply follows and applies a doctrine already affirmed by this Court. But—

(a) The cases cited by the Court below on this point do not sustain its contention. In each of them, persons or corporations, beside possessing the power to suppress competition, had actually used it by enter-

ing into agreements actually accomplishing that precise result.

(b) The mere power to stifle competition between interstate railroad companies acquired and possessed as one of the incidents of the general control of a corporation by stockholders is not made illegal by the Anti-trust Act. No such operation can be given to the act either as the result of the terms employed or by necessary or reasonable implication from those terms.

If the purpose of the statute were to do away with all *power to suppress competition* on the part of such stockholders, there would be found in it appropriate language to that effect.

It would prohibit a single stockholder from buying a majority of the stock of two such competing companies, or, if he had bought a majority of the stock of one of them, would incapacitate him from taking by inheritance or otherwise, or from continuing to hold, a majority of the stock of the other.

It would either prohibit a majority of the stocks of two competing interstate railroad companies from passing by inheritance to an heir or heirs or from being taken for debt by a creditor or creditors, or it would in each case compel a sale by the party or parties interested of his or their shares in one or the other of such companies.

In short, if the statute had meant to strike at all power on the part of stockholders of two competing interstate railroad companies to suppress competition between them, it would have enacted in express terms that neither one person nor several persons should own a majority of the stocks of both such companies.

And it would have said that such railways could not consolidate and that one could not be controlled by another.

But the statute contains not a word or a syllable which looks in that direction or which can be tortured as contemplating or effecting any limitation upon the right to acquire and hold property.

It is the use—not the acquisition or ownership—of property which the statute forbids, and the forbidden use must be (1) in restraint of trade, and (2) the result of a contract, combination, or conspiracy.

Hence, no violation of the Anti-trust Act can be held to result from the simple ownership by the Securities Company of a majority of the stocks of the Great Northern and Northern Pacific Companies—from the mere fact that the Securities Company, or the "few men acting in concert" of whom it is said to be the organ have the power—in the exercise of the general control vested in a majority in interest of the stockholders of both those companies to suppress competition between them.

3. For the purposes of the present suit the existence of the Securities Company being unimportant, the mere power to violate the Anti-trust Act possessed either by the Securities Company in its capacity of stockholder or by the natural persons holding its stock not of itself constituting such violation, the further question is whether there is anything in the mode of acquisition of that power which makes its possession unlawful under the Anti-trust Act. The Court below rules that there is, and that that thing is the *concert of action* in the procurement of the power between the men creating the Securities Company as their organ and representative.

That is, in the view of the Court below, though a single individual as a majority stockholder in two competing interstate railroad companies may lawfully possess the power to violate the Anti-trust Act, though several individuals as such majority stockholders may lawfully possess the same power through accident, through operation of law, or in any way not involving their mutual co-operation to that end, yet, if several individuals get the same power by concert of action, its possession falls within the interdictions of the Anti-trust Act and forthwith becomes unlawful.

If it be asked how such a concert of action can work such a result, the answer is—in the view of the Court below—that the "concert" is conclusive proof of unlawful intention. Realizing that the mere possession of power to violate the Anti-trust Act cannot of itself be a violation, but must be accompanied by an intent to use it for that purpose, the Court below holds that concert of action in acquiring the power supplies such intent. It is held to do so as matter of law, and because, according to the Court below, the power being obtained, every motive for competition is destroyed and every man is presumed to intend the necessary consequences of his acts.

These propositions, it is submitted, as applied to the case at bar, are unsound alike in law and in reason.

First. The acquisition or possession of power to do an illegal act cannot be held as matter of law to extinguish all motive to refrain from such act.

No such doctrine has ever been laid down, either by Courts or by jurists.

It ignores the consideration that, as the true interest of every member of the community is that the

law should be universally respected, he has always a strong motive to be himself law abiding.

Any such doctrine is not only without warrant in our jurisprudence, but is in direct antagonism to one of its most salutary and best-established tenets.

Nothing in our law is better settled or deemed more vital than the principle that every man is charged with knowledge of the law and credited with the desire and the purpose to obey it—whence the presumption of innocence until guilt is proven.

But such a presumption would manifestly be a mere form of words—devoid of all substantial value—if the mere acquisition or possession of a power to break the law were held to remove all motive to obey it and to justify a presumption of intent to disobey it.

SECOND. Equally untenable is the proposition that, if several persons by concert of action become majority stockholders in each of two competing interstate railroads and thus acquire the power to destroy competition between them, the legal consequence of such concert is to convict them of an intent to destroy such competition and thus to violate the Anti-trust Act.

(a) It is conceivable that several persons might co-operate in buying of the owners not a majority of the stock of each of two competing interstate railroads but only the right, at their option, to vote such majority at corporate meetings so as to do away with competition.

It might then be urged with great force that such a special power must have been obtained for use and with the intent to use it, and a court or jury might so find as matter of fact. Even in that case, however, there would be no legal presumption to that effect.

(b) The case at bar, however, presents no such situation. Nothing appearing except that several persons have by concert of action acquired a majority of the stocks of two competing interstate railroads, not only is an illegal intent to violate the Anti-trust Act not a necessary and therefore not a legal consequence of the "concert," but the parties concerned are entitled to the presumption of their "concert" being for entirely lawful and laudable purposes.

Thus the parties concerned may have looked into the market value and earning capacity of the stocks in question and may have arranged to acquire a majority interest in them solely because of their intrinsic financial merits.

Their concerted action may have had no other object than to determine how and when and through what agency or agencies each should buy—that they might not uselessly bid against each other and raise market prices beyond their normal or fair value.

Their concerted action may have been based on the natural and proper view that the railroad properties in question were desirable investments only if the ultimate control of the properties was secured to themselves as investors and thus placed beyond the reach of mere speculators.

Their concerted action may have been based on the conviction that the stocks in question would be good investments only if desirable changes in the management of the properties could be brought about through the assured control of a majority ownership.

Their concerted action, indeed, may have been prompted by nothing else than threatened or apprehended violations of the Anti-trust Act on the part of those then in control of the properties, and may have

had as its precise object the prevention of such violations and the rescue of the properties from the injurious consequences of such violations.

Or their concerted action may have been for the purpose of preventing the control of either railway from passing to people mainly interested in the development of other sections of the country and lines of traffic other than those wherein they conceived their true interests to lie.

In short, to declare that an intent to violate the Anti-trust Act follows as a necessary consequence from the concerted action of several persons in becoming majority stockholders of two competing interstate railroads is to state a proposition repugnant to common sense and common experience and without foundation in reason or in fact.

As matter of law, such a proposition directly conflicts with that legal presumption of lawful purpose and intent which attaches to every act not either *malum in se* or *malum prohibitum*.

If the rule laid down by the Court below be sound there is no possible reason for limiting its application to the Anti-trust Act and to the case of several persons by concert of action acquiring a majority of the stock of two competing interstate railroads.

On the same theory and for the same reason, if several persons by concert of action acquire a majority of the stock of one interstate railroad, those persons, as they have the power, are to be charged with the intent to violate the Interstate Commerce Law respecting discriminations between customers, to disobey the statute respecting couplers of cars and other safety appliances, and to break any law that Congress may have

enacted under its general power to regulate commerce, including the act in question.

The power itself to do interstate business necessarily involves the power to restrain it. Any railway company or corporation or person engaged in commerce has *power* to restrain it. The power to do involves the power to restrain. If the doctrine of the Court below is correct, every combination of capital and brains to engage in and expand commerce must therefore be condemned as criminal and illegal.

C. W. BUNN,
Of Counsel.

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 277.

NORTHERN SECURITIES COMPANY AND OTHERS,
APPELLANTS,

vs.

THE UNITED STATES.

BRIEF FOR THE GREAT NORTHERN RAILWAY COMPANY.

The decree in this suit enjoins the defendant, the Northern Securities Company, from holding, voting, receiving dividends on and acting in other ways as owner of, the capital stock of the Great Northern and Northern Pacific Railway Companies, a majority of which it had purchased and paid for in cash, and in its own stock, before the suit was commenced, upon the grounds that the ownership by any single interest, individual or corporate, of a majority of the stock of competing corporations engaged in interstate trade, is, through the voting power of the shares to elect a

separate board of directors for each corporation, a direct regulation of such trade; that though, in fact, the power may be used to enlarge trade and increase competition, in law there is a conclusive presumption that it will not be so used; and that Congress, in the exercise of Federal control has, by the Sherman Anti-Trust Act, forbidden and made criminal the acquisition of such ownership through purchase from two or more owners, if such owners had previously come to an agreement or understanding to make the sale.

The Decree.

FIRST. "IT IS DECREED THAT THE DEFENDANTS ABOVE NAMED (JAMES J. HILL, WILLIAM P. CLOUGH, D. WILLIS JAMES, JOHN S. KENNEDY, J. PIERPONT MORGAN, ROBERT BACON, GEORGE F. BAKER AND DANIEL LAMONT) HAVE HERETOFORE ENTERED INTO A COMBINATION OR CONSPIRACY IN RESTRAINT OF TRADE AND COMMERCE AMONG THE SEVERAL STATES SUCH AS AN ACT OF CONGRESS, APPROVED JULY 2, 1890, ENTITLED 'AN ACT TO PROTECT TRADE AND COMMERCE AGAINST UNLAWFUL RESTRAINT AND MONOPOLIES,' DENOUNCES AS ILLEGAL."

SECOND. "THAT ALL OF THE STOCK OF THE NORTHERN PACIFIC RAILWAY COMPANY AND ALL THE STOCK OF THE GREAT NORTHERN RAILWAY COMPANY, NOW CLAIMED TO BE HELD AND OWNED BY THE DEFENDANT, THE NORTHERN SECURITIES COMPANY, WAS ACQUIRED AND IS NOW HELD BY IT IN VIRTUE OF SUCH COMBINATION OR CONSPIRACY IN RESTRAINT OF TRADE AND COMMERCE AMONG THE SEVERAL STATES."

Pages 1714–15.

Case as Stated and Found by the Court.

The findings of fact by the Court upon which the decree rests are contrary to the evidence. To make this

clear, the findings will be separated, and the evidence bearing upon each finding referred to. It is a fact, that in the transaction under review, there was no device or intent to evade the "Anti-Trust Act," to restrain competition, to monopolize trade, to inflate securities, water stock, or create fictitious capital.

First Finding.

"THESE ROADS ARE, AND IN PUBLIC ESTIMATION HAVE EVER BEEN REGARDED AS PARALLEL AND COMPETING LINES. FOR SOME YEARS AT LEAST AFTER THEY WERE BUILT THEY COMPETED WITH EACH OTHER ACTIVELY FOR TRANSCONTINENTAL AND INTERSTATE TRAFFIC" (page 1704).

The volume of competitive interstate traffic is insignificant. The reason for this is, that the lines of the two roads traverse a sparsely settled country. They really occupy two broad belts of territory running from the Mississippi River and Lake Superior to Puget Sound. For the greater part of the way, they are as far apart as would be two lines of railroad, one running through the middle of the State of New York and the other through the middle of the State of Pennsylvania. They come together at only two points in North Dakota where there is an appreciable amount of interstate traffic—Fargo and Grand Forks—two points in Montana—Helena and Butte—one interior point in Washington—Spokane—and at Seattle and four or five small towns on Puget Sound. The line of the Chicago, Milwaukee and St. Paul Railway Company extends from Chicago, St. Paul and Minneapolis to Fargo; the Union Pacific System extends to Butte and Spokane. Puget Sound rates are made by water competition

Defts.' Map, Ex. 4, p. 964.

Rates of defendant companies cannot be higher to the points named, than the rates of other carriers by rail or water, from a common territory.

(a) All interstate traffic, except that beginning and ending on the respective lines of the defendant railway companies, is carried under joint tariffs with eighteen railroad companies operating west of the Mississippi River and between that river and the Pacific coast, and one hundred and twenty companies operating east of the Mississippi River, and so connecting as to furnish through routes between practically all important traffic centers of the country, both east and west of the Mississippi River (fol. 3802).

The rates in joint tariffs are made by agreement between all the parties, and the tariffs are subject to withdrawal or change at the option of any party, not only as respects the rates, but the division of rates between the parties. In respect to traffic carried under joint tariffs, neither of the defendant companies has ever had, and neither of them can have, an independent rate-making power or control. All joint tariffs to and from points common to the lines of the defendant railway companies have always been, and necessarily will be, the same whether the traffic is carried by one or the other company. Joint rates from all the territory named in the joint tariffs have always been, and always must be, such as lines of railway competing with defendant railway companies for interstate traffic from such territory are willing to adopt. There is no competition between the defendant railway companies, as respects traffic carried under such joint tariffs, other than competition regarding divisions of the joint rate, and this does not affect nor concern the public. Should the defendant railway companies, through consolidation, become one company, the joint rates from all the territory named would not, for that reason, be different from what they otherwise would be,

because such consolidation would not, as respects rates or facilities, change the relation with other railway companies parties to the tariff.

(b) Ninety-seven per cent of the total interstate traffic of both companies is carried under joint tariffs to which they are parties, and concerning which they have no voice other than to accept terms and conditions which all other parties to the tariffs are willing to accept. Joint tariffs will not be different from what they otherwise would be because the board of directors of each company is selected by a single shareholder, holding a majority of the shares of the companies, instead of by many shareholders owning a majority of such shares.

The following table shows the percentage of interstate traffic subject to control by the defendant companies in the exercise of their rate-making powers. It does not equal three per cent. of the total interstate traffic of either company, and does not amount to $600,000 a year out of interstate earnings of each company exceeding $18,000,000.

The percentage of interstate traffic on the lines of the defendant companies, which can be controlled by joint action of the companies, is as follows:

Great Northern	2.78
Northern Pacific	2.89

Percentage of interstate traffic, the rates on which can be controlled by joint action of defendants with connecting lines:

Great Northern	.65
Northern Pacific	4.90

Percentage of interstate traffic, the rates on which can be controlled only by agreement with lines competing with the defendants:

Great Northern	6.89
Northern Pacific	2.58

Percentage of interstate traffic, the rates on which can be controlled only by agreement

with lines competing with defendant companies and with connecting lines:

Great Northern 17.09
Northern Pacific 13.25

Percentage of interstate traffic moving between stations on line of Great Northern Company, neither of which is reached by lines of the Northern Pacific 72.59

Percentage of interstate traffic moving between stations on line of Northern Pacific Company, neither of which is reached by lines of the Great Northern 76.38

Interstate business forwarded from and to towns reached by lines of the defendant railway companies only:

Great Northern $471,218.88
Northern Pacific 554,395.24

Total interstate business, both companies:

Great Northern $16,920,906
Northern Pacific 19,253,852

Exhibit "6," fol. 3819; Exhibit "7," fol. 3834; Rec., fols. 3147–3188.

Second Finding.

"IN THE SPRING OF THE YEAR 1901 THEY (THE DEFENDANT RAILWAY COMPANIES) UNITED IN PURCHASING ABOUT 98 PER CENT. OF THE ENTIRE CAPITAL STOCK OF THE CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY AND BECAME JOINT SURETIES FOR THE PAYMENT OF BONDS OF THE LAST-NAMED COMPANY, WHEREBY THE PURCHASE WAS ACCOMPLISHED, WHICH WERE TO RUN TWENTY YEARS AND BEAR 4 PER CENT. INTEREST PER ANNUM. THE AMOUNT OF STOCK SO ACQUIRED WAS OF THE PAR VALUE OF ABOUT $107,000,000, AND, AS IT WAS PURCHASED AT THE RATE OF $200 PER SHARE, THE BONDED INDEBTEDNESS OF THE TWO COMPANIES WAS THUS INCREASED TO THE EXTENT OF $200,000,000."

Rec., p. 1704.

The purchase was not joint. Each company purchased an equal interest in ninety-eight per cent. of the entire capital stock of the Burlington Company.

They did not become joint sureties for the payment of bonds of the Burlington Company. They executed their own joint and several bonds on account of the purchase of the Burlington stock, and pledged the stock as security for the bonds. The Burlington Company did not execute an obligation in connection with this purchase. The stock of the Burlington was worth all that was paid for it, and there was no thought of the Northern Securities Company or of any single ownership of a majority of the shares of the defendant railway companies, in connection with the purchase.

First Thought of Purchase.

MR. HILL:

"Q. Why was it, Mr. Hill, that you took no steps for the purchase of the Burlington road, or some other eastern connection, prior to 1900 and 1901.

"A. The earliest consideration of that question, which I recall, of a line to the south—and the Burlington was mentioned at the time—was in 1897. It was by some friends of mine in London. But we were just emerging from a period of business depression, and the undertaking was a very large one for the Great Northern Railway—a very large one. It was thought that, if the two roads having the same general interest in the broad question of developing their local business would take it up, the burden would be very much less, and the Northern Pacific was hardly in a condition to take it up sooner than the time when it was taken up. Its earnings and dividends were hardly established. While its earnings had been increasing quite rapidly, the company's recent reorganization left its credit somewhat on a different basis from the Great Northern, which had been paying dividends from its organization or commencement.

Fol. 2719.

MR. MORGAN:

"Q. When did you first hear of the proceeding or negotiation to purchase the entire capital stock, or

endeavor to do so, of the Burlington by the Northern Pacific? * * * * * *

"A. If you will allow me to state to you the history of that in my own words, I will tell you the transaction from beginning to end. I think it was in 1899—it may have been in 1898.—I made up my mind that it was essential that the Northern Pacific Railway Company should have its terminus practically in Chicago, and in the same manner that the New York Central, of which I am a director, at that time or soon after decided the same thing with regard to their line, that the western terminus of their line should be in Chicago, practically by acquiring the Lake Shore; in other words, that the transcontinental line should come to Chicago, and that the eastern line should go to Chicago, so that was to be the central point, and I talked it over with a great many people interested in the Northern Pacific, and I found they all agreed with me.

Fols. 1304–1307.

Why The Purchase Was Made.

The defendant railway companies have expended millions of dollars in building great instrumentalities of commerce. They have little to sell but transportation, and they are confronted with the problem of finding a market in which to sell it. The traffic beginning and ending on their respective lines is light, owing to the fact that the country traversed is sparsely settled or not settled at all. The commodities furnished for carriage are raw materials of great weight and bulk in comparison to value, and which will not bear transportation to market, except at a low rate, such as can only be made profitable by an increase in volume of traffic. The cost of running a train is practically the same whether it is light or fully loaded. The cost of moving a ton of freight on any railroad decreases as the number of tons moved on it increases. It became indispensable to the welfare of the defendant companies,

and to the development of the country which they serve, that they should take steps to increase their volume of interstate and international traffic, in order to be able to reduce rates and meet, not only the competition of railway lines, but competition on the ocean and by way of the Suez Canal. To do this it was necessary to reach markets for the products of the territory along their lines, and to secure connections which would furnish the largest amount of traffic for their respective roads, and thus increase trade and interchange of commodities under conditions more favorable, because more permanent, than joint tariffs subject to be withdrawn or changed at any time, without their consent and against their protest. *Had the line of the Burlington Company not been constructed, and had the defendant companies constructed it as it is now located, the act would have been regarded as a great achievement for the country served by it, as well as for the country served by the lines of the defendant railway companies, because of the advantages to be derived in creating and interchanging traffic. The resulting increase in volume of traffic would enable the companies to reduce rates, and thus strengthen each company in its competition with the more southerly lines, with the Canadian Pacific Railway, and with European carriers, for the trade and commerce of the Orient.*

MR. HILL:

Q. State whether the Pacific coast, and the population reached by your lines there, furnished a sufficient market for the commodities which it was necessary for you to carry westward, in order to give low rates eastward on your line.

A. At the time the road was completed, (it was in 1893) and for a short time afterward, the westbound merchandise furnished more than enough empty cars

to move the lumber east, but within a short time, two or three years, the lumber trade had grown very rapidly, and the Alaska trade sprang up, and that furnished a larger westbound movement. Honolulu increased the westbound movement, and to some extent in 1896, by making very low rates, we were able, for the first time, to take American rails to Japan (fol. 2647).

Q. What steps did you then take, what markets did you seek for westbound traffic on the line?

A. Well, we took every step we thought would result in developing the trade. I sent men to Japan and China and kept them there—one man for over a year. His business was to get a manifest of every ship that entered or left a Chinese or Japanese port, as far as he could; to find what the exports and the imports of those countries consisted of, and where they went. Afterwards we sent one of our traffic representatives and kept him there for a time. We also had men in the east, and wherever there was any business or likelihood of business.

Q. I wish you would go on now, and state in a general way the growth and development of this Oriental business and traffic, what steps you took to secure transportation across the Pacific Ocean, and also what connection or relation, if any, there was between the building up of this Oriental commerce and the purchase of the Burlington road or the stock of the Burlington?

A. We found that the lumber supply of the United States, east of the Rocky Mountains and north of the Ohio River, was becoming more and more dependent upon the Washington and Oregon forests, and that the time was rapidly approaching, when the States that theretofore furnished the lumber for that region would not be able to furnish lumber enough to meet their own consumption. Michigan furnished, for a long time, the bulk of the lumber going into the States east of Lake Erie or of Detroit, and also the large markets in Chicago and west of Chicago. I think it is reasonably safe to say, that Michigan does not furnish to-day as much lumber as she consumes. *I have given a great deal of attention to that matter, because at the time we considered building the road, and when I first went to the Pacific coast, if we could not carry that lumber to market there was absolutely nothing else for us to carry, and no use in building a road there.* I felt, after making a thorough examination of the lumber trade of the

country, that it was only a question of time when that would be the source from which all the northern lumber would have to be supplied, or practically all; and the result has shown that the time when such would be the case is much shorter than I anticipated. But in order for that lumber to move, it must be moved at a low rate; and in order to make a low rate you must have a large tonnage, and you must load your cars in both directions. That carried us to investigating the different markets to which we could send anything that was made in the east. In 1896, in the fall, we had just closed an agreement with the Japanese General Steamship Company to put on a line of through steamers running to our terminal at Seattle in connection with our road, and the conditions of the contract were such as to enable us to make a rate from the east to the Orient. I remember when those men were present with us. Some of them were interested in securing rails for their railroads. I asked them where they were going to get their rails. They thought they would either get Belgian or English rails. The Belgian rails would come from Antwerp, the English rails from Middlesboro. I asked them, as they were going to stay here a day or two, to let me see what could be done for American rails. I immediately cabled to my friends in London and got quotations for Antwerp and Middlesboro rails, and the best charters to Yokohama. I remember that the rails could be laid down at about $29, the English or Belgian rails. I telegraphed to Chicago. The time was rather a quiet one in American manufactures, especially with the rail mills (the Joliet and one or two otheas were about closing down) three or four weeks before election, and possibly they were a little anxious to keep their mills running. I told them if they would make a price of $19.50, we would give them a rate of eight dollars a ton—or 40 cents a hundred—from Chicago to Yokhama, which would be $1.50 a ton lower than the English or Belgian quotations. After some hesitation they made the price and got the contract for 15,000 tons.

Fols. 2647–2656.

Cotton.

Some Japanese were passing through. The men I had out there reported the amount of cottan spun in Japan, and the fact that the cotton came—raw cotton

—mainly from India; a short staple cotton, which made an inferior yarn and sold at a low price. I got these gentlemen to try a small shipment of American cotton, with the guaranty, if it did not prove profitable to mix our long staple with their short staple of India, that I would pay for the cotton. The result of that was very satisfactory. The cotton trade has grown very fast, both raw and manufactured, but especially raw cotton. We have chartered ships to run to Honolulu, and make low rates there. The rates we made, and the rates we are making now, are very low. We make a rate from Minneapolis to Hong Kong, or from St. Paul, or any part of the state here, to Hong Kong, that would enable them to ship flour, if the Chinamen wanted to use flour, or were able to buy it (they are rather poor over there just now, and have to be content with millet, they can't buy flour). In carrying this business forward we were soon brought to a point where we realized that the rates, in order to build the traffic upon a permanent basis, must be permanent, or reasonably so. We found, in going to the south for cotton—Texas cotton going to Galveston, and the Gulf states cotton going to New Orleans, that it went at different rates, and went from New Orleans to foreign ports at such rates as the ships were inclined to make, according to the supply and demand for tonnage. *We found that it was necessary for us, in order to be on a permanent basis, to have more than a joint rate, to have more than a joint tariff, which might be withdrawn at any time. We could not build up a great permanent business, extending across the continent, and even across the ocean, on the basis that to-morrow the rate might be changed, or the party with whom we were working to reach the different points of production or consumption, had some other interest, or some greater interest elsewhere. It was necessary in doing this that we should have some reasonable expectation that we could control the permanency of the rate and that we would be able to reach the markets. In other words, if the man producing lumber on the coast, or cattle on the ranges, or ore in the mines, could not find a market for it, and if we could not take it to a market that would enable him to sell his stuff for a profit, he would have to stop making it. That was the line we worked upon, and that was the reason we felt called upon to put ourselves in a position where we could control access to the markets for him and access to*

the production for the west-bound. The Burlington reaches, more than any other road in the country, I think, these particular conditions; I think probably as much as all the other western roads put together.

Q. In that particular, as to the places which it reaches, what are the distinguishing features of the Burlington, as compared with the other roads; what points does it reach?

A. Well, if you will commence in the west, it connects with the Northern Pacific at Billings; it reaches Denver; it reaches Lincoln and Omaha, Nebraska; coming east to Des Moines and to Burlington, and going south to St. Joe, Kansas City and St. Louis; and then you may commence at St. Louis; and it reaches every town between St. Louis and the Twin Cities. It reaches Chicago, Peoria, Galesburg, Aurora—all those large points in Illinois. I had the figures and probably I might be able to find them. It reaches a very large percentage of all the manufacturing interests in the state of Illinois, and Illinois is a large manufacturing state.

Q. What are the principal markets in the West for the cattle that are brought over your line from the ranges?

A. Well, the principal markets in this country over all lines are Omaha, St. Joe, Kansas City and Chicago.

Q. All reached by the Burlington?

A. By the Burlington.

Q. As for this ore from the mines, that is shipped eastward?

A. Well, the Burlington runs to Denver and has connection over some road to (Pueblo) Colorado, but Denver and Pueblo are the principal western terminal smelting points.

Q. Omaha?

A. Omaha, Kansas City, Aurora (Illinois) and the Black Hills. I think, outside of the copper smelting in Montana, those points cover three-quarters of the smelting in the United States.

Q. What advantage does the Burlington give you in regard to obtaining cotton for shipment?

A. The Burlington, at St. Louis and Kansas City especially, connects with all the southern railways reaching the cotton fields. To illustrate. Mr. Ripley, President of the Atchison, a few weeks ago told me he found they could make more money loading their cars that went down to Texas and back to St. Louis with cotton,

than they could in hauling the cotton to San Francisco. They would rather haul it up to St. Louis in the return cars and give it to us and let us take it abroad, because they had to haul the car that took it to San Francisco back empty. They had no lumber to bring back, and we had lumber to bring back, for every car we carried. So that the question is one that depends on the low rate, on the bulk of the traffic, the density, the amount of the traffic and the ability to load in both directions. It would seem rather strange that we should take cotton from Texas to Puget Sound (I think Puget Sound last year carried 75% of all the cotton that left the Pacific coast, and it is the farthest port from the cotton) but the conditions are such as to enable us to carry it there.

Fols. 2657 to 2666.

MR. MORGAN:

"There was the St. Paul, and the Burlington & Quincy and the Wisconsin Central. Of course, we would not have taken the last one anyway. Consequently we came down to the question of the St. Paul. I made up my mind that of the two I would rather have the St. Paul. Soon after that I met Mr. Hill, and I said 'Mr. Hill, I think that is the best thing we can do.—I think your line perhaps is in the same condition.—I think we had better go to work and secure the St. Paul road, or a road to Chicago, and if you will share with us, we will do it together.' He said 'All right.' So he said, 'Who would take it up?' I said, 'I will; I think we had better take the St. Paul.' He said he thought we had better take the Burlington. I said I would rather have the St. Paul; because the financial responsibility to take the St. Paul would be less. He did not agree with me, but he acquiesced in my decision, and we discussed that question. I took up negotiations—not in any secret manner. We went directly to the directors of the road and told them what we wanted. We found some of them disposed to make the transaction, others were not. I will tell you what my reasons were for taking the St. Paul in preference to the Burlington. Mr. Hill's opinion—I will give you what I understood to be his opinion—was that the Burlington system offered a better market for the coarse freight we were hauling from the Pacific Coast for distribution than the St. Paul, and he

wanted the Burlington because he thought that would have been open for the freight from the Pacific to greater advantage than the St. Paul. However, as I say, he acquiesced in my decision. These negotiations, as I said, went on for some time, and finally the directors of the St. Paul asked me for a conference, and then they told me very frankly that they had decided they would not let us have the road on any terms. * * * Then I went to Mr. Hill and told him so. You can go ahead and see what he could do with the Burlington, and he took up negotiations with the Burlington, which were carried through successfully. That is the whole story. * * * It was a transaction entirely independent of all other transactions that you have in mind, or anything of the kind. It was a perfectly independent transaction, and it was done to attack nobody or to do anything. It was simply to bring those two northern lines to Chicago.

Fols. 1308–1312.

Joint Rates.

MR. HILL:

Q. In reference to shipments of cotton especially, and other articles, what disadvantage was there in its being carried over separate lines under a joint tariff, which you do not have where it is carried with both roads under the same control, for instance, in the matter of breaking bulk, or anything of that kind, shifting from cars?

A. Well, it is almost a necessity, if business is to be at all permanent, to be able to control the rate. The rates on the high seas vary according to the supply and demand for ships; and we, in order to take this business west, must be in a position to compete to take the traffic, one day with another. The line between here and St. Louis, if the Burlington, was not in a position to work with us, and to continue to work with us, might find some other connection that would give it a larger division than we could make of the rate; they might find or feel that it was their interest to work with somebody else. Maybe they would give them some other business in lieu of this, and we would have to hire some other road to haul that business from St. Louis here, at the best

rate we could get. We could not control it except through the option of some other road, which might at any time withdraw the rate; might at any time refuse to make a joint rate with us, except on terms that would be prohibitory. And in that way, we could not go very far. We would not be in a position to compete for that business. We must either take that business to the Coast—we must take all the westbound business we can get to the Coast, or else we must advance the rate on the lumber. Now, outside of cotton—take nails, wire, articles of that kind, that business has grown to very large dimensions, but our rate is a very low one. From Lake Erie to Hong Kong it is 45 cents a hundred, $9 a ton, on those commodities. But the demand for American steel at home makes it almost a matter of indifference whether they send it or not, so we have to look, not only for cotton, but we have to look to anything that will furnish us business going to the west, whether it is going to the Pacific coast or to Alaska, or to Honolulu, or to the Orient, or Manila—anywhere; we must try everything. *During the season of open water, during the season of navigation, we can make rates from Buffalo and the lower lake ports by way of Lake Superior on our own lines, but that does not reach to the south, and only takes the manufacturing districts south of the lakes during the season of navigation. A line reaching St. Louis and all the trunk lines of the south, and the trunk lines of the east, between St. Louis and Chicago, puts us in a vastly different position, and that is the reason why it was of such importance for us to control the situation. We could not control it without controlling the access to the main centres. We could not control it unless we could give a market for the production of the line—products raised along our road—whether it was out of the mine, from the farm, or out of the forest. If the man who produced it could not sell it, he would stop producing. And that was the problem we had to meet, and with the Burlington we find ourselves able to meet it.*

Fols. 2686, 2690.

Q. Now, to get back to the increase of traffic that was to come to you from the Burlington by reason of your acquisition of it. Do you wish to be understood as stating that because the Northern Pacific and the Great Northern purchased the Burlington road, traffic was actually created by that fact? Or did you mean

to say that you would get a larger portion of the Burlington's traffic by reason of your ownership of the Burlington?

A. *Not by any means. The object was to make it possible to carry out a clearly and well-defined plan. If we depended upon joint tariffs, if we depended upon lines of railroad coming here that had no interest in our road, or we had no interest in them—take for instance, the St. Paul road, which has just been or is advertised as having been allied with the Union Pacific; the Chicago and Northwestern which comes here and has a contract with the Union Pacific; their lines reach away out to Omaha and into the Platte Valley; they have a direct interest in taking their business over their own lines and not bringing it here. Now, we wanted to be in a position where we were not subject to the good will or the changes of ownership of any railway; we wanted to be in a position where we could reach these centres, and to do that the Burlington gave more ground than any of the other lines —practically, I think, as much as all of them. And it was to put us in a position where we would not be defeated in building up the traffic of these northern States and the northern lines to the East.*

Fol. 2916.

Q. I ask you now, do you state that the acquisition of the Burlington by the Northern Pacific and Great Northern will create traffic that would not otherwise exist?

A. *It has created traffic. The figures show that the traffic has increased very materially. Now, how much of that traffic would have been created, or would have existed, it is very difficult for me or anybody else to say. But we know that the traffic has increased since the acquisition of the Burlington, to an enormous extent, and we know further that we are able not to compete alone with railways, for that is a small matter in this business, but to compete in the matter of rates with the ships going from New Orleans or from Galveston, or the railways carrying it anywhere, or in connection with any other system of transportation. Now, we are able to make a rate that will take that business. And it was that rate I had reference to, and that policy and that ability that I tried to make plain yesterday.*

Fol. 2920, 2921.

MR. HARRIS:

Q. What is the mileage of the Burlington?

A. In the state of Illinois, 1,500 miles; Iowa, 1,400 miles; in Nebraska, 2,400; Missouri, 1,100; Kansas, 260; Colorado, 400; Montana about 200; Wisconsin, 223; Minnesota, 38; altogether about 8,200 miles main track, counting straight main track, and about 460 miles of double track.

Q. Will the acquisition by the Great Northern and Northern Pacific of the shares of the Burlington restrain trade and traffic between the states and foreign countries?

A. On the contrary, I think it will promote business very greatly, and develop latent resources and enable forest, mineral, and other products and resources to be utilized which are now idle.

Q. Speak on that subject with respect to general merchandise, manufacturing industries and products.

A. I think that the practical extension of the Burlington road to the Pacific coast, by reason of its connection and union with those two lines (whatever you may call it,) and the practical extension of those lines into the Mississippi and Missouri valleys, and throughout all the country occupied by the Burlington lines, by affording an opportunity to merchants and manufacturers to extend their markets, that they will do it, and that the opportunity to trade will be taken advantage of to promote business and commerce.

Fols. 2969-2972.

MR. MELLEN:

Q. Did the acquisition of the stock of the Burlington road by the Northern Pacific and the Great Northern have any effect or influence to restrain or hinder trade or commerce between the states and with foreign countries.

A. I thought it promoted rather than hindered it.

Q. Will you tell us in what respect it promoted it?

A. It resulted in a much freer interchange of business between the Northern Pacific and Burlington. The business increased very much. It has been more to the interest of the two companies to work closely together. It has opened a much wider market to the products tributary to the line of the Northern Pacific and the business has increased. I have no figures to show, but it is my impression the business

has increased very considerably, and is bound to increase from month to month, and from year to year, as the result of the acquisition.

Fol. 3417.

Q. Why does this existing arrangement between these roads tend to create or promote business beyond what a mere connection and joint tariff would have done?

A. It is among the possibilities that a joint tariff and interchange under the same might produce a large business, similar to that perhaps that we are now doing, but it is uncertain and insecure, and people establishing large industries, and seeking a market, want to be sure of a secure one, that it may not be subject to the whims of management, that might possibly see in another part of the country a chance to get a few cents more on a carload of freight and divert the lumber business now coming from the state of Washington, say to Texas, or some other point where a supply could be obtained under a division of rates with the Burlington road. That might make it equally as well for the Burlington road, but at the same time would cause the Northern Pacific a great loss.

Fols. 3424–3425.

Beginning of Negotiations.

Negotiations were commenced with the directors of the Burlington Road in January, 1901, and concluded in April.

Fols. 101–103, p. 27.
Fol. 170, p. 44.

There was no connection between the dissolution of the Northern Pacific voting trust and the purchase of the Burlington stock.

MR. MORGAN:

Q. When was it first decided to dissolve the voting trust of the Northern Pacific?

A. I think in October, 1900.

Q. Why was that decided ?

A. I came to the conclusion that the condition of the company was such that it could be safely turned over to the stockholders, and for the reason that I thought the time was approaching when it would be desirable to retire the preferred stock, and I preferred that that question should come up before the stockholders then rather than the voting trustees, and that was one of the leading reasons which induced me.

Q. Was the question of retiring the preferred stock ever submitted to the stockholders ?

A. No, but I mean that they should act upon it.

* * * * * *

The retiring of the preferred stock, of course, was in the hands of the directors, but those directors were elected by the voting trustees. There was an election in October, 1901, to elect directors. I preferred that that election should take place by the stockholders themselves, rather than simply by the voting trustees.

Fols. 1285–1287.

* * * * * *

When the Northern Pacific was reorganized, the times were very bad, and the indebtedness of the Northern Pacific—the old company—was very large. It was not possible, it was not desirable, and I don't think it would have been possible at that time, with the credit of the Northern Pacific in the market, or the public opinion of the value of the property, to get a syndicate up large enough to raise an almost indefinite amount of money. At the same time, provision had to be made to take up bonds and stock of the old company under the reorganization. Consequently in making up the plan Mr. Coster and myself, together with Mr. Stetson, who advised us on the legal points of the question, decided this point, that if we could issue a preferred stock, which would be a temporary security upon which we would not have to pay interest unless the road earned it, and which at any time we could retire if we wished to. that that would be a safe transaction, and that plan was decided upon, and such a security was issued in the shape of the preferred stock. That preferred stock, as you will see by the plan of reorganization, which I have agreed to submit to you, was used to take up obligations in the shape of bonds, notes, and old debts of the original Northern Pacific Company, and it was successful, and

from the day that that plan of reorganization was issued, we never had one moment's doubt that within a very few years, and before the expiration of the time fixed for the voting trust, that the common stock would have reached a point in its price where it could be sold at par, or better, and the preferred stock retired, which restricted not only the income of the property, but also restricted certain lands which were set aside, and upon which the preferred stock was, to a certain extent, a lien. Consequently, it was always considered, and always known, by everybody connected with the Northern Pacific, that the amount of preferred stock which was outstanding was simply a temporary loan until we should issue the common stock at par and take it up, and, consequently, in dealing with the question, the question simply was when the directors of the Northern Pacific should decide that it was expedient to do it.

Fols. 1291 to 1294

MR. STEELE:

Q. Do you know how it happened that a plan of retirement was adopted that prevented the preferred stockholders from participating in the benefits, and obtaining convertible certificates?

A. I know how it was adopted. It was adopted by a vote of the board of directors.

* * * * * *

Why it was adopted was, it was considered by us, my firm, who were fiscal agents, and by the board of directors, as a fair, equitable, wise and expedient plan to pursue.

Q. And it was also considered by your firm that if any other plan was adopted, or if the preferred stockholers were given equal privileges in the retirement, that it would throw the control into this other interest (the Union Pacific) that had the $78,000,000, was it not?

A. No, sir.

Q. That was not considered at all?

A. We never took that into consideration at all.

Fols. 1214 to 1216.

Q. Do you know why it happened to be taken up and acted on at that particular time?

A. I do; it had been intended from the time of the reorganization to retire the preferred stock as soon as the company became financially able to do so. The voting trust by its terms continued until January, 1902, but in the fall of 1900 the company had become very prosperous; it was very strong, and it was deemed by the voting trustees that they had fulfilled the purpose of their trust, and that they could properly dissolve the voting trust on the first day of January following, which was 1901. The only uncompleted object of the reorganization was the retirement of the preferred stock, and they intended at the time that the voting trust was dissolved that the preferred stock should be retired on the first of January, 1902, that being the first date when it could be retired under the provisions of the charter, by-laws and stock certificates.

Fols. 1217–1219.

The Burlington purchase was not made with a view of organizing the Northern Securities Company, or unifying ownership of the Great Northern and Northern Pacific shares.

MR. HILL:

"Q. In planning and carrying out the purchase of the Burlington shares, was it any part of that scheme, so far as you know, that the shares of the Great Northern and Northern Pacific Companies, or any of those shares, should be put into a holding company?

"A. That was no part of the Burlington transaction; it was not considered. I don't know that it was thought of. I know it was never discussed, and I don't think it was thought of or cut any figure whatever in the Burlington purchase.

* * * * * *

But the question of the Northern Pacific and the Great Northern ever being put into a common ownership was not thought of in that connection nor until long afterwards.

"Q. At the time of making the Burlington purchase was there any purpose on your part or, so far as you

know, on the part of your associates, or Mr. Morgan and his associates, of increasing your holdings of Northern Pacific stock so as to obtain a controlling majority of that stock?

"A. There was no effort made to increase the holdings of the Northern Pacific by the stockholders of the Great Northern that I know of, and I am very well satisfied that had such been the case I would have known of it. In fact, some of them had sold their stock as the prices advanced. As to Mr. Morgan's views about increasing his Northern Pacific, I do not think Mr. Morgan's people increased their holding of Northern Pacific up to and during the time the Burlington transaction was being considered.

Fols. 2720, 2724.

Q. Between March and the 1st day of May, 1901, had you and others representing the Great Northern and J. Pierpont Morgan & Co. been buying stock in the Northern Pacific?

A. I had not. I don't know that any one else had for Mr. Morgan or the gentlemen you have named.

Fol. 180, p. 46.

Q. At that time, in April, (conclusion of the Burlington purchase), how much common stock did you and your immediate associates hold in the Northern Pacific?

A. I should think, on the 1st of April, somewhere from 33 to 35 millions.

Q. And about how much of that was held on the 21st of April?

A. Well I don't know that it was not all held then. I know that on the 9th of May, after there had been a struggle, or we will say up to the 3rd of May, after prices had been put up to above par, 110 or 120, and it was actually demonstrated that there was an attempt to buy the Northern Pacific, I sent word to a few of my associates who were large stockholders, and they sold no more of their stock from that time. Some of them had parted with large amounts of the stock. I know that Morgan & Co., for a fund they had, on the 2nd of May, sold over a million dollars, probably a million and a quarter or more of the stock. They thought that the market price was quite high, and did not believe that anybody was trying to raid the property.

Q. On the 5th and 6th of May the holdings of yourself and the gentlemen associated with you amounted, as I think has already been testified, to between 21 and 22 millions of common stock.

A. I think, at that time, the closest estimate I could make was between 20 and 21 millions" (fols. 2727, 2731).

Thus it appears that prior to May 5th, there had been no attempt on the part of Mr. Hill, and those charged with being his associates in the alleged combination, to increase their holdings of Northern Pacific stock, but on the contrary some of them had sold, between the 1st day of April, and the 3d day of May, several millions of Northern Pacific shares which they had held for a considerable time, and which they would not have sold had they contemplated placing a majority of Northern Pacific shares in the hands of a single owner.

Pending the Burlington purchase, Union Pacific interests requested to be allowed to join in the purchase because the defendant railway companies were getting too strong, and were going down into the country served by Union Pacific interests, and taking from it traffic and people.

MR. HILL:

Q. Did the Union Pacific, or anybody representing the Union Pacific, at or about the time you opened negotiations with the trustees or directors of the Burlington Railroad Company, request to be allowed into the deal of purchasing the Burlington?

A. About the time that the Burlington people and representatives of the Northern Pacific and myself had arrived at an understanding in regard to the Burlington property, matters were so far advanced that Mr.

Baker, on behalf of the Northern Pacific, and myself were going to Boston, and we were requested by two members of what had been the Union Pacific reorganization committee, or acting for the Union Pacific people, to be allowed to join in the purchase. (This was early in March.)

Fols. 171 to 173, p. 44.

Q. You have been questioned as to what effect or what injury the acquisition of the Northern Pacific stock by interests hostile to the Great Northern or hostile to the development of this Northwestern country, would have on the Great Northern Company. Now, I want to ask you what effect would such an acquisition of the majority, or of the control of the Northern Pacific by a corporation which had greater interests in other directions than it had in developing the country traversed by the Northern Pacific, developing the country and making that country valuable—what effect would that have on the minority stockholders of that company, including yourself; on their property, their stock?

A. The value of the property would be destroyed. Its growth would be restricted. It would be controlled in the interests of another property or body for the reason that it would be restricted, or might be restricted, so as not to interfere with the growth of the other property. We were making great efforts, and very successful efforts, at that time, to settle up all this northern section between the Great Lakes and Puget Sound, and bringing in an enormous number of people, many of these people coming from the line of the Union Pacific in Kansas and the Southwest, bringing them up here. *And I remember one reason why they wanted to get a joint interest in the Burlington; they said we were getting too strong for them; we were going down into their country and taking people from there. That was one of the reasons they gave.*

Fols. 2945–2948.

Q. You understood at that time that the Union Pacific owned and controlled the majority of stock of the Southern Pacific?

A. I have never understood that it owned a majority of the stock. I knew that it had purchased, or at least was informed, that it purchased, the Huntington interest, but that was not a majority.

Q. And the Southern Pacific controlled the Central Pacific?

A. Well, I don't know which was considered the parent company, whether the Central controlled the Southern or the Southern the Central. It was one interest.

Q. And the Oregon Short Line had been controlled and managed by the Union Pacific?

A. For some time.

Fols. 521–524.

Union Pacific interests, after refusal of request to join in the Burlington purchase, acquired a majority of Northern Pacific shares.

This purchase was made to acquire an influential voice in the control of the Northern Pacific Company, and to prevent the carrying out of the plan of the Northern Pacific and Great Northern Companies to increase their volume of interstate and international traffic through the Burlington purchase. The Union Pacific Company, through its proprietary lines and connections, had access to Butte, Montana; Spokane, Washington; Portland, Oregon; and through its relations with the Southern Pacific, and with lines running to Chicago, had a much more direct communication with the great traffic centres of the country east and west of Chicago than the defendant railway companies, and more permanent business relations than those depending upon joint tariffs. After the close of navigation through the Great Lakes, the defendant railway companies could obtain little interstate or international traffic except by connection with lines running to Chicago, and under joint tariffs which could be withdrawn or changed at any time without their consent.

MR. HARRIMAN:

Q. You are a member of the board of directors of the Union Pacific and chairman of its executive committee?

A. Yes, sir.

Q. You are also officially connected with the board of directors and the executive committee of the allied interests of the Union Pacific?

A. Nearly all of them.

Q. On or prior to May 9, 1901, had you, acting for the companies or railway interests that you represented, acquired certain stock in the Northern Pacific Railway Company, amounting in round numbers to about $78,000,000 par value.

A. Yes, sir.

Q. And that stock stood in your name and that of Mr. Pierce holding it for the interests that you represented?

A. Yes, sir.

Fols. 3564–3566.

Q. I suppose when you acquired the stock you supposed you had acquired a controlling interest in the Northern Pacific?

A. Practically that is what we thought.

Fol. 3578.

Q. When you began buying this stock for your company or companies you did it with the expectation of acquiring control in the Northern Pacific, of course?

A. Or an influential voice in the management.

Q. And you knew that you did in fact have a majority of the combined stock of the Northern Pacific after you got through with your purchases?

A. Certainly.

Q. And would continue to control that company unless they retired your preferrred stock?

A. Or unless we sold it.

Fol. 3599.

Q. Mr. Harriman, has the Union Pacific any stock interest in the Southern Pacific?

A. Yes, to an amount between 35 and 40 per cent. of the entire capital stock. It was acquired by purchase.

Fols. 2385–2386.

Q. Any other interest in the Southern Pacific, except what results from that ownership, any lease, guaranty of dividends or bonds?

A. No; nothing whatever.

Q. In round numbers what does that stock at par value amount to?

A. To about $75,000,000 of the total capital stock of the Southern Pacific, which is about $200,000,000. That stock is held by the Union Pacific Company—the corporation.

Fols. 2386-2388.

Q. You are President of the Oregon Short Line?

A. Yes, sir.

Q. And the Union Pacific owns all of the stock of the Oregon Short Line?

A. Approximately all.

Fol. 2390.

Q. What is the total capital stock of the Oregon Short Line?

A. I think between 27 and 28 millions.

Q. It purchased how much stock of the Northern Pacific?

A. $78,000,000.

Q. How did it pay for that stock?

A. Some in cash and some by issuing its own obligations against that stock. 15 or 20 millions in cash came out of its treasury.

Q. How was the money raised by the Oregon Short Line to acquire the balance of $60,000,000?

A. By issuing its own certificates of indebtedness. The Union Pacific helped the Oregon Short Line to finance it and purchased from the Oregon Short Line the certificates of indebtedness, the money for which it used in paying for the Northern Pacific stock.

Fols. 2393-2395.

Q. The Union Pacific Company owns $75,000,000 of the stock of the Southern Pacific Railroad Company, or Southern Pacific Company. The Union Pacific Company also owns all or nearly all of the stock of the Oregon Short Line. The Oregon Short Line owns all or nearly all of the stock of the Oregon Railroad and Navigation Company?

A. The Short Line has a considerable interest in the Navigation Company. I think our reports show that the Union Pacific owns a considerable interest in that company.

Q. What the Union Pacific does not hold in the Oregon Railroad & Navigation Company the Oregon Short Line does?

A. Practically.

Fols. 2410–2412.

At the time of the purchase by Union Pacific interests of a majority of Northern Pacific shares, J. P. Morgan & Co. owned about six millions, and Mr. Hill and associates named about twenty millions, of the eighty millions of Northern Pacific common. On learning of such purchase J. P. Morgan & Co. bought fifteen millions of Northern Pacific common, in addition to the six millions then owned by the firm, and this, with the twenty millions owned by Mr. Hill and associates, made a majority of the eighty millions of Northern Pacific common. This purchase was made in the belief that the Northern Pacific Company had a right to retire its preferred stock on the 1st day of January, 1902, through an issue of new common, and with the expectation that the stock owned by J. P. Morgan & Co. and Mr. Hill and associates would be held for the purpose of retaining stock control of the Northern Pacific Company, as a defensive measure to protect themselves and other shareholders of the defendant railway companies against

the attempt of the Union Pacific to defeat the purpose for which the Burlington shares were purchased.

In interstate and international commerce the defendant railway companies compete, within this country and on the ocean, with other carriers. Their rates are and must be made in competition, not only with other lines of railway, but with carriers upon the ocean and by way of the Suez Canal. They were placed at a disadvantage with the Union Pacific and other transcontinental railroads, as well as with European competitors, by want of a sufficiently direct connection with the great traffic centres of the country, east, south and west of Chicago, which offer the best markets for the products of the country along their lines, and from which their traffic must be largely supplied. For many months they had considered best means of getting closer to those markets and sources of supply. Their purchase of Burlington stock was made because the lines of the Burlington, better than those of any other company connecting St. Paul with Chicago and other traffic centres, fulfilled the requirements of both companies in respect to markets for eastbound and freight for westbound traffic. At the time of the purchase of Burlington stock, it was not contemplated by either purchasing company, that any alliance between them, or among their shareholders, was needed to preserve to each company its fair share of the advantages secured by the purchase. It was thought that the manifest interest of each company rendered any further guaranty or security needless. The intent of the purchase by Union Pacific interests of a

majority of Northern Pacific stock was to defeat, and if successful it would have defeated, the carrying out of the purpose for which the Burlington stock had been purchased, and would have subordinated the policy of the Northern Pacific and Great Northern Companies to an interest adverse to both. The defendant companies having executed joint and several bonds to an amount exceeding $200,000,000 for the purchase of the Burlington shares, the control of the direction of one of the defendant railway companies by Union Pacific interests would impose upon the other the burdens of the joint obligation, and take from it to a great extent the benefits to be derived from the purchase. Until J. P. Morgan & Company and Mr. Hill learned of the purchase by Union Pacific interests of a majority of the Northern Pacific stock, there was no purpose on the part of either of them to increase their holdings in that stock, which at the time did not exceed $26,000,000 out of $155,000,000 total outstanding stock of that company. The Union Pacific purchased about $37,000,000 common and $41,000,000 of preferred. The preferred stock was subject to retirement under the provisions of the Northern Pacific charter and stock certificates. The additional purchase of $15,000,000 was made by J. P. Morgan & Company with an understanding with Mr. Hill, and the stockholders named, that they would hold the Northern Pacific common they then owned. That understanding related solely to the opportunity of acquiring a majority of Northern Pacific common, upon the retirement of Northern Pacific preferred, as it was believed that the latter could, at the option of the company, be retired January 1st, 1902. The organization of the Northern Securities Company,

or any other investment company to hold Northern Pacific shares, had not then been thought of or discussed.

MR. HILL:

Q. About what time did you learn of the large holdings of the Union Pacific or the Oregon Short Line?

A. Early in May is my best recollection.

Fol. 180, p. 46.

Q. On and prior to May 7th, 1901, how much stock par value did you and your associates hold in the Northern Pacific, that is, of the common stock?

A. I should say in the neighborhood of eighteen or twenty millions.

Q. And on and about that time, how much of the common stock of the Northern Pacific did J. P. Morgan & Co. hold?

A. Seven or eight millions; they held or controlled it.

Q. And subsuquent to that time, May 7th, and before May 9th, did J. Pierpont Morgan & Company, or did you and your associates, acquire further Northern Pacific common?

A. The members of the firm asked me if myself and friends would hold the stock and not sell out. I told them we would, and they went into the market and bought some fifteen or sixteen millions. My recollection is on Saturday and Monday prior to the 9th of May.

Q. Then prior to the morning of May 9th you and your associates, J. Pierpont Morgan & Company and other associates held somewhat exceeding forty-two millions par value?

A. Something less than forty-two millions—in that neighborhood.

Fol. 184 to fol. 186, p. 47.

Q. When did the retirement of the Northern Pacific preferred stock come up between you and your associates and J. P. Morgan & Company?

A. I don't know when it was first mentioned. It was always understood from the time of the reorganization, that the preferred stock would be retired, and that there would be one kind of stock.

Q. But what I mean is after, say May 9th, was there any definite plan between you and your associates and J. Pierpont Morgan & Co. with reference to the retirement of the preferred stock?

A. I think that between May 1st and the time they made up their minds to buy the control of the common, that it was decided to exercise that privilege.

Q. And that was decided upon between you and your associates and J. Pierpont Morgan & Company?

A. No; they simply said that that could be done, and they would do it. They wouldn't hand over control of the property. Mr. Morgan had a good deal of feeling that the Northern Pacific had been a difficult property to keep on its feet and get it on its feet. His name was connected with it, and he had a good deal of pride in not handing it over to a rival.

Fols. 251–253, p. 64.

Q. And having a complete majority of the common stock, that would give you and your associates, and Mr. Morgan and his associates, complete control of the Northern Pacific?

A. Of the Northern Pacific, through a majority of the common stock.

Q. Yes; that is what I mean.

A. And the Great Northern had a very direct interest in knowing that the control of the Northern Pacific was not going to be vested in the friends of the Union Pacific, because, if that was the case, the Northern Pacific, owning one-half of the control of the Burlington, with the control of the Northern Pacific in the hands of the Union Pacific, the Great Northern would have had to go into the hands of the Union Pacific.

Q. Now, Mr. Hill, when subsequent to this determination to retire the preferred stock was it definitely decided upon to retire?

A. Before myself and friends would agree to hold our Northern Pacific we had the promise of Morgan & Company that the preferred would be retired.

Fols. 254, 256, p. 65.

Q. Well, you and Mr. Morgan had that understanding that it should be done?

A. Mr. Morgan was abroad. His partners were at home and I stated to them, if you will retire that pre-

ferred stock under the conditions under which it was issued, we will not sell our stock—we will co-operate with you.

Q. And it was upon that agreement and understanding that you and your associates continued to hold the common stock?

A. As I testified before, it was a very important matter to the Great Northern. It was a question whether we controlled our property or whether the Union Pacific controlled it through the Burlington and Northern Pacific. If that stock had not been redeemed, and the Union Pacific controlled the Northern Pacific and half of the Burlington, they would very soon have controlled the Great Northern.

Fols. 258, 259, p. 66.

MR. STEELE:

Q. When was it that your firm (J. P. Morgan & Co.) and Mr. Hill had their first conference relative to standing together in the matter of their Northern Pacific holdings?

A. I do not recollect that I have testified that there was such a conference.

Q. Were you present at any such conference on or about May 1st, between some members of your firm and Mr. Hill regarding Mr. Hill's holding or retaining his holdings in Northern Pacific?

A. I certainly had conferences with Mr. Hill on that subject. The substance of it was that there had been large purchases of Northern Pacific stock in the market, and we were questioning whether ourselves and Mr. Hill and our friends held an actual majority of the stock, either common or preferred.

Fol. 1116 to 1120.

Q. What I am more particularly anxious about, at the present time, is these conferences your firm had with Mr. Hill, and just what agreement or understanding you reached at those conferences between you, representing yourselves and friends, and Mr. Hill, speaking for himself and friends?

A. I don't think there was any agreement at all. It was understood, and we certainly expected, that Mr. Hill and his friends and our friends would hold their Northern Pacific common stock. There was no agree-

ment with them to do so, and there was no obligation to do it if they didn't want to.

Fol. 1122.

MR. MORGAN:

Q. When did you first hear that somebody else was trying to buy the stock of the Northern Pacific?

A. It must have been the last of April or the 1st of May (Mr. Morgan was in Europe). When I heard that, I felt in this position: We had reorganized the Northern Pacific. We had placed all the securities of the Northern Pacific, and I knew, as I had always supposed, that there were people—friends of ours and other people—who held practically enough Northern Pacific—we always supposed we had with us people upon whom we could depend to protect our moral control of the property—and consequently, when that news came to me, I hadn't any doubt about the fact of the matter, and at the same time this news came so strong, whoever had acquired it, I felt something must have happened. Somebody must have sold. I knew where certain stocks were, and I figured it up. I feel bound in all honor, when I reorganize a property, and am morally responsible for its management, to protect it, and I generally do protect it; so I made up my mind that it would be desirable to buy 150,000 shares of stock, which we proceeded to do, and with that I knew we had a majority of common stock, and I knew that actually gave us the control, and they couldn't take the minority and have it sacrificed to the Union Pacific interests.

Fols. 1341–1346.

Union Pacific interest promised to give proxy to Morgan to vote its Northern Pacific shares at the next annual election of directors. In doing this there was no thought of uniting the ownership of a majority of Great Northern and Northern Pacific shares, or of organizing the Northern Securities Company. It was done solely to allay public excitement and relieve a strained financial condition.

There was no agreement as to who should be selected as directors of Northern Pacific or Burlington.

On and shortly after the 9th day of May there was a very strained financial condition. Bankers and brokers were deeply interested, and much anxiety over the situation prevailed, not only in New York, but in London and on the Continent. The situation was brought about or aggravated by short selling of Northern Pacific stock. Many had sold Northern Pacific stock which they did not own, and they could not make delivery, and that made extremely high prices. This led to two or three meetings for the purpose of discussing some plan for relieving the situation, and resulted in a promise by the Union Pacific interest to give a proxy to J. P. Morgan to vote the Northern Pacific stock held by that interest, at the election of the Board of Directors of the Northern Pacific Company, at its next annual meeting.

MR. HILL:

Q. Was there a conference or meeting between you and Morgan & Co. and Kuhn, Loeb & Co., or anybody representing them?

A. There might have been more than one meeting; possibly there were several meetings. There was a very strained financial condition. People were failing and the trouble was very great. Something had occurred that never had happened in New York before—an attempt to buy a control of one hundred fifty-five millions of stock in the market and the high price caused people to sell stock they did not own. The bankers and financial men of every description were deeply interested, not only in New York, but in London and in financial centers on the Continent, and the result was, I think, two or three meetings. I know certainly there was one between the bankers at that time. The Union Pacific people claimed that they had the control by the ownership of a majority of the

stock of the Northern Pacific Railroad. That was not conceded by Mr. Bacon and Mr. Steele, because they knew they held, as long as myself and friends held our stock, a majority of the common stock, which would control the property. They made an agreement that as far as the election of the directors was concerned they would leave it to Mr. Morgan to name the directors, and that was done.

Fols. 195–197, p. 50.

Q. Was not the matter that was under discussion between you gentlemen, that led up to the appointment of Mr. Morgan as arbitrator, the respective claims as to the control of the Northern Pacific?

A. No; the thing that led up to that was the bankers' anxiety to allay this terrible condition, and they wanted to know how it might be done, and, as I understand it, the other people waived their control. They said, we will leave the matter to Mr. Morgan, and let him name the board of directors, and we will vote for them or send a poxy.

Fol. 237, p. 61.

MR. STEELE:

Q. Were you present at the conference of May 9th, at which it was decided to leave the election of the board of directors of the Northern Pacific to Mr. Morgan?

A. I was present, but it wasn't May 9th. It was about a week or two later.

Q. Who were present at that conference?

A. Mr. Hill, Mr. Harriman, Mr. Schiff, Mr. Bacon and myself, I think.

Q. What was the substance of the negotiations that were had at that conference?

A. I shall have to go back a little to answer your question fully. On the 9th of May there was a great disturbance in the stock market here, and the newspapers were full of stories of a great contest for the control of the Northern Pacific between important financial interests. They had succeeded in creating a condition of great excitement in financial circles. People were in danger of failure. There was a lack of confidence around, and the purpose of this conference was to devise a statement, that could be made public, assuring the public generally that they were mistaken,

and there was no such trouble on hand. The conference was very brief. I think it lasted not more than ten or fifteen minutes, and Mr. Harriman, I think it was, suggested that the purchase of Northern Pacific stock, which had been purchased by or in their interest. They were quite willing to give Mr. Morgan a proxy, to let him fix the composition of the board of directors of the Northern Pacific in the autumn, and they thought that would remove any question in the public mind about any friction or contest between different interests.

Fols. 1141, 1148.

There was no agreement or understanding as to the composition of the board to be named by Mr. Morgan.

MR. HILL:

Q. Was there or was there not any agreement at this conference, at which Mr. Morgan was appointed arbitrator, with reference to naming the present board—that is, the *personnel* of the board should be changed?

A. There was no agreement stipulated for retaining the board or changing the board. I remember Mr. Bacon saying, if we leave it to Mr. Morgan, Mr. Morgan must have the entire power to say who shall be nominated.

Fols. 228–229 p. 58.

Q. Was there, at that conference, any agreement among the parties to it as to the Union Pacific being represented on the board of the Northern Pacific?

A. There was not.

Q. No understanding with reference to that?

A. None whatever. I remember some discussion, not as to the question of Union Pacific, but as to the suggestion of some names. Mr. Bacon said he would not consider it at all, on any other basis than that Mr. Morgan should nominate the board, and if you are willing that he shall nominate the board we will agree to it.

Q. When you say there was some suggestion made with reference to the directors, do you mean to say that Mr. Harriman or Mr. Schiff insisted?

A. I think that they named or suggested some names, and they were refused.

Q. And the final agreement then was that Mr. Morgan should have the right and power to absolutely name the board of directors of the Northern Pacific?

A. That was the understanding or the conclusion arrived at; it hardly took the form of a final agreement.

Q. Well, you broke up with that understanding, didn't you?

A. Yes, that is right, and I think it was practically carried out on that line, and the disturbance on the street adjusted itself very quickly.

(Fols. 234 to 236, p. 60.

MR. MORGAN:

Q. On your return (from Europe), did you have any conference with Mr. Hill or his friends on the subject of the control of the Northern Pacific, or any arrangement to quell the uneasiness that had been in the stock market?

A. Now, you come to another subject—the public feeling in relation to the transaction.

Q. Yes, I know they were anxiously awaiting your return.

Q. Well, as I told you before, we bought that stock in good faith, feeling bound in honor to protect the minority stockholders. We didn't know who they were, or anything about it. We knew perfectly well that if the Union Pacific was to acquire, or had acquired, a majority, there was certainly a minority we were bound to protect, and this stock was purchased for that purpose. But subsequently came up another question. The people at large, those who didn't know Northern Pacific, or Union Pacific, or anything else, became very much alarmed, fearing that there was going to be a great contest over this thing, which would bring in active antagonism what they deemed the important financial elements of the street. That is what they talked about. They were going to have a battle in Wall Street, and it had spread to such an extent that it became absolutely essential that something should be done. That was before I returned. It had taken some shape. Something should be done to allay that public excitement and they had several conferences. I was not here and don't know anything about how they were

brought about, or whether they were held, or who was present, or anything of the kind in relation to them. But finally a paper, at least not a paper, but an agreement, or whatever it is, an understanding, was arrived at which was published in the papers, that there was nothing of that kind; that the election to be held in October of the board of directors of the Northern Pacific would be left to me to decide; subsequently the Morgan interests, as they were called, should be left independent to manage that property, and that was decided upon. When I got back I found that this feeling had not entirely subsided, and there was still a great deal of anxiety, so I thought it was best to act at once, and I drew up a paper—stating who I thought should compose that board and sent it to the Union Pecific interests, or the people who had signed this, J. P. Morgan & Co. and others, and that was carried out. It was thought best that the thing should not wait until October; in other words, better have the changes made at once in order to show there was no hostility, and, consequently, I suggested to some of the directors that they had better make the change then in the board instead of waiting until October, and that was done, and that seemed to suit the people's mind a good deal, and the thing simmered and died out—that public excitement.

Fols. 1355 to 1360.

Q. Did you consult Mr. Hill about that?

A. I told him what I was going to do.

Q. You did not consult with him?

A. No, I did not think anybody had anything to say about it but myself. They had been kind enough to trust me in the matter, and I did not consult Mr. Harriman, and I don't think I consulted anybody; at least, if I did, I did not consider it in any way that made it a factor in the case at all. I wanted to be in a perfectly independent place. I felt that I was acting in a fiduciary capacity to allay this feeling, and I was acting without any influence from anybody. I don't think I satisfied anybody, but I accomplished the object.

Q. Mr. Morgan, you know that the Union Pacific, of course, was a competing line with the Burlington. You know that it had attempted to wrest your property away from you; what was the object in putting their representatives on the board?

A. Simply to show that there was nothing that the Northern Pacific management, or J. P. Morgan & Co.,

or anybody, which had bought the Burlington, to show that they were acting under what we know as a community of interest principle, and that we were not going to have that battle on Wall street. There was not going to be people standing up there fighting each other.

Fols 1363–1365.

MR. STEELE:

Q. Were you aware that at the time Mr. Harriman was placed on the board of the Northern Pacific?

A. I was. I think I was present at the meeting when he was elected.

Q. Five directors had resigned or retired at that time?

A. Yes, sir.

Q. And five new ones were selected and appointed by Mr. Morgan?

A. Suggested by Mr. Morgan.

Q. Do you know whether there was any controversy or understanding relative to Mr. Harriman's being placed on the Northern Pacific board prior to that time?

A. I do know absolutely there was not.

Q. Do you know how he happened to be placed on the board of directors of the Burlington?

A. I do.

Q. State how it was.

A. There had been some apprehension, I think, in the minds of Mr. Harriman and some of his friends, that difficulties might arise through the fact that the Great Northern and Northern Pacific had purchased the Burlington road, and it was a menace to the Union Pacific. I talked it over, I think, with Mr. Morgan, and said, "Why not let us suggest that Mr. Harriman go on the board, and he can see there is nothing intended as a menace in any way?" and he approved of the idea, and I don't know whether I made the suggestion or whether Mr. Bacon did, when the Burlington meeting came around, that Mr. Harriman should be elected a director of that board, and he was, at any rate, elected at that meeting.

Q. Did the same thing hold good in the election of George J. Gould to the same board?

A. Yes.

Q. Mr. Gould is also a member of the Union Pacific board, is he not?
A. I think he is.
Fols. 1169–1174.

Third Finding.

"SUBSEQUENT TO THE ACQUISITION OF THE STOCK OF THE BURLINGTON COMPANY, AND IN THE SUMMER OF THE YEAR 1901, CERTAIN LARGE AND INFLUENTIAL STOCKHOLDERS OF THE NORTHERN PACIFIC AND GREAT NORTHERN COMPANIES, WHO HAD PRACTICAL CONTROL OF THE TWO ROADS, AND WHO HAVE BEEN MADE PARTIES DEFENDANT TO THE PRESENT BILL, ACTING IN CONCERT WITH EACH OTHER, CONCEIVED THE DESIGN OF PLACING A VERY LARGE MAJORITY OF THE STOCK OF BOTH OF THE LAST-NAMED COMPANIES IN THE HANDS OF A SINGLE OWNER. TO THIS END, THESE STOCKHOLDERS ARRANGED AND AGREED WITH EACH OTHER TO PROCURE AND CAUSE THE FORMATION OF A CORPORATION UNDER THE LAWS OF THE STATE OF NEW JERSEY, WHICH LATTER COMPANY, WHEN ORGANIZED, SHOULD BUY ALL OR AT LEAST THE GREATER PART OF THE STOCK OF THE NORTHERN PACIFIC AND GREAT NORTHERN COMPANIES. THE INDIVIDUALS WHO CONCEIVED AND PROMOTED THIS PLAN AGREED WITH EACH OTHER TO EXCHANGE THEIR RESPECTIVE HOLDINGS OF STOCK IN THE LAST-NAMED RAILROAD COMPANIES FOR THE STOCK OF THE NEW JERSEY COMPANY, WHEN THE SAME SHOULD BE FULLY ORGANIZED, AND TO USE THEIR INFLUENCE TO INDUCE OTHER STOCKHOLDERS IN THEIR RESPECTIVE COMPANIES TO DO LIKEWISE, TO THE END THAT THE NEW JERSEY COMPANY MIGHT BECOME THE SOLE OWNER OF THE WHOLE OR AT LEAST A MAJOR PORTION OF THE STOCK OF BOTH RAILROAD COMPANIES."

Fol. 1704.

This is another finding contrary to the evidence. The stockholders referred to did not have practical control of the two roads. They owned about one-quarter of the stock the Northern Pacific and Great Northern companies;

they had no interest in or control of stock held by other stockholders. There was no concert or agreement between them with a design of placing a large or any majority of the stock of both companies in the hands of a single owner. There was no understanding that they would use their influence to induce other stockholders in the respective companies to transfer their shares to the Northern Securities Company. Not one of them did in any way influence, or seek to influence, any shareholder of either of the defendant companies to sell his shares to the Northern Securities Company. What was done, all that was done, by whom it was done, and how and why it was done appear in the fullest detail.

Organization of Northern Securities Company.

The company was organized under the laws of the State of New Jersey, which provide that:

"Any corporation may purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the shares of the capital stock, or any bonds, securities or evidence of indebtedness created by any other corporation or corporations of this or any other state, and, while owner of such stock, may exercise all the rights, power and privileges of ownership, including the right to vote thereon."

The persons who formed the corporation paid into the capital of the company a sufficient amount to qualify it to do business, and filed in the proper office a duly executed certificate of incorporation, paid the statutory fee, and the certificate was placed upon the public records. These acts put the organization of the Northern Securities Company, as a corporation of the State of New Jersey, beyond question in any place, save

the Courts of that State, and by any person, save the State itself, in some direct proceeding brought for the purpose.

The powers conferred upon this company by the certificate of incorporation are limited to buying, owning and selling securities of all kinds, and buying, selling, owning and voting stock of other corporations, and to aiding in any manner, by pledging its credit, any other company whose stock or securities it holds. It is not a railroad company. It is not empowered to own, hold or manage railways, mines, factories, stores or farms, nor to direct the management of any other corporation. It has no power as respects the defendant railway companies, other than the voting power of the shares it owns in electing a separate board of directors for each company, for the boards must be separate under the laws of the States of Minnesota and Wisconsin. It is a mere investment or financial company having no power except such as is held and exercised by financial companies the world over.

Only eight or ten out of eighteen hundred Great Northern and thirty-six hundred Northern Pacific shareholders were consulted concerning the organization of the Northern Securities Company. The aggregate holdings of the shareholders consulted did not much exceed one-fourth of either Great Northern or Northern Pacific shares, and no shareholder of either company, except those consulted, had knowledge of any plan to organize the Northern Securities Company, or of its organization, until it had commenced to do business.

There were over eighteen hundred Great Northern shareholders, owning over one hundred and twenty-three millions outstanding Great Northern stock (fol. 2769). There were thirty-six hundred Northern Pacific shareholders, owning one hundred fifty-five millions Northern Pacific stock (fol. 3406). Mr. Hill and the other shareholders named, whom he consulted concerning the organization of the Northern Securities Company, did not own or control much to exceed one-fourth of the capital stock of the Northern Pacific Company or of the Great Northern Company (fols. 2731, 2734, 2770). No shareholder of either company, except the eight or ten shareholders referred to, was at any time consulted respecting the organization of the Northern Securities Company or the sale of stock to it. The control of the Northern Pacific Company mentioned as attached to the ownership of the forty-two millions Northern Pacific common held by Mr. Hill and stockholders referred to, and J. P. Morgan & Company, meant no more than this: If the preferred stock of that company should be retired, and an equal amount of new common should be issued in its place, and if the new common so issued should be offered to the holders of the old common in proportion to their holdings, and if every one of the holders of the forty-two millions of the old common should be willing to take his allotment of the new and be able to raise the money to pay for it, then the holders of the forty-two millions would, with their acquisition of new stock, in the aggregate own a majority of outstanding Northern Pacific stock. It does not appear that any agreement or understanding was ever had or suggested on this point.

A part, but not the chief feature, of the plan

of organizing the Northern Securities Company was a corporation that would have the legal right to acquire, own and dispose of as many shares in the Northern Pacific and Great Northern Companies as the owners should see fit to sell, and at prices and upon terms the purchasing company would accept. As to the Northern Pacific it was hoped and desired that at least a majority would be acquired, not so much to get control of the Northern Pacific into the proposed company as to keep it out of another company, with interest adverse to building up interstate and international transportation via Puget Sound.

The project of a holding company which finally developed in the formation of the Northern Securities Company had its inception years ago, among eight or ten Great Northern shareholders, with a view of keeping their holdings together so as to secure the continuance of the policy which had made the Great Northern Railway Company successful. It was thought that if a holding company should be formed to which they might transfer their individual shares, the shares would likely be held together so long as the majority in the holding company should wish, and this would give stability to the policy of the company, and aid it in financial operations, and maintain the value of their investments. It was late in the summer of 1901 before the said Great Northern shareholders thought of selling their Northern Pacific stock as well as their Great Northern stock to the proposed holding company.

Until after June 1, 1901, there was no plan or purpose of Mr. Hill and the shareholders named to organize an investment company to buy Northern Pacific shares; and, for a considerable time after that date, the plan was limited to the Northern Pacific stock held by Mr. Hill and the eight or ten shareholders whom he consulted.

MR. HILL:

Q. In planning and carrying out the purchase of the Burlington shares, was it any part of that scheme, so far as you know, that the shares of the Great Northeren and Northern Pacific Companies, or any of those shares, should be put into a holding company?

A. That was no part of the Burlington transaction; it was not considered. I don't know that it was thought of. I know it was never discussed, and I don't think it was thought of or cut any figure whatever in the Burlington purchase. Some of the people connected prominently with the Northern Pacific recognized the advantage of a line to Chicago, and wanted to consider the purchase of another railway that was offered to them, or, as I understand, was offered to them if we would join. It would not answer our purpose. It practically did not reach anything except Chicago; did not reach St. Louis; did not reach the great markets and material that we wanted to reach, and it was not seriously considered. The question of the Northern Pacific and the Great Northern ever being put into a common ownership was not thought of in that connection, nor until long afterwards.

Fols. 2720–2722.

Q. At the time of making the Burlington purchase, was there any purpose on your part, or so far as you know on the part of your associates, or Mr. Morgan and his associates, of increasing your holdings of Northern Pacific stock so as to obtain a controlling majority of that stock?

A. There was no effort made to increase the holdings of the Northern Pacific by the stockholders of the

Great Northern that I know of, and I am very well satisfied had such been the case I would have known of it. In fact some of them had sold their stock as the prices advanced. As to Mr. Morgan's views about increasing his Northern Pacific, I don't think Mr. Morgan's people increased their holdings of Northern Pacific up to or during the time the Burlington transaction was being considered.

Fols. 2723, 2724.

Q. State whether or not a suggestion was made at that meeting (directors' meeting Great Northern, authorizing the Burlington purchase) that, in order to protect the Great Northern Company, the control of the Northern Pacific common stock should be acquired in its interest.

A. *As I remember it, one of our directors raised a question that inasmuch as the purchase of the Burlington stock and the creation of a bond to pay for it involved the joint and several liability of the entire amount of the purchase, it was a matter of consequence to the Great Northern to know that the Northern Pacific would not pass into the hands of people who might be interested in other directions, in developing in other directions or other sections of the country; and I remember I answered that with what myself and friends held at that time, and what Morgan & Company held, we would have somewhere in the neighborhood of 35 or 40 millions of the stock of a total of 155 millions, which was larger than is usually held in any of the large companies. I did not think at the time that it was at all likely that anybody would undertake to buy in the market the control of 155 millions of stock.*

Fols. 2725–2727.

MR. MORGAN:

Q. When did you first hear of the Northern Securities Company?

A. Just a few days before it was organized.

Q. You hadn't been consulted about it previous to that time?

A. In what way, about the Northern Securities Company?

Q. Yes; about the advisability of forming such a company.

A. No; do you want me to tell you about the Northern Securities Company? Have you got through with the Burlington? I mean let us finish one. Don't you think it would be as well to finish one thing? There is no connection between them; consequently, I would prefer it. I don't want to convey the impression there is any connection between the two, because there is no more connection between the Burlington and the Northern Securities Company than there is between New York and Kamschatka.

Fols. 1332, 1333.

MR. HILL:

Q. What steps, if any, had been taken by you and your associates and Mr. Morgan and his associates with reference to the organization of the Northern Securities Company prior to November 13, 1901?

A. The Northern Securities Company, or a company of that character, had been considered by the large shareholders of the Great Northern Railway Company for several years.

Q. For what purpose?

A. For the purpose of combining their interest in the property. Some of them were very old men and they had always acted together and in harmony, and they desired to perpetuate that action.

Q. What amount of stock, par value, of the Great Northern Road did those men that you now speak of hold prior to November 13, 1901, in the Great Northern Road?

A. On the 1st of November, I should say they held somewhere from thirty-three to thirty-five millions.

Fols. 324–326, p. 82.

MR. CLOUGH:

Q. During your relation with the great Northern Railway Company, was the subject of organizing what we call a holding company, or making use of one, mentioned in your presence and discussed by Mr. Hill, Mr. Kennedy, Mr. James and other Great Northern shareholders?

A. Yes, sir, those suggestions and discussions, to a certain extent, began years ago.

Fol. 3104.

Q. State the purpose of organizing or making use of such company ?

A. The gentlemen who were to be considered in that connection, and whose co-operation was desired and intended, were about eight or ten men who had originally gone into the St. Paul and Pacific securities along about 1875, when the lines were in a state of bankruptcy. They had retained their interests in the property, and increased them as time had gone by, with the result that they had made very large gains, * * * and it was the desire of those gentlemen, in the event of any of them passing away, that as they had co-operated together, and acted in view of the mutual and common interest in the past, that their stock should be put in a position so that the stock of those parties in the future would stand in about the same or similar relation to each other that they had in the past ; that the value of the securities should be preserved, as far as possible, by a continuation of the policy of building up the property of the company, and in event of a sale of the holdings of any of them that those of the rest of them should be treated in the same way, and be subject to the same conditions. That was the general idea.

Fols. 3106-3109.

MR. HILL :

Q. At the time of the organization of the Northern Securities Company were these things that you have told us the only objects or purposes that you had in mind at that time ?

A. The action in buying the majority of the stock of the Northern Pacific in the market in April or May, or both, brought the question up more strongly than before as to the necessity of the Great Northern old shareholders, who had been continuously connected with the property from the beginning, making their holding together permanent, and, I think, in June, somewhere about the 5th or 6th of June, speaking from recollection, Mr. Kennedy, on his return from Europe, discussed the matter with me, going over the entire situation ; the relations of the Burlington ; the relations growing out of the Burlington ; the relations growing out of the large purchases by the Union Pacific interests of Northern Pacific ; and suggested

whether we should not include in our holding company our holdings in the Northern Pacific.

Q. And for the same purpose?

A. For the same purpose, so that we would all act together and no one would sell out or leave the others. We would all act together.

Q. For the purpose of unifying the interests that you had in the two roads?

A. Yes, sir; for the purpose of unifying the interests in each road; because when the Burlington was transferred or sold to the Northern Pacific and the Great Northern jointly, our owning an equal share in the company, it was a matter of great consequence to the Great Northern as to who would own the stock of the Northern Pacific, or control the Northern Pacific, and some of our shareholders—some of them are 86 years old, others are more than 80, and so on—they might have concluded that they would sell their stock, and it might have made a difference as to the majority of the common stock.

Q. Of the Northern Pacific?

A. Of the Northern Pacific. If the control of the Northern Pacific had passed to the Union Pacific, as a matter of influence. The control of the Great Northern would have passed to the Union Pacific, because we would not have held it a day longer than we could have sold it. You can readily see that we didn't want to hold a line from Lake Superior and the Twin Cities to Puget Sound, with all the rest of the roads in the United States in a position to fight us and without power to fight back.

Fols. 327–332.

Q. What injury did you consider was likely to result to the stockholders of the Great Northern Company, or the stockholders of the Northern Pacific Company, or those corporations, if a majority of the stock of the Northern Pacific, or a controlling interest in that company, should be obtained by a hostile railway interest?

A. With the Northern Pacific as a half owner in the shares of the Burlington, and responsible for one-half of the purchase price of these shares, the transfer of the shares of the Northern Pacific, or the control of the Northern Pacific, to an interest that was adverse or an interest that had greater investments in other directions, the control being in the hands of com-

panies whose interests would be injured by the growth and development of this country, would, of course, put the Great Northern in a position where it would be almost helpless, because we would be, as it were, fenced out of the territory south which produces the tonnage we want to take west, and which consumes the tonnage we want to bring east, and the Great Northern would be in a position where it would have to make a hard fight—either survive or perish, or else sell out to the other interests. The latter would be the most business-like proceeding.

Fols. 2751, 2753.

Q. Well, if, say, the Union Pacific had got physical control of the Northern Pacific, as it got actual control of a majority of its combined capital stock; suppose it had gone on and got, as you feared it might, or anticipated it might, physical control of the Northern Pacific property, they could not have carried lumber any cheaper to the East, or cotton any cheaper to the West, than you could? It would not have crippled you in that respect, would it?

A. How would we get to the prairies of Nebraska, Kansas, Iowa and Illinois?

Q. Just as you always have—by all the lines of travel that are open to you?

A. They are not.

Q. Six lines out of here (St. Paul)?

A. Any one of those lines, or all of them, could at any moment withdraw their joint tariff from us. We could not control the business a day longer than they were willing we should, and we could not undertake to build up a great, permanent interstate and international business on any such basis. I think it would be ridiculous—the statement of it.

Fols. 2930-2932.

Q. Was there any other motive, Mr. Hill, in having the Northern Securities Company acquire a majority of the stock of the Northern Pacific Company—was there any other motive in that than the intention to defend and protect the interests of the stockholders and this enterprise which you had undertaken?

A. The object and the intent was to defend the property that otherwise would be destroyed, both of the Northern Pacific and the Great Northern. When

I say destroyed, there would be something left, but the main plan would be destroyed; there would be something left, but the property would be incapacitated from doing what it was intended to do and what it was quite able to do.

Q. Was there any intention or purpose on your part, or on the part of any one else, so far as you know, in forming the Northern Securities Company, to restrain trade or commerce among the states or with foreign nations, or at all?

A. There was absolutely none whatever, and that view of the case never occurred to us. On the contrary, it was constantly in our minds that it was going to be the most effective way of developing and increasing commerce between the states and international commerce. And it was necessary, if we were to bring this enormous business to the eastern markets—it was necessary that we should pretty soon be able to reach some point where there was a market, where people would buy our products, and in the growth of that business our increased earnings would put us on a firmer basis and in a better position to make lower rates on the local traffic of our line.

Fols. 2757–2760.

Q. What was the purpose after the purchase of the Burlington Company, and after the very large purchases of Northern Pacific stock made in the Union Pacific interests—what was the purpose, after that time, of you gentlemen who promoted the Northern Securities Company, in forming that company, and putting into it a majority of the stock of the Northern Pacific Company?

A. We were particularly anxious to put a majority of that stock where it could not be raided again as it had been. We wanted to put it in a corporation that was not a railroad company—a company that would hold it as an investment, and the larger the company the more difficult it would be to secure a majority of it. Then, again, a reason why we preferred an investment company: railroad charters, I think, I may say almost entirely, are drawn or granted on terms that do not permit railroad companies to buy the shares or own the shares of investment companies. * * * We were advised that we would be safer with the shares held by an investment company, the stock of which could only be held by individuals or by corporations

that were not railway companies, and to that extent we would be more free from such raids by interests that were anxious to destroy or restrict the growth of this country—such raids as had been made by the Union Pacific interests, so-called.

Fols. 2748–2751

MR. MORGAN:

Q. When did you first hear of the plan to organize the Northern Securities Company, or a securities company of any kind, or a holding company?

A. A securities company in connection with the Northern Pacific? It was a long time after I came back.

Fols. 1369–1370

Q. By whom was the matter first brought to your attention?

A. I think it was rather in my own mind, as far as the Northern Pacific was concerned.

A. Well, as far as the Great Northern was concerned, when was that first suggested?

A. I had heard it discussed for a year or two.

Q. Had you talked with Mr. Hill generally about it?

A. I think I had. That is, not in any detail, but with the exception of being to a certain extent a stockholder in the Great Northern. I talked to him on that subject.

Q. And that was a separate holding company for the Great Northern?

A. Yes, sir.

Fols. 1370–1372.

Q. And then you had that in your mind to have a holding company for the Northern Pacific?

A. That came up after I came back. When we found ourselves in this position, with the danger, having escaped, as I thought at that time, from what I thought was a great danger; that is to say, our property being absorbed by a competing line without our knowledge or consent. It occurred to me something ought to be done to prevent that. While we chose to defend the property, I did not want it to go on indefinitely, and I thought the best plan was to go to some trust com-

pany. My idea was first to go to some trust company to take the Northern Pacific stock and hold it.

Fols. 1372–1373.

Q. For the purpose of keeping control in one place?

A. No; not alone to keep it in one place, to keep it so that the policy of the company upon which its future depended could be continued. We didn't want convulsions going on. You cannot take a company with three or four hundred millions of securities and do one thing one day and another thing another. It destroys confidence in the first place, and everything of that kind. What I wanted to accomplish was to put that stock so that it would be protected—to maintain the policy of the company as it then existed.

Q. Held in one hand, in other words.

A. No; not in one hand, because it could be held in third hands. I wanted it so that I could go to Europe, and not hear next day that somebody had bought it for the Boston and Maine, or I don't know what other company. I wanted the Northern Pacific stock put where nothing could interfere with the policy I had inaugurated and for the carrying out of which we were perfectly satisfied and morally responsible.

Q. It being the idea that the control would be in your hands?

A. It was not a question of control. It is a moral control.

Fols. 1373–1375.

How the Capital Came to be Made Four Hundred Millions.

MR. HILL:

Q. At that time (in August after Mr. Morgan's return) what amount of capitalization was either agreed on or thought to be the proper amount for the proposed company?

A. When the matter was discussed with Mr. Kennedy, Mr. James and myself in June, I think that we thought a hundred millions would cover the necessity, provided that a large number of the shareholders of the Great Northern did not deposit their shares. There was also

a good deal of hesitation; in fact, the formation of a holding company, in the first place, was discussed among a very limited number of Great Northern shareholders. The amount was comparatively small. It was the stock of those who had always been most active in carrying on the business of the company. But when it came to making a holding company that would hold the ownership of the stock held by these people, they all hesitated about forming any company to hold the shares of the Great Northern Railway in which all the shareholders might not be allowed to participate, if they so desired. And in that way it became necessary—and it was decided early, possibly in June. It had been discussed at least a year before that. I know Mr. Farrer, of the firm of Baring & Company of London, was here and he said, "No matter what you do—your company has always had the reputation of dealing with all the shareholders on the same basis—no matter what you do, try and keep that." Everybody seemed to be of the same mind, that all the shareholders might participate in any advantage that any shareholder might have so far as related to the action of those who were most active in in the company's affairs. That involved the necessity of making the capital of the holding company large enough to take in the stockholders of the Great Northern, if they elected to sell their stock.

Q. Taking that stock at the figures which had been mentioned, 180—

A. That would make 225 millions.

Q. What additional sum to those 225 millions was considered necessary on account of the holdings in Northern Pacific stock of your party and the Morgan party?

A. After Mr. Morgan's return from Europe, I bought for myself and a few friends the bulk of his holdings. I think I bought 12 millions out of the 15 millions that he had purchased in the market at cost, and with what he held made the control the Northern Pacific common stock an absolute majority, which controlled the company after the redemption of the preferred. That would take some 48 or 49 million dollars of the stock to purchuse the 42 millions of Northern Pacific common, and the additional amount that might be necessary—or rather, the amount, 225, for the Great Northern, with, say, 50 for Northern Pacific, carried it up to 275. We thought at one time of making it 300, cover-

ing these amounts and some other properties that the Northern Securities Company desired to buy.

Q. Did you at that time take any account of what ought to be provided in case of your getting additional common stock for your preferred, on the retirement of the preferred?

A. That was considered. Those steps came one after another. They were considered, I should say, after the latter part of August and prior to the organization of the company. One condition, as it took shape, called for a relative change in the plan of the stock—that is, an increase in the amount of the stock. I might answer that further, that Mr. Morgan, acting as he had been for the Northern Pacific for a great many years since its reorganization, was very urgent that whatever was done for his shares, any other holder should have the same right. That had to be considered.

Fols. 2736–2742.

Mr. Clough, fols. 3132–3140.

Neither J. P. Morgan & Co. nor the Union Pacific interests, nor the defendant railway companies, had anything to do with the formation of the Northern Securities Company. It was an affair of not exceeding ten Great Northern and Northern Pacific shareholders owning at the time not much to exceed one-fourth of the shares of both companies.

Mr. Hill:

Q. Did the Great Northern Railway Company or its board of directors or any of its officers, so far as you know, have anything to do with the organization or formation of the Northern Securities Company, or was it an affair of the stockholders alone?

A. Neither the Great Northern Company nor any of its officers, as such, had anything whatever to do with it, not any more than the most distant railway corporation in the country. Absolutely nothing. The matter of forming the Northern Securities Company

was purely of the shareholders, and limited to a very small number, I think I am safe in saying not to exceed 11 out of 1800.

Fols. 2768, 2769.

Q. About what was the general holdings of these gentlemen in the Great Northern, as you remember?

A. Between 33 and 35 millions out of a capital of 125 millions (Great Northern).

Q. What corporate action, if any, was taken by the Northern Pacific Company or any of its officers, so far as you know, in forming or organizing the Northern Securities Company?

A. I don't know that there was any, and I don't know there was any as a company. The Northern Securities Company simply bought the stock of the Northern Pacific from the people who owned it, and the corporation had nothing to say as to the disposition of the stock; the corporation didn't own any stock, or at any rate it didn't sell any stock to the Northern Securities Company.

Fols. 2770–2772.

MR. MELLEN:

Q. You are the president of the Northern Pacific Railway Co.?

A. I am, and a member of its board of directors and of its executive committee.

Q. Has the Northern Pacific Railway Company ever taken any action, or any part as a corporation, in the formation of the Northern Securities Company?

A. It has not.

Q. Has it taken any action or any part as a corporation, in the transfer of any shares of stock to the Northern Securities Company?

A. Not to my knowledge.

Fols. 3411–3413.

MR. STEELE:

Q. Did your firm have anything to do with the organization of the Northern Securities Company?

A. No, sir.

Q. That was a deal entirely outside?

A. Yes, sir.

Fols. 1153, 1154.

Q. In the organization of the Northern Securities Company did your firm speak for the majority of the stockholders of the Northern Pacific? or act at all other than for your personal interests? or did you have anything to do with organizing the Northern Securities Company other than to sell your stock to it?

A. I was about to answer, that I have already testified that we had nothing to do with the organization of the Northern Securities Company, and the first connection that we had with it was the negotiation by which we sold to it the Northern Pacific common stock which we held.

Fols. 1210, 1211.

MR. HARRIMAN:

Q. Were you consulted at all regarding the formation of this holding company?

A. No, sir.

Q. You did not know where it was going to be organized?

A. No, sir.

Q. And had nothing to do with it?

A. No, sir.

Q. You were not consulted about the retirement of the preferred stock either, were you?

A. No, sir.

Fol. 3592.

The shareholders consulted about the organization of the Northern Securities Company did not have practical control of either the Great Northern or Northern Pacific Company.

The eight or ten men consulted about the organization of the Northern Securities Company discussed the matter separately and individually, and not at any meeting where they were all together. They separately owned various amounts of Great Northern stock, aggregating about twenty-five per cent. of the whole amount outstanding, and various amounts of

Northern Pacific common, aggregating about one-fourth of Northern Pacific outstanding shares. They did not own or in any way hold the control of the Great Northern or Northern Pacific Companies. In the absence of proof to the contrary, it cannot be assumed that any stockholder neglects to attend stockholders' meetings, either in person or by proxy, and to cast every vote which he is entitled to cast. There is no evidence to show that any holder of either Great Northern or Northern Pacific stock has ever failed to vote at a stockholders' meeting, either in person or by proxy, or that the selection of Mr. Hill to be the head of the Great Northern management from year to year was in any way attributable to the amount of stock owned by him, or to the support of those consulted about the formation of the Northern Securities Company.

There was no agreement or understanding between the stockholders consulted to use their influence to induce other stockholders in their respective companies to transfer their shares to the Northern Securities Company.

Of the eighteen hundred shareholders of the Great Northern Railway Company, and the thirty-six hundred shareholders of the Northern Pacific Railway Company, not to exceed ten were consulted concerning the plan of forming the Northern Securities Company, or had knowledge of its existence until after it had commenced business. There is no evidence showing, or tending to show, that any one of the shareholders consulted agreed, or even intended or expected, to use his influence to induce any other shareholder of either company to dispose of his shares to the Northern Securities Company, or that the matter was even sug-

gested, or that any one of them did at any time use his influence directly or indirectly to induce any other shareholder to transfer his shares to the Northern Securities Company.

MR. HILL:

Q. In the formation of the Northern Securities Company was there any agreement among its promoters, or any of them, including yourself, by which they, or any of them, bound themselves to transfer their stock in either railway company to the Northern Securities Company, when it should be organized?

A. There was no agreement of any kind. When I discussed the matter with these gentlemen, they said, "All right, go ahead and we will put ours in"—each man speaking for himself, and I think I saw them all separately, with one exception. I saw Mr. Kennedy and Mr. James together; both happened into my office at the same time, as was a very common thing with them. Possibly I saw Mr. Thorne and Mr. Clark together. The others I saw separately. There was no agreement, an hour—a minute, before any shareholder of the Great Northern transferred his stock; he was at liberty to turn round and go away with it.

Fol. 2777.

MR. KENNEDY:

Q. Did you hold any stock in the Northern Pacific jointly with anybody else, or did you have any agreement or understanding with anybody, as to how you should handle or sell or vote stock in the Northern Pacific?

A. No, sir; never did.

Q. Well, as far as you know, was there any agreement between these gentlemen, in their Northern Pacific purchases, that they should act together, or sell together, or vote together, or handle it together in any way?

A. There was none on my part. I never heard of any agreement of that sort with anybody.

Fols. 846–847.

Q. Do you know of any agreement between the majority stockholders of the Northern Pacific Company that they would all turn their stock in or sell it to the Northern Securities Company?

A. I know of no such agreement. Never heard of it.

Fol. 856.

MR. MORGAN:

Q. In selling the stock in Northern Pacific, belonging to J. P. Morgan & Co., to the Northern Securities Company, did your firm act by agreement with other stockholders, or did you act individually?

A. We acted individually, with the understanding that every other stockholder should have the same right, at the same price; that I have testified to already.

Fols. 1446–1447.

It was expected, but not agreed, that the Great Northern shareholders owning Northern Pacific shares, who were consulted about the organization of the Northern Securities Company, would transfer their shares to it when organized, and that J. P. Morgan & Company would do likewise. It was thought that the Northern Pacific Company had a right to retire its preferred shares on the first of January, 1902. It was known that its right to do so was disputed by the Union Pacific interest, which then held a majority of Northern Pacific shares. Should Northern Pacific preferred stock be retired through an issue of new common, the holders of the old common would have a right to their proportion of the new common, and if that right were exercised, they would acquire a majority

of the stock of the Northern Pacific Company. There was no agreement however that any one of the holders of the old shares should purchase or acquire his allotment of the new.

It was not expected that the Northern Securities Company would acquire a majority of Great Northern shares.

It has been shown that the capital of the Northern Securities Company was fixed at four hundred millions, not with the expectation that it would acquire a majority of Great Northern and Northern Pacific shares, but in order to enable it to do so, should the holders of a majority desire to sell their stock. There is no evidence of any willingness on the part of the Union Pacific interest to sell its holding until within two or three days of the date of its sale, or that before the organization of the Securities Company it had been consulted on the subject, or made any agreement in that respect. It was not thought that a majority of Great Northern shareholders would transfer their shares, because the price, 180, was ten to twenty per cent. lower than the market price, and lower than what the shares had been selling for in cash, for a long time, in the market.

MR. HILL:

Q. Now, what I wanted to get at was, whether at this time, at the end of August, when you were fixing your proposed capital for the holding company, you took into account the increase of your holding, which would or might result from a retirement of the preferred stock?

A. That had to be considered; it was considered.

Q. What was the market price of the Great Northern stock during the fall and winter of 1901?

A. I think it ran from 187 to 190 or 195. I don't think it has ever been 180 from the time the offer was made to the present time.

Fols. 2743–2747.

Q. You state in this letter (letter of Nov. 30th written in answer to inquiries made by Great Northern stockholders) "The organization of such a company has been considered for many years by the original promoters of the St. Paul, Minneapolis and Manitoba Railway Company, and its successor, the Great Northern Railway Company, who have always remained the largest shareholders therein. These men have deemed it wise to make permanent arrangements for the protection of their interests and for securing a continuous policy in the management of their properties." What did you mean by that?

A. "The protection of their interests;" protection from the raids like the one which had been made in May previous on the Northern Pacific. Some such raid might be made on the Great Northern; and for the making permanent the general policy. The road was built with great care, with very low grades, built through a country that had very few people for a long distance west of Dakota. When we built it we had to get permission from the Government, because it was unceded land; and we had a policy; building a low grade road, a road that could move a large tonnage (if it could get a large tonnage) at a low rate, and develop the business, the country. It is true, as every one will find on inquiry, that that country has practically no manufactures, and the traffic has been confined to the natural productions.

Q. And that meant to protect and to continue the control which had carried out that policy? That is what you meant by it?

A. I may say that I think I controlled the policy of the Great Northern Railway Company and its predecessor as fully as the policy of any railway ever was controlled in this country, and I never owned over ten or twelve per cent.; I never owned a majority of the stock, but I always had a following of good loyal stockholders, and the men who were most active, covering about 33 or 35 millions out of 125 millions, practically formed the company, and they desired that their other shareholders, whoever they were, new or

old, might participate in anything that they were doing, if they thought it would be any advantage to them as shareholders.

Q. And so, in order to continue the policy which had obtained for so many years for the benefit of the company and of the public, they arranged to put their holdings into this holding corporation—these shareholders?

A. The eleven shareholders.

Q. Yes.

A. And asked that the same offer be made to all the shareholders, so that they might not be charged with any discrimination, or doing anything for themselves that they were not willing to do for all the shareholders.

Q. Now, would the policy be perpetuated, or the interest protected, if less than a majority of the stock of the Great Northern had gone into the holding corporation?

A. Oh, yes, sir.

Q. If less than a majority of the stock of the Great Northern had gone into the holding corporation, wouldn't the stock of the Great Northern have been liable to a raid by hostile or rival interests?

A. The Stockholders of the Great Northern were many in number, but we have always considered they were a very loyal list of stockholders, and we never felt that we were liable to lose control.

Q. You thought that about the Northern Pacific, too?

A. The Northern Pacific was in an entirely different position. The Northern Pacific stock, when the Burlington was bought, was selling at somewhere from 50 to 60, while the Great Northern was selling at three times that price. The Great Northern was selling at 180 or 190. A different question about getting control of the Great Northern. In answering the question it never occurred to me that we would lose control of the Great Northern, except at a price that we would be well paid if we sold. We could afford to take any price that anybody could pay to get control of the Great Northern. I think there has never been, in the past ten years, an hour when it was not true. As long as we could control the traffic and develop it, the Great Northern shareholders would be well satisfied and well paid.

Q. Then you never intended to put into the Northern Securities Company a majority of the stock of the Great Northern Railway?

A. I never did put it in. I put in a very small amount.

Q. And you thought you could protect the interests, and continue the policy, without placing in the Northern Securities Company a control or a majority of the stock of the Great Northern?

A. When we made the offer, we decided to make the offer to allow all shareholders to sell their stock on the same terms as those who had been most active—a small number of ten or eleven. It was necessary, if they were going to sell their stock, to be able to give them the Northern Securities Company stock in payment. If the question has reference to the desire or preference, I should answer that if the individual men who formed the Securities Company had their choice, and all the shareholders were there and could say, "We release you from any responsibility," we would have preferred to have had the Northern Securities Company stock restricted to the 35 millions. There isn't any question about that. I have discussed that with the shareholders many, many times. One gentleman spent an afternoon discussing with Mr. Grover; another spent an evening at my house; came from London to discuss it. So, it is not a new question with us. The question was, "Shall we make a corporation and close the door on our old associates? If we do, it is the first time that anything has ever been done in which any shareholder had the advantage over all the shareholders." And that was the reason for making the offer, and the only reason for making the offer.

Fols. 2799 to 2810.

MR. KENNEDY:

Q. It was the expectation and purpose of you gentlemen at that time, when you conceived the idea of organizing the Northern Securities Company, to acquire a majority of the stock of both roads, was it not?

A. *It was our intention to have a majority of the Northern Pacific, but as to the Great Northern, it was simply an intention to let the members in who chose to come in, and it remained to be seen whether it would be a majority or a minority.*

Q. Why did you plan on getting a majority of the Northern Pacific and not of the Great Northern?

A. Well, my idea was in consequence of what took place last May; we didn't want to be subject to such an attack as took place last year.

Fols. 772, 773.

Q. Now, it was finally determined, after it was decided to take in a majority or more of the stock of the Northern Pacific, to throw open the privilege to all the stockholders of the Great Northern to go into the Northern Securities Company?

A. Yes, sir.

Q. *And was that done for the purpose of placing a majority of the stock of the Great Northern in the Northern Securities Company, as well as a majority of the Northern Pacific?*

A. *I think not. The idea was to give the Great Northern stockholders, who might desire to come in, an opportunity to come in, that they might not feel that they were not fairly treated if certain persons went in and other persons were left out.*

Fols. 781, 782.

Q. *Did you understand that the formation of the Securities Company was in any way conditioned upon its acquiring a majority of the stock of both railroad companies?*

A. *No, sir; no such condition.*

Q. *Well, was it or was it not decided to form it whether it procured—*

A. *Whether it procured a majority or whether it did not.*

Fol. 855.

MR. CLOUGH:

A. Sometime after his (Mr. Morgan's) return, he expressed his willingness to sell his stock to a company of that character, but upon the condition that all other holders of Northern Pacific stock (common stock) should have like privileges with him, if they desired to exercise them. I might say at this time it was known, became generally known, that a plan for the retirement of the Northern Pacific preferred stock, and its replacement by new common stock, that had been conceived early in the year, would be quite surely carried out on the following January; and, when it was carried

out, there would be 155 millions of stock of one class of the Northern Pacific, and Mr. Morgan was very strenuous that when this stock was all out, if he sold his stock to the Northern Securities Company, that each of the other holders of the common stock, if he wanted to do so, should have the privilege of selling to the Northern Securities at the same rate. He was extremely insistent on that. Some of the eight or nine or ten Great Northern stockholders who were consulted in this matter had quite early taken a similar view in regard to Great Northern stock. They suggested that it had been the settled policy of the Great Northern management, that whatever benefits of any kind should be open to the holder of any of the Great Northern stock should be opened upon equal terms to all the others. There was not very much progress made with that proposition until after Mr. Morgan's return, and his insistence upon that privilege (a similar privilege for the Northern Pacific stockholders in relation to their stock,) and then it was very generally considered by these gentlemen that the arrangements for the holding company, as it was commonly called at that time, should be made large enough so as to let in, if desired, all of the holders of the Great Northern stock as well as of the Northern Pacific. *That matter was discussed from time to time, and it was believed by myself and Mr. Hill and Mr. Kennedy and some of the others who had watched things very closely, that there was very little probability of anything nearly like the whole of the stockholders of the Great Northern, at least, coming in, because that was a well established stock in the market. It had been on the market for ten years, and had a high market value and was thoroughly well known. It was held entirely by investors. There never has been any speculative movement in Great Northern stock, and it was thought, that being held that way, the holders of a well known and well-established stock would be loath to sell it and take in pay the stock of a new and comparatively unknown company.*

Fols. 3135-3139.

MR. MORGAN:

Q. When was it was first decided between you and Mr. Hill to put both stocks of these companies into one holding company?

A. Mr. Hill did not decide the Northern Pacific. I told him I thought if he was willing we would take it; and that was probably some time either just before or just after I returned from California.

Q. Then you agreed to do it?

A. No, sir; I told him that would be my decision if everything went smooth. We could not tell at that time if we were going to be able to get our charter.

Fols. 1410, 1411.

Q. If you could get your charter and all the legal formalities could be carried out?

A. He was acting for his stock and I for mine, with the condition that if the Northern Securities Company was organized the holders of the Northern Pacific stock should have the right to put in their stock the same as we did.

Q. When was it decided between you, or agreed between you, that the Great Northern would come in?

A. They were in before; I had nothing to do with that; that was all fixed.

Q That they would come into the Northern Securities Company?

A. I have already said to you that the Great Northern Company and a holding company was a thing of Mr. Hill's plan. The question simply was whether J. P. Morgan & Co. should select the Northern Securities Company as the custodian for our Northern Pacific stock or not, so that it was really Mr. Hill's plan, and the Great Northern went in before I did. I told you before, he had arranged that for his road and subsidiary companies, at least that or some holding company, so that was long before this thing came up.

Fols. 1412 to 1414.

Q. *Was the fact of acquiring a majority of the stock of both or either the Northern Pacific and the Great Northern Railway Company made a condition of the organization of the Northern Securities Company, so far as you know?*

A. *Nothing at all. On the contrary, we only wanted one.*

Q. *Was it, or was it not, determined, so far as you know, to form the Northern Securities Company without knowledge whether the company would, or could, acquire a majority of either or both of these stocks?*

A. *Nothing whatever. We had a majority of the Northern Pacific; we knew that.*

Q. *Was it agreed by anyone, so far as you know, before the Northern Securities Company was organized, that the so-called Harriman or Union Pacific stocks in the Northern Pacific should be placed in the Northern Securities Company?*

A. *No; we did not require it.*

Fols. 1442–1444.

Fourth Finding.

"WHEN THE SECURITIES COMPANY WAS ORGANIZED, IT ASSENTED TO AND BECAME A PARTY TO THE SCHEME THAT HAD BEEN DEVISED BY ITS PROMOTERS BEFORE IT BECAME A LEGAL ENTITY.

VERY SHORTLY AFTER ITS ORGANIZATION THE SECURITIES COMPANY ACQUIRED A LARGE MAJORITY OF ALL THE STOCK OF THE NORTHERN PACIFIC COMPANY AT THE RATE OF $115 PER SHARE, PAYING THEREFORE IN ITS OWN STOCK AT PAR. AT THE SAME TIME IT ACQUIRED ABOUT 300,000 SHARES OF THE STOCK OF THE GREAT NORTHERN COMPANY FROM THOSE STOCKHOLDERS OF THAT COMPANY WHO HAD BEEN INSTRUMENTAL IN ORGANIZING THE SECURITIES COMPANY, PAYING THEREFOR AT THE RATE OF $180 PER SHARE, AND USING ITS OWN STOCK AT PAR TO MAKE THE PURCHASE. THE SECURITIES COMPANY SUBSEQUENTLY MADE FURTHER PURCHASES OF STOCK OF THE GREAT NORTHERN COMPANY AT THE SAME RATE, AND IN ABOUT THREE MONTHS HAD ACQUIRED STOCK OF THE LATTER COMPANY AMOUNTING AT PAR TO ABOUT $95,000,000, USING FOR THAT PURPOSE ITS OWN STOCK TO THE AMOUNT OF ABOUT $171,000,000. THE SECURITIES COMPANY WAS ENABLED TO MAKE THE SUBSEQUENT PURCHASE OF STOCK FROM STOCKHOLDERS OF THE GREAT NORTHERN COMPANY NOT IMMEDIATELY CONCERNED IN THE ORGANIZATION OF THE SECURITIES COMPANY BY THE ADVICE, PROCUREMENT, AND PERSUASION OF THOSE STOCKHOLDERS OF THE GREAT NORTHERN COMPANY WHO HAD BEEN INSTRUMENTAL IN

ORGANIZING THE SECURITIES COMPANY AND HAD EXCHANGED THEIR OWN STOCK FOR STOCK IN THAT COMPANY SHORTLY AFTER ITS ORGANIZATION.

"AT THE PRESENT TIME THE SECURITIES COMPANY IS THE OWNER OF ABOUT 96 PER CENT. OF ALL THE STOCK OF THE NORTHERN PACIFIC COMPANY AND THE OWNER OF ABOUT 76 PER CENT. OF ALL THE STOCK OF THE GREAT NORTHERN COMPANY."

Pp. 1704–5.

The Northern Securities Company did not become a party to any scheme. It is not an agency or association deriving its power from any contract or plan dependent upon the will of those who organized it. It is a lawful corporation, and not a fraudulent device. It is not an agency of its stockholders, or of its directors. Its directors are its officers, and their authority is derived from its charter and the Laws of New Jersey. Within its charter powers it has a lawful right to do what an individual may do. If, in the exercise of its lawful powers, it violates the law, it is subject to restraint and prosecution. On the 13th day of November, at a meeting of its Board of Directors, resolutions were adopted authorizing the purchase of any Northern Pacific shares that might be offered for sale at $115 per share. On the 14th day of November, the board adopted resolutions authorizing the purchase of any Great Northern shares that might be offered for sale at $180 per share. A majority of Northern Pacific shares was not purchased by the Northern Securities Company at $115 per share; but was purchased in one block, for a lump sum, payable partly in cash, and partly in the shares of the Northern Securities Company.

The shareholders owning Great Northern and Northern Pacific shares, who consulted about the organiza-

tion of the company, sold to it, shortly after its organization, about $30,000,000 of Great Northern stock, and about $35,000,000 of Northern Pacific common stock. J. P. Morgan & Co. sold to it about $7,000,000 Northern Pacific common stock. The price paid for Great Northern was 180 per share, and for Northern Pacific, 115 per share.

Between the 18th day of November, at which time the Northern Securities Company had acquired a majority of Northern Pacific shares, and the commencement of this suit, 1200 other Great Northern shareholders, who had not been consulted about its formation, and who did not know of its organization until after it had begun to do business, and had acquired a majority of Northern Pacific shares, sold their shares to it, separately and individually; the aggregate of such shares being about $65,000,000 and being a large majority of Great Northern stock held by the Northern Securities Company. Prior to December 11th, 1901, the Northern Securities Company had purchased not to exceed $49,000,000 of Great Northern shares, which had been transferred to it on the books of the Great Northern Company. After that date, it purchased Great Northern shares, which had not, at the time of the taking the testimony, been transferred on the books of the Great Northern Company.

MR. HILL:

Q. Shortly after the formation of the Northern Securities Company, you yourself transferred to it, sold to it, a large amount of Great Northern stock and Northern Pacific stock, did you not?

A. Yes, sir.

Q. And large amounts were sold in like manner by other holders?

A. Yes, sir.

MR. KENNEDY:

Q. And you turned in all your stock?

A. Yes, sir. I turned it in shortly after the formation of the company; about 96,000 Great Northern and 40,000 Northern Pacific.

Fol. 788.

MR. MORGAN:

Q. Did the relative proportion of 180 for Great Northern and 115 for Northern Pacific seem fair to you?

A. It did; if anything, I think the Great Northern was a little low.

Q. You, then, did acquaint yourself with the standing of the Great Northern and its history?

A. If you take the dividend and the market price of the Great Northern, and the uncertainty as to the price of the Northern Pacific—because you must remember that when this was formed, and all that sort of thing, we did not know whether we were going to be able to settle definitely with the Union Pacific interests, and we did not know either if we were going to get through the 1st of January without legal contest—and we found out from you gentlemen we came very near not doing it—*consequenty, I say the Northern Pacific got their fair share of that deal.*

Q. So the stocks did not go in on the basis of actual certainties?

A. They went in as near as possible on what we considered the market price. The price of Northern Pacific was fixed because it was the price at which we bought this stock. Undoubtedly, if that stock had not cost quite as much we would not have received as much.

Fols. 1405 to 1409.

MR. CLOUGH:

A. On the 18th of November, 1901 the Northern Securities Company purchased $37,023,000 of the common stock, and $41,085,000 of the preferred stock of the Northern Pacific Railway Company, making a total of $78,108,000 of the stock of the Northern Pacific Railway Company in one lot, for which it paid the lump sum of $91,407,500. Of this price, the Northern Securities Company paid $8,915,629 in cash, and $82,491,871 in its own stock at par. That is one trans-

action. On the 27th day of December, 1901, the Northern Securities Company purchased from the Northern Pacific Railway Company the convertible bonds, so called, of the latter company to the amount of $34,709,062.50, which it paid in cash. Within about two or three days afterwards, about the 1st of January, 1902, it caused those bonds to be converted into the new common stock of the Northern Pacific Railway Company, which it has since held. It has also from time to time since purchased small lots of Northern Pacific, for which it has paid cash.

Fol. 2606.

Q. In the answer of the Northern Securities Company it is stated that that Company has purchased and had transferred to it five-twelfths of the capital stock of the Great Northern Railway Company, and has negotiated for four-twelfths of the capital stock of that company. I should like to have you explain what is meant by the term "negotiated for" and what is the present status of that stock.

A. The total authorized capital stock of the Great Northern Railway Company is 1,250,000 shares of 100 each, of which 1,238,804 shares are outstanding. I am giving this in a way so as to make it as comprehensive as possible. Of the outstanding shares the Northern Securities Company, up to this date, (date of hearing September 25th, 1902, Fol. 33) has purchased and paid for, and transferred into its own name on the transfer books of the Great Northern Railway Company, 528,672 shares. It has also purchased and paid for, but has not had transferred into its own name on the transfer books of the Great Northern Railway Company, 458,017 additional shares. These latter shares stand on the stock books of the Great Northern Railway Company in names other than that of the Northern Securities Company.

Fol. 2594.

Q. At what time did the Northern Securities Company first have shares of stock in the Great Northern which it had purchased and paid for, withheld from transfer and placed in the hands of individuals in this way?

A. I don't remember now the precise date of the first transaction of that character, but it was some time last winter or early in the spring, as the stock was

offered for sale to the Northern Securities Company. I don't remember the date now, but if desired, I could get the date of the first transaction of that character.

Q. I wish you would get the date.

A. I will do so, and hand it to you or to the stenographer.

The witness subsequently advised the examiner that the date of the first transaction above referred to was December 11, 1901.

Fol. 2598, 2599.

Purchase from Union Pacific Interest of its Holding in Northern Pacific Stock.

On the eighteenth of November, 1901, the Northern Securities Company purchased $37,023,000 of the common stock and $41,085,000 of the preferred stock, making a total of $78,108,000, in one lot, for which it paid the lump sum of $91,407,500. Of this price the Northern Securities Company paid $8,915,629 in cash and $82,491,871 in its own stock at par. On the twenty-seventh of December, 1901, the Northern Securities Company purchased from the Northern Pacific Company the convertible bonds, so called, of the latter company to the amount of $34,709,062.50, for which it paid cash. Within two or three days afterwards, about the 1st of January, 1902, it caused those bonds to be converted into the new common stock of the Northern Pacific Company, which it has since held.

Fol. 2606.

Prior to the organization of the Northern Securities Company there was no agreement or understanding with Union Pacific interest relating to a sale of its Northern Pacific holding to the Northern Securities Company. The sale came near falling

through because of the refusal of the Northern Securities Company to accept the terms proposed. The sale would not have been made but for the fact that the Northern Pacific Company had adopted the necessary resolutions for retirement of its preferred stock, and the Union Pacific interest finally sold to avoid risk of litigation growing out of a contest of the right.

MR. STEELE:

Q. What did your firm have to do with the purchase of the Harriman interests in the Northern Pacific?

A. My impression is, it was my firm that conducted that negotiation entirely.

Q. Will you state what those negotiations were?

A. I will, as nearly as I can, and I think I know the substance of them. It was after the meeting of the Northern Pacific board, as I recollect it, at which it was resolved that the preferred stock was to be retired. Whether the suggestion came from Mr. Harriman or not, I couldn't quite say, but the question was taken up between Mr. Harriman and ourselves as to the disposition of the Northern Pacific stock which they had.

I think it was a little after the middle of November, after the meeting of the Northern Pacific board, at which it was resolved to retire the Northern Pacific stock. They expressed a desire to be allowed to part with their stock. It had become, or would become, by the retirement of the preferred stock, a minority interest, and it was rather an unsalable commodity, as the stock had practically been withdrawn from the market, and they asked us if we wouldn't undertake to get the Northern Securities Company to buy their stock. We finally agreed upon a basis by which they agreed to sell their stock for a lump sum, which was to be payable partly in cash and partly in stock of the Northern Securities Company. At that time, Mr. Harriman and his friends held both common and preferred stock, in the proportion, I think, of about 37,000,000 common to 41,000,000 preferred, in round numbers, and their proposition was to sell us that stock, in one block, for a fixed sum, which was to be paid partly in cash and

partly in Northern Securities Company stock, and we undertook to try and get the Northern Securities Company to buy that stock on those terms, we acting as bankers between them (fols. 1159, 1162).

Q. You state that the purchase of the so-called Harriman stock by J. P. Morgan & Co., as bankers, was made with the idea of a resale thereof, or an arrangement for the resale thereof to the Northern Securities Company?

A. I have stated that the idea of the purchase by J. P. Morgan & Co. of the Northern Pacific stocks held by Mr. Harriman and his friends was with the idea and undertanding that they were to be offered to the Northern Securities Company, on terms exactly the same as those upon which they were taken by J. P. Morgan & Co., and that the proceeds of the sale received by J. P. Morgan & Co., if the sale was consummated, were to be turned over to Mr. Harriman and his associates, and this is what was done.

Q. Do you know of any hitch or difficulty in the completion of doing what was done?

A. *There was quite a hitch, which arose from the fact that in our talk with Mr. Harriman and his friends we had assumed that their holdings of preferred and common stock were somewhat larger than they actually proved to be, and we had negotiated with the Northern Securities Company upon that basis. When they came to deliver the stock, which was the first time that we knew accurately just how many shares of stock they held, it turned out that they did not have quite so much as we supposed in the negotiation, and had represented to the Northern Securities Company that we did have. The Northern Securities Company consequently refused to take that amount of stock on the same basis that they had agreed for the amount which they supposed was to be delivered. We succeeded in effecting a compromise under which the Northern Securities Company accepted the amount of stock, which Mr. Harriman and his friends were able to deliver, but a substanti l reduction in the price was made, owing to the fact that the amount was not as great as the Northern Securities Company had supposed it would be.*

Fols. 1199-1203.

Q. *I understand you, Mr. Steele, that when the Northern Securities Company was organized, the so-*

called Harriman stock had not been purchased by you, or by anyone for that company.

A. *It had not been purchased by us.*

Q. *And, so far as you know, no arrangements for this sale to the Northern Securities Company had ever been made?*

A. *No, sir.*

Q. *Well, was there, as far as you know, any connection between the organization of the Northern Securities Company and the acquisition of the Harriman stock?*

A. *None whatever.*

Fols. 1204, 1205.

MR. MORGAN:

Q. Was it agreed by anyone, so far as you know, before the Northern Securities Company was organized, that the so-called Harriman or Union Pacific stocks in the Northern Pacific, should be placed in the Northern Securities Company?

A. No; we did not require it.

Q. And you did not know that it would be done until after the consummation?

A. Not until after.

Fol. 1444.

MR. HILL:

Q. At the time when the Northern Securities Company was decided upon, which took place some time in the summer of 1901, to your knowledge, were there any negotiations being carried on, or had been carried on prior to that time, with Mr. Harriman, or with persons representing Mr. Harriman, or the Oregon Short Line, looking to the purchase of the entire holding of the Union Pacific or the Oregon Short Line, or Mr. Harriman?

A. There was absolutely no such negotiations, directly or indirectly, and I think there could not have been any without my knowing it.

Q. Now the actual sale of the Harriman stock—we will call the stock which stood in the name of the Oregon Short Line, and perhaps in the name of Mr. Harriman and Mr. Winslow Pierce, the Harriman interest or Harriman stock. Now, at the time of the actual sale

of that stock to J. Pierpont Morgan & Co., do I understand you to say it took place in November, 1901 ?

A. I testified as my recollection that it was sold to Morgan in November.

Q. Now, was or was not that sale the result of conferences between Mr. Harriman and J. Pierpont Morgan & Co., yourself and Mr. Schiff, of Kuhn, Loeb & Co. ?

A. No ; I don't recall conferences between myself, Mr. Schiff of Kuhn, Loeb & Co., or Mr. Harriman on that subject.

Fols. 365 to 367, p. 93.

Q. Do you know that as a part of the consideration for the sale of the Harriman stock, so-called, to J. Pierpont Morgan & Co., a large block of Northern Securities Company's stock, which was to be issued later, was to be turned over to Harriman or his associates ?

A. I knew that the stock was exchanged the same as other stock. Now, that is all the exact information I had on the subject.

Fol. 378, p. 96.

Q. Now, was there any connection whatever between the organization of the Northern Securities Company and the purchase of the Harriman stock ? That is, taking those two things together, was there any connection between those two things and the selection of Mr. Morgan as arbitrator to name the board of directors of the Northern Pacific Railway Company ?

A. There was absolutely no connection whatever. The time at which it was agreed by the banks to allow Mr. Morgan to nominate the directors was in May. The Northern Securities Company was actually formed in November. It had been discussed without any reference to Mr. Harriman's holdings, or anybody else's holding for several years, and they had no more to do with each other than you have to do with either of them.

Fol. 390, p. 99.

Q. Had you prior to November 13, 1901, any arrangement, agreement or understanding that Mr. Harriman, or of any one representing his interest or the interests of the Union Pacific Railway Company, with reference to the taking care of the preferred stock of the Northern

Pacific held by him, or the Union Pacific, or the Oregon Short Line?

A. I had no such arrangement with Mr. Harriman or any else before or after.

Fol. 268, p. 68.

MR. HARRIMAN:

Q. On or prior to May 9, 1901, had you, acting for the companies or railway interests that you represented, acquired certain stock in the Northern Pacific Railway Company, amounting in round numbers to about 78 millions dollars, par value?

A. Yes, sir.

Q. And that stock stood in your name and that of Mr. Pierce, holding it for the interests that you represented?

A. Yes, sir.

Q. Did J. P. Morgan & Company, or any member of that firm, open negotiations with you looking to the purchase or acquisition of such holdings during the fall of 1901?

A. Does it make any difference whether I opened the negotiations with them or they with me? I don't remember. It was either one or the other. The negotiations were opened. Or they may have been opened by some intermediate party. I don't remember just how it was.

Q. At what time were those negotiations opened?

A. It would be difficult for me to state within a month. It was September or October, I should think.

Q. How long did those negotiations continue before they were finally consummated?

A. I should think about a month or six weeks, possibly two months.

Q. With whom did you have your first dealings in those negotiations, if you remember?

A. I couldn't remember.

Q. Was it with Mr. Bacon of J. P. Morgan & Company?

A. I had many talks with Mr. Bacon. I had talks with nearly every member of the firm.

Q. In these negotiations were they acting for themselves, or acting with the understanding that these securities or this stock was to be turned over to some holding company when organized?

A. They never disclosed to me whether they were acting for themselves or somebody else.

Q. Before the negotiations were finally closed was it understood that you were to take some stock in a company to which this stock was to be transferred?

A. That is my recollection.

Q. And was that the Northern Securities Company?

A. It never was designated by any name.

Q. You didn't learn what company was to take it until you received the stock of that company in exchange?

A. Practically at that time.

Q. Did you understand, from the beginning of these negotiations, that this stock was ultimately to be turned over to some holding company which was to be organized?

A. No, I can't say that there was any understanding at the beginning of the negotiations for a settlement of whatever differences we might have in regard to that stock, whether it was to be taken by them or by a holding company, or how it was to be paid for. It was only towards the end, when the thing crystallized, that the suggestion was made, that payment should be made partly in cash and partly in a holding company's stock. *I think it was just toward the end of the negotiations when we were considering whether we would break away or get together on it.*

Fols. 3565 to 3571.

Q. *Well, you finally learned that the stock was in fact to be turned over to a holding company?*

A. *There never was anything on their part, it seems to me, that would lead me to infer that they were to turn that stock over to a holding company. Towards the end, when the matter crystallized, and when we were very nearly at the end of our tether, they offered to pay for these shares in the stock of a holding company so much, and so much in cash. Now, there was nothing said as to whether they would turn this stock over to a holding company, or whether they would hold it themselves; but they would give us that holding company's stock in part payment.*

Fol. 3573.

Q. *When did you first learn that this stock was to be delivered to the Northern Securities Company?*

A. *When it was delivered.*

Q. And that was the first you knew about that?
A. That is my recollection. The first I knew was when it was delivered to that company.
Fol. 3576.

Q. What did these negotiations relate to then? Whether you would surrender your stock or give it up?
A. Whether we would do anything with our stock except to stand where we were on the basis of holding preferred and common stock.
Fol. 3577.

Q. I suppose when you acquired the stock you supposed you had acquired a controlling interest in the Northern Pacific?
A. Practically that is what we thought.
Q. And did they contend that they had the right to retire this preferred stock that you held without your consent?
A. Yes, sir
Q. That contention was made during these negotiations?
A. I think steps were taken to retire it before the negotiations were ended.
Fol. 3578.

Q. And why were these negotiations pending, then, looking toward a settlement of your disputes, if you had started in to buy a controlling interest in the Northern Pacific, and supposed you had it, and no questions were raised about that retirement?
A. Well, of course, it was stated to us that this preferred stock could be retired.
Q. Who made those statements?
A. *Everybody. It was published in the papers. Statements were made by the directors and by people connected with the company, and published in the papers. I think you will find public statements were made at that time that that was the intention. But, of course, the actual steps taken for that purpose were not taken until about the time we made our trade. And if they hadn't been taken, and it hadn't been retired, we probably would have been in control.*
Fol. 3581.

Q. You understood, then, during these negotiations and prior to the time you closed the transaction, that there would be an effort to retire that stock without your consent?

A. A probability of it; yes.

Q. Did Mr. Morgan, or any of the representatives of J. P. Morgan & Company with whom you negotiated, state to you that they intended to do that?

A. I imagine they did. I don't remember just what—

Q. Well, that was one of the principal inducements that led you to finally surrender your holdings, was it not?

A. Practically.

Fols. 3582, 3583.

Q. Did they represent to you that that was the basis on which they were going to take in the stock?

A. The statement was made to me that they would put this Northern Pacific stock into a holding company, and give us, in part payment, a holding company's stock on the basis of $115 for Northern Pacific, and, if Great Northern were taken in, on the basis of $180 for Great Northern. They didn't state how much they were going to take in, or how little they were goin to take in.

Fol. 3588.

Q. Didn't you understand from their statements that the basis of exchange, if any was made, was 115 and 180?

A. Yes.

Q. That is, 115 for Northern Pacific and 180 for Great Northern?

A. Yes.

Q. Were you consulted at all regarding the formation of this holding company?

A. No, sir.

Q. You didn't know where it was going to be organized?

A. No, sir.

Q. And had nothing to do with it?

A. No, sir.

Q. You were not consulted about the retirement of the preferred stock either, were you?

A. No, sir.

Q. You made no inquiries as to where the corporation was to be formed or the amount of its capital stock?

A. I knew, of course, the amount of the capital stock, but I didn't go into the particulars of the formation of the company at all. That may seem strange. But in the enormous transactions we have down here we simply have faith that the man who is doing the thing is doing it properly, or else we don't negotiate or trade with him.

Q. *Did you finally consent to surrender your holdings on the basis on which you did, because you had made up your mind they would carry out the determination you had heard expressed, to retire the preferred stock, and thus take away from you the controlling interest in the stock of the Northern Pacific?*

A. *I think I recollect pretty clearly, that from our standpoint we thought it was better for us to accept that price for our stock than go into legal contest.*

Q. *And you understood that if you did not do that you would have a legal contest on that question?*

A. *Well, we took it for granted, naturally, action having been taken determining to retire the preferred stock.*

Q. *Well, action was not taken to retire the preferred stock until your negotiations had nearly reached a conclusion?*

A. *Yes, but they had not reached a conclusion.*

Q. *That is, you waited until the very last moment to see if they would do what you understood they would do?*

A. *Well, we were very patient.*

Q. Then, if such action had not been taken, you would not have surrendered your stock?

A. I don't know. That is a condition we did not have to meet. I don't think I could answer that question fairly, nor do I think it is exactly a fair question, because the board of directors might have determined (if they had not done it) to have sold our shares for less.

Fols. 3591-3598.

Q. And they never disclosed to you for whom they were acting until the transaction was ready to be closed?

A. *My recollection is they did not. In fact, I don't think this transaction was closed until practically the very minute the payment was made. I think there was considerable discussion and dispute as to the final payment, and about—I don't remember now whether it was the amount to be paid, or whether it was the amount of stock to be delivered; I think it was the amount of stock to be delivered. They supposed we had somewhat more stock than we really had.*

Fols. 3602, 3603.

MR. CLOUGH:

Q. The records show that you were present at a meeting of the directors of the Northern Securities Company on the 15th of November, 1901, where the statement was made by the president of the Northern Securities Company as to his ability or the possibility of acquiring $37,023,000 of the common stock of the Northern Pacific, and $41,085,000 of the preferred stock. You were present at that meeting?

A. I was; yes, sir.

Q. Was there any discussion at that meeting as to the advisability of this purchase and the terms upon which it was to be made?

A. There was no extended discussion.

Q. Well, will you state what discussion took place?

A. If you will be kind enough to let me take those minutes, I will explain just what did occur [referring to pamphlet containing minutes of the meeting]. This meeting was an adjourned meeting, held at half-past two o'clock on the afternoon of the 15th, which, as I remember, was Friday. A little before the hour for the meeting had arrived—perhaps half an hour or so—one of the partners of J. P. Morgan & Company—my recollection is that it was Mr. Steele—came to the Northern Securities office and said that a negotiation which was pending at that time between J. P. Morgan & Company and Messrs. Harriman and Pierce, for the purchase of their holdings in Northern Pacific preferred and common, he thought would very shortly come to a conclusion as to terms; that is, the precise terms upon which Harriman and Pierce would sell would be arrived at very shortly. And he said, at the same time, that probably before closing the contract, if one were entered into, Harriman and Pierce might, if the stock were turned over to the Northern

Securities Company, desire to see some action of the board, and suggested that some kind of action should be taken, and inquired about the meeting. I told him that there was to be a meeting that afternoon, but that likely there could not be another meeting on Saturday (which would be the following day) on account of the fact that a number of our directors did not come to their business on Saturday, and that a meeting could not be had until the fore part of the week after that day. Then it was suggested that as that was the case, and this bargain might come to an early termination, and it might be desired to close it up soon, some sort of action be taken at the meeting to be held that afternoon. And then a sketch was made of a minute entry for the meeting, beginning with the words "The president stated", and ending with the resolution which closes the first paragraph of the 18th page of this printed volume of the minutes. But as the bargain had not yet been concluded, the figures showing either the amount of the stock, or the price to be paid, could not then be stated, but he thought they would be ascertained before the close of the meeting. So this preamble, commencing with the words, "The president stated," and the resolutions following were prepared just as they are now, with the sums left blank, and the meeting assembled, and, after waiting a little while, no figures were present, and some of the directors being anxious to get away, I produced this preamble and resolution, and I read the resolution and explained it in a general way to the meeting. After quite a general expression of opinion among the directors who were present, that a purchase of this stock was very desirable, the resolutions with the blanks and the preamble were adopted. Then we passed to other business. Just as the meeting was breaking up (the other business being finished) I think Mr. Perkins came in (who was a director). I think Mr. Perkins appeared for the first time near the close of this meeting, after most of the business had been done, and brought in figures showing the amount of preferred and common stock, respectively, that Harriman and Pierce had, and the price to be paid; showing the money and the amount of stock of the Northern Securities Company that was to be paid for it. I looked at it, and it was shown to Mr. Hill, and then it was perceived that the amount of Northern Pacific stock contained in that statement was appreciably less than the amount

of stock which we had all the time supposed they owned. *And we declined to close the trade; that is, the Securities Company declined to take the stock from Morgan & Company on that basis. The meeting then adjourned, with the whole matter left open. And, as I understood, negotiations were then resumed between Morgan & Company and Harriman and Pierce, and were concluded sometime between Friday afternoon and the following Monday morning (which was the 18th). Then a basis was reached, which is expressed by the figures which now appear in this resolution. The preferred and common stock of the Northern Pacific were brought in and paid for, and the minutes were written up with these numbers inserted as they now appear here. The meeting for the purpose of acting upon this project again had been adjourned until the following Tuesday. It was found that the following Tuesday was the first day we could reasonably expect to get a quorum. So the following Tuesday the minutes of the meeting of the previous Friday with the blanks filled as they now stand, were read and approved by the board of directors. That is the history of the resolution.*

Fols. 3621 to 3629.

Purchase of Great Northern Shares.

Thirty millions of Great Northern stock were purchased from the eight shareholders instrumental in organizing the company. Sixty-five millions, making up the ninety-five millions acquired, were purchased from time to time from twelve hundred other Great Northern shareholders who were not concerned in the organization of the Northern Securities Company, and who did not have knowledge of its organization until it had commenced doing business. Not one share of the sixty-five millions purchased from those twelve hundred shareholders was purchased through the advice, procurement or persuasion of any-one of the shareholders concerned in the organization of the company.

On November 22, 1901, the Northern Securities Company issued and mailed to each registered shareholder of the Great Northern Company a circular, of which a copy appears below.

There is not the slightest evidence that any Great Northern shareholder, other than the eight or ten who consulted about the formation of the Securities Company, had ever heard of the existence of that company, or that any such company was contemplated, prior to his receipt of this circular.

"No. 27–29 Pine Street, New York City,
November 22, 1901.

To Holders of Stock of the Great Northern Railway Company:

The Northern Securities Company, incorporated under the laws of the state of New Jersey with an authorized capital stock of $400,000,000, and with power to invest in and hold the securities of other companies, has commenced business, and has acquired from several large holders of stock of the Great Northern Railway Company a considerable amount of that stock.

A uniform price has been paid of $180.00 per share in the fully-paid stock of this company at par. This company is ready to purchase additional shares of the same stock, at the same price, payable in the same manner, and will accept offers made on that basis, if made within the next sixty days.

Offers for sale of stock of the Great Northern Railway Company should be made upon the enclosed form, and should be accompanied by the certificates of the stock offered with transfers duly executed, having United States stamps for transfer tax of two cents per share affixed.

Upon receipt of any such offer, so accompanied, the Northern Securities Company will deliver to the seller of the stock of the Great Northern Railway Company, certificates of its own stock to the amount of the purchase price above named, or if such certificates are not then ready for delivery, its negotiable receipt obliging it to issue and deliver such certificates as soon as

ready. For fractional parts of shares scrip certificates convertible into stock in multiples of $100 will be given.

(Sgd.) NORTHERN SECURITIES COMPANY,
By JAMES J. HILL,
President."

Fols. 2782–2786.

MR. HILL:

Q. After sending that circular, state whether or not you received inquiries from shareholders in reference to what conduct they should take, what they should do with their shares.

A. There were a great many letters. I was in New York at the time, and a great many letters came addressed to the office, some of them addressed to me, wanting to know what I would advise them to do. Some would write to the office and wanted to know what Mr. Hill wanted them to do, or what the company wanted them to do.

Q. What action did you take in answer to those inquiries? How did you answer them?

A. Some individuals came in to see me. I told them it was their own affair. Others wrote, and there were so many letters that I prepared a letter that was in the nature of a circular letter, that would answer all their questions, and that was issued. I prepared it instead of writing a separate letter to each inquirer."

Fols. 2786–2788.

"NOVEMBER 30TH, 1901.

DEAR SIR: Replying to your letter of the 23rd instant, asking for further information about the Northern Securities Company, I beg to say that the business of that company is to deal in high-class securities, to hold the same for the benefit of its shareholders and to do such other acts as will advance the interests of the companies whose securities it holds.

The powers of the company do not include the operation of railways, banking, nor buying or selling for others on commission.

The organization of such a company has been considered for many years by the original promoters of

the St. Paul, Minneapolis & Manitoba Railway Company, and its successor, the Great Northern Railway Company, who have always remained the largest shareholders therein. These men have deemed it wise to make permanent arrangements for the protection of their interests and for securing a continuous policy in the management of their properties. Believing the Northern Securities Company will secure the objects named, they have generally sold to it their holdings of Great Northern shares, on the terms stated in the circular.

The traffic of coal and other local companies is of great value to the railway, while the conduct of the business of such companies is outside of the railway's corporate powers. The Securities Company will control this large traffic for the railway and will receive the profits of these separate properties.

The offer contained in the circular came from the request of the large holders of Great Northern, above mentioned, who desired that all other holders might have the same opportunities as themselves in association with them, and upon the same terms. The writer is of opinion that the offer of the Securities Company is one that Great Northern shareholders can accept with profit and advantage to themselves.

Yours truly,

(Sgd) JAS. J. HILL.

Fols. 2791–2793.

MR. HILL:

Q. About how many individual shareholders of the Great Northern have transferred their shares to the Northern Securities Company?

A. Well, I can hardly say, but I should think possibly a thousand or twelve hundred.

Fol. 2780.

Sales made by the Great Northern shareholders were absolute, separate, and individual, without concert of action or solicitation from those instrumental in organizing

the Northern Securities Company. Instead of soliciting sales, Northern Securities Company gave notice of threatened litigation, verbally, and by causing it to be stamped upon written applications for exchange of shares, and thus left it to the decision of each shareholder.

MR. HILL:

Q. *State whether or not your sale or transfer to the Northern Securities Company was an absolute, out-and-out sale and transfer, or whether there was any understanding or condition or trust or anything of that kind connected with it.*

A. *The sale by myself, and by everybody—and as president of the Northern Securities Company I know the conditions upon which the purchases were made—they were absolute purchases, as absolute as was possible to make them, and outside of any condition, or trust, or implied agreement, or anything else. They were just as free to sell the stock—that is, the Northern Securities Company is the absolute owner of the stock and free to sell it and dispose of it, or burn it if it sees fit.*

Fol. 2774.

Q. Was there any understanding as to how the Northern Securities should vote that stock?

A. None whatever. It is a matter for its own considerstion. Not any more than if you bought it, or any other purchaser. There was no condition of any kind attached to the sale of the stock. They bought it outright and paid for it, and there is no agreement, direct or implied, in existence, or ever was in existence or ever contemplated.

Fol. 2775.

Q. *Now, was there any solicitation with the shareholders of the Great Northern, either on the part of the officers of the Great Northern or of the officers of the Northern Securities Company—any solicitation to them*

to turn in, to transfer, their shares to the Northern Securities Company?

A. *No, sir; there was absolutely none. On the contrary, great pains were taken to see that every shareholder understood that it was a matter for himself to decide, and one that nobody else could decide for him. The price was such, bring below the market, that it was thought it would deter a number from selling their stock. In fact I did not expect that so large a number of the shareholders would exchange their stock. We gave them the opportunity if they desired to.*

Fol. 2779.

Q. Now, what was the response to the offer? How much stock of the Great Northern was exchanged for stock of the Northern Securities?

A. Oh, I don't recall the amount. I know a great deal came in before—I should say nearly half of it came in very soon after—maybe 40 per cent. Then a lawsuit was started, I think, by the state of Minnesota first, or Peter Power; I am not sure which; but a lawsuit was started, and we took pains then—a great many had sent their stock to the office—we took pains to notify them that a lawsuit had been commenced, and the stock was not purchased, the transaction was not closed until they were notified and asked: "Do you still want to sell your stock?" We felt it was a duty to let them know that such a lawsuit had been commenced, as that might make some difference in their view as to whether they wanted to sell their stock to the Securities Company or to hold it as Great Northern.

Fols. 2810–2811.

MR. CLOUGH:

Q. Had you any knowledge of the fact of transfers of the Great Northern and Northern Pacific to the Northern Securities Company.

A. Yes, sir; I knew about that; it was all done under my supervision.

Fol. 3124.

Q. *State whether the transfers were individual, absolute, and without solicitation from the Northern Securities Company?*

A. To answer the first question, every purchase of stock that has been made by the Northern Securities Company, (whatever stock it may be,) has been by direct individual transactions and negotiations with the owner of that stock, except in the one instance that I have referred to in my previous testimony, of the purchase of the Harriman and Pierce stock, where J. P. Morgan & Co. negotiated the purchase and the purchase was assigned to the Northern Securities Company.

Q. Now, were the transfers absolute?

A. They were absolute and unconditional in every case.

Q. Were they solicited by the Northern Securities Company?

A. No, sir; in no case. The Northern Securities Company, sometime in November, I have forgotten the precise date, I think it was the 22nd, issued a circular to each individual stockholder of the Great Northern Railway Company, of which a copy has been introduced.

Q. Were you present in the office of the Northern Securities Company at the times when holders of shares came there to make transfers or to make inquiries?

A. Yes, sir; I was there constantly in attendance, at all times during practically every business day.

Q. Now, were a considerable number of transfers made there by parties appearing personally or by their representatives?

A. Yes, sir, quite a good many people brought their stock in personally; many others sent it by mail.

Q. What information or suggestions were made to them respecting the transfers?

A. Why, there was nothing special; the transaction would be, that the individual would present his Great Northern stock, or Northern Pacific stock, as it might be, ank asked to sell it to the Company and to receive in pay the stock of the Company. When litigation against the Company was threatened, I think in every instance, that fact was communicated to every person bringing his Great Northern and Northern Pacific stock to the Securities Company to sell it. And after a little time, after litigation had been begun by the state of Minnesota, in the Supreme Court of the United States, (that was, if I remember right, early in the present year, about the first of January, 1902), the Company had a rubber stamp made, of which I haven't a copy of the impression here (I forgot to bring it), but it was to the effect, that the person who offered his stock to the Securities Company for sale had been in-

formed by the officers of the Company of the pendency of the litigation, and that was stamped upon each application. In order to keep our records straight, we had a blank form of offers to the Company, and that was stamped upon the application.

Fols. 3126, 3130.

No inflation of securities was planned or effected. The stock of the Chicago, Burlington and Quincy Railroad Company and of each of the defendant railway companies was worth in cash at least the price paid.

MR. HILL:

Q. *Now, how was the price of the Burlington Railroad Company stock fixed?*

A. *The matter was the subject of negotiation on several occasions. The books or transcripts of the accounts were produced, showing its earnings—the income—I remember its income as shown was $10,400,000, including the sinking fund, and that was over 10 per cent. on the outstanding stock at that time, or about 10 per cent. The Burlington road had a very heavy sinking fund; for many years the miles of main track—something over 8,000—had a bonded debt, less the sinking fund, of about $15,800 a mile, and stock was about $13,000 a mile. Take the Burlington stock at 200, and add to it the bonded debt per mile of the road, and it would give the average cost of the Burlington about $42,000 a mile, which was about what it cost us; that is $10,000 or $12,000 a mile less than any of these granger roads are selling at on the market. In other words, the Burlington was the cheapest property altogether, and reached the points we desired to reach, and it would cost us less money per mile than it would to have acquired any other.*

Fols. 587, 588, p. 148.

The Norther Securities Company paid for about half of the Northern Pacific common stock at $115 per share in its own stock. About thirty-four millions were obtained directly from the railway company

through the convertible bonds, which cost the Securities Company par, for cash. The cost of the thirty-seven millions bought from the Oregon Short Line (the Union Pacific interest) can only be estimated in a general way. Its net cost to the Securities Company, part cash, and part Securities Company's stock, could not have much exceeded $132 per share, including the right to acquire the shares of new stock at par.

The average cost to the Securities Company, therefore, of all its acquisitions of Northern Pacific common was not far from $115 per share.

The Northern Pacific Company owns about 5,750 miles of railway, of which it operates about 5,350 miles, directly and through controlled companies. Its fixed charges are about $6,600,000 per year. Its total capital stock outstanding is $155,000,000, all of uniform class and rights.

For the fiscal year ending June 30, 1901, its net revenues above operating expenses and taxes were $15,744,274. Deducting interest and rentals left a balance of $9,213,903 applicable to dividends, if the company should elect to so use it all. This was six per cent. upon its stock.

In the year ending June 30, 1902, its net revenues above operating expenses and taxes were $19,792,840. Deducting interest and rentals, left a balance of $13,047,233 applicable to dividends, if the company should elect to so use it all. This was about eight and a half per cent. upon its stock.

The increase of revenues of this property in 1902, over 1901, did not come from increased rates of transportation. It came solely from increase in volume of traffic.

In the year 1901 the number of tons one mile was 2,440,662,665. In the year 1902 the number of tons one mile was 3,300,253,137, making an increase in one year of 859,590,472 tons one mile. In the year 1901 the average earnings per ton per mile were $9\frac{44}{100}$ mills. In the year 1902 the average earnings per ton per mile were 9 mills (Rec., pp. 998–1009).

The Great Northern Railway System comprises about 5,850 miles of road, covered by the stock of the Great Northern Company.

The fixed charges of the company on securities in the hands of the public amount to about $4,860,000 per year. Its total capital stock now outstanding is about $123,850,000, all of uniform class and rights. For the year ending June 30, 1901, its net revenues above operating expenses were $13,887,679. Deducting interest and rentals left a residue of $8,833,021 applicable to dividends, if the company should elect to so use it all. This was eight and eight-tenths per cent. on its outstanding capital stock ($98,000,000) in that year.

For the year ending June 30, 1901, its net revenues above operating expenses were $20,015,946. Deducting interest and rentals left a residue of $15,180,732 applicable to dividends, if the company should elect to so use it all. This was 12 per cent. on its outstanding capital stock ($123,850,000) in that year.

As in case of Northern Pacific, the increase of the revenues of this property in 1902 over 1901 did not come from increased rates.

In the year 1901 the numbers of tons carried one mile was 2,481,751,195.

In the year 1902 the corresponding figures were 3,190,217,482.

In the year 1901 the average earnings per ton per mile were $8\frac{71}{100}$ mills.

In 1902 they were $8\frac{59}{100}$ mills.

Rec., pp. 944–952.

The average earnings per ton per mile of these roads in both years are shown by the public and official statistics of railroad operations in the United States to have been considerably below those of any other line of road operating to the Pacific Coast.

Great Northern stock has been regularly bought and sold upon the market up to date; and the daily quotations of prices for it appear in the public statistics. The figures for these prices through the year 1901, and for the bulk of the year 1902, have been put in evidence. At practically all times from the beginning of the year 1901 down the market price has been several dollars per share above $180 (Rec., p. 986).

There was no connection between the retirement of the Northern Pacific preferred stock and the formation of the Securities Company. The purpose of retiring the preferred stock on January 1st, 1902, had been formed before the dissolution of the voting trust, on January 1, 1901, and that dissolution was the first step toward carrying out such purpose.

The first meeting of the first Board of Directors of the Northern Pacific Railway Company, elected by the direct vote of its stockholders, was held on November 13,

1901, a regular meeting day of the board, under its rules.

The holding of the meeting at any earlier date had been prevented by absence from town of directors necessary for a quorum.

The preferred stock was issued for temporary purposes only. Prior to the beginning of the year 1901 Mr. Morgan and his co-trustees in the voting trust had decided that the subject of retirement should be acted upon by the first board of directors elected by the stockholders. The first election of the board by direct vote of the stockholders occurred in October, 1901. There was no meeting of the board of directors so elected by the stockholders, by reason of the absence from town of directors, until November 13th, at which time the board was organized, officers elected, and a resolution adopted to retire the preferred stock. By the terms of the agreement under which stock was issued, it could be retired only on a first day of January. To accomplish the retirement, the company would have to raise $75,000,000, the amonnt of the preferred stock, and give notice of its action and intention to the parties concerned. As the first meeting of the newly-elected directors, on November 13th, came so late as to leave but a short interval for doing the necessary things connected with the retirement the requisite action of the board was taken at that meeting. The reasons why the filing of the certificate of incorporation was delayed until the 13th of November, the same date when the Northern Pacific board of directors met, was inability to complete the articles earlier, because of the absence of gentlemen it was considered desirable to consult.

MR. KENNEDY:

Q. Why was the directors' meeting which passed the resolution for the retirement of the preferred stock held on the 13th of November, 1901?

A. That is the regular meeting day. I think the by-laws provide that the board shall meet on the second Wednesday of every month, and I think that was the regular meeting day.

Q. Was that the first meeting after the election?

A. Yes; I believe that was the first meeting after the election. There was no meeting held in October, because it was found they could not get a quorum, so that was passed over, and the first meeting after the election was held the second Wednesday in November. I don't remember the date, but I think it was the 13th.

Fols. 865, 866.

MR. STEELE:

Q. When was the plan of transferring to the Northern Securities Company, the stock in the Northern Pacific, first brought to your attention?

A. May I ask what stock in the Northern Pacific you mean?

Q. All the stock that could be obtained.

A. I never heard any such plan as that at all.

Q. Will you modify that question by saying any stock of the Northern Pacific, then?

A. That was brought to my attention about midsummer of 1901. It came about shortly after Mr. Morgan's return from Europe, which was early in July. The question of transferring that stock to the Northern Securities Company I am not sure was discussed at that time. The question of forming some sort of a holding company to hold the Northern Pacific stock which we had bought, and which was held by our friends, at that time was discussed, about then.

Q. Did your firm have anything to do with the organization of the Northern Securities Company?

A. No, sir.

Q. That was a deal entirely outside?

A. Outside; yes.

Q. Wasn't the matter of the retirement of the preferred stock discussed, and the plan under advisement at the same time as the plan for organizing a securities company to turn over the N. P. stock?

A. No, sir. The matter of retiring the preferred stock was never under discussion. It was considered a settled thing, as far as we were concerned, and the question of the particular plan I don't think came up until shortly before the directors' meeting at which it was to be acted on.

Fols. 1152 to 1155.

MR. MORGAN:

Q. You returned from California the very end of October, did you not?

A. Yes.

Q. The plan for the retirement of the preferred stock was adopted by the board of directors on the 13th of November?

A. Yes.

Q. Now, so far as your knowledge or participation in the completion of that plan, it was between those dates, was it not? Between your return from California and the 13th of November?

A. Of course; it could not have been otherwise.

Q. I mean it was not taken up before you went to California?

A. Oh, no; I think we finished it up the day we issued it.

Fols. 1455, 1456.

Q. Did or did not the organization of the Northern Securities Company have any relation to the retirement of the preferred stock of the Northern Pacific?

A. Nothing whatever.

Q. Was there, or was there not, in any way, any connection between the organization of the Northern Securities Company and the retirement of the preferred stock of the Northern Pacific?

A. Nothing whatever.

Q. Was the retirement of the preferred stock of the Northern Pacific Company undertaken for the purpose of giving to the Northern Securities Company an opportunity to acquire a majority of the common stock of the Northern Pacific Company, and thereby control that company?

A. Nothing whatever, because they already had it.

Q. Was there any scheme or plan entered into by anyone, so far as you know, whereby the retirement of the Northern Pacific preferred stock was to be used to

vest in the Northern Securities Company, or in anyone else, the control of the Northern Pacific?

A. Certainly not.

Q. Was it agreed by any one, so far as you know, before the Northern Securities Company was organized, that the so-called Harriman or Union Pacific stocks in the Northern Pacific should be placed in the Northern Securities Company?

A. No; we did not require it.

Q. And you did not know that it would be done until after the consummation?

A. Not until after.

Fols. 1439 to 1444.

Fifth Finding.

"THE SCHEME WHICH WAS THUS DEVISED AND CONSUMMATED LED INEVITABLY TO THE FOLLOWING RESULTS: FIRST, IT PLACED THE CONTROL OF THE TWO ROADS IN THE HANDS OF A SINGLE PERSON—TO WIT: THE NORTHERN SECURITIES COMPANY BY VIRTUE OF THE OWNERSHIP OF A LARGE MAJORITY OF THE STOCK OF BOTH COMPANIES; SECOND, IT DESTROYED EVERY MOTIVE FOR COMPETITION BETWEEN TWO ROADS ENGAGED IN INTERSTATE TRAFFIC WHICH WERE NATURAL COMPETITORS FOR BUSINESS BY POOLING THE EARNINGS OF THE TWO ROADS FOR THE COMMON BENEFIT OF THE STOCKHOLDERS OF BOTH COMPANIES, AND, ACCORDING TO THE FAMILIAR RULE, THAT EVERY ONE IS PRESUMED TO INTEND WHAT IS THE NECESSARY CONSEQUENCE OF HIS OWN ACTS WHEN DONE WILFULLY AND DELIBERATELY, WE MUST CONCLUDE THAT THOSE WHO CONCEIVED AND EXECUTED THE PLAN AFORESAID INTENDED, AMONG OTHER THINGS, TO ACCOMPLISH THESE OBJECTS." (Rec., p. 1705.)

"(IN CASES ARISING) UNDER THE 'ANTI-TRUST ACT WHEN THE POINT INVOLVED IS WHETHER THE OWNERSHIP OF ALL THE STOCK OF TWO COMPETING PARALLEL RAILROADS VESTS THE OWNER THEREOF WITH POWER TO SUPPRESS COMPETITION BETWEEN SUCH ROADS WE ENTERTAIN NO DOUBT THAT IT DOES. INDEED, WE

REGARD SUPPRESSION OF COMPETITION, AND, TO THAT END, A RESTRAINT OF COMMERCE AS THE NATURAL AND INEVITABLE RESULT OF SUCH OWNERSHIP." (Rec., p. 1707.)

Here we have reference to a plan or scheme which had not been formed, and also a new definition of "pooling." Assuming the existence of such a "scheme," it was, under the decision of the Court, unlawful solely because it led to the placing of a majority of the stock of the two roads in the hands of a single owner, thereby destroying the motive for competition between them. Under the decision, it is the possession of the power by a single owner to vote a majority of the shares of competing corporations engaged in interstate trade, that necessarily, directly and immediately regulates the commerce of such corporations. Let us refer again to the language of the Court: "Indeed we regard suppression of competition, and to that end a restraint of commerce, as the natural and inevitable result of such ownership." It is then the possession of the power that restrains trade, and not the method of its acquisition. The ruling of the Court is, that the obtaining of the power by a single interest, no matter how acquired, necessarily restrains trade. Congress, in the exercise of Federal control over the matter, has not as yet forbidden the obtaining of the power by gift, inheritance, or purchase in the market in the usual course of business, but has, as the Court holds, by the "Anti-Trust Act," forbidden its acquisition through contract or combination in the form of trust or otherwise. The question then is whether unity of ownership of a majority of shares of competing corporations en-

gaged in interstate commerce is a direct regulation of their commerce. If the voting power incident to such ownership is not a direct restraint of the commerce of the corporations, no plan or combination to acquire the power can be unlawful. The Anti-Trust Act does not forbid the obtaining of the power if the power does not directly, necessarily and inevitably restrain the commerce of the corporations. The method of acquiring the power is unimportant if possession of the power is not unlawful. If we are to look at the motive which led to the obtaining of the power, it is because of the bearing which such motive has, or may have, upon the question of how the possessor of the power intends to exercise it. In this view it is not the obtaining of the power, but its unlawful exercise, that is forbidden. It comes to this: The "Anti-Trust Act" does not forbid the acquisition of the power by a single owner, through gift, inheritance or purchase in the usual course of business. In such case, in the view of the Court, the power to restrain trade and the destruction of the motive for competition, destroys competition. If two or more owners of a majority of the stock of competing corporations engaged in interstate trade sell their shares to a single owner, individual or corporate, through an understanding or agreement between themselves to make the sale, the power acquired through the purchase restrains the commerce of the corporation, and the transaction is forbidden by the Anti-Trust Act. If the ownership by a single interest of the capital stock of competing corporations engaged in interstate trade, directly and inevitably restrains the commerce of such corporations, such ownership is a matter of exclusive Federal control. If common ownership of a majority of shares of such cor-

poration is a direct regulation of their commerce, it would seem to follow that the ownership by a single interest of a majority of the shares of a single railway company is also a direct regulation of the commerce of such company. "If the ownership of a majority of shares of one company does not regulate the commerce of that company, how can the ownership of a majority of shares of two companies be held to be a regulation of the commerce of both? If the ownership of a majority of shares of two non-competing corporations does not directly regulate the commerce of such corporations, how can it be said that the ownership of the shares of competing corporations regulates their commerce? The intent with which the power was obtained is immaterial, if the power, when obtained, directly restrains trade. The single owner, who has obtained the power cannot be heard to say that there was no intent to obtain it. If the obtaining of the power is not unlawful as a direct restraint of trade, and the question is one of the exercise of the power, intent may become material in a suit brought to restrain the exercise of the power, provided that in the exercise of the power, trade may be directly restrained. It is not claimed or pretended that the Northern Securities Company has entered into any contract or combination in restraint of trade.

Sixth Finding.

"IT MAY BE THAT SUCH A VIRTUAL CONSOLIDATION OF PARALLEL AND COMPETING LINES OF RAILROAD AS HAS BEEN EFFECTED, TAKING A BROAD VIEW OF THE SITUATION, IS BENEFICIAL TO THE PUBLIC RATHER THAN HARMFUL. IT MAY BE THAT THE MOTIVE WHICH INSPIRED THE COMBINATION BY WHICH THIS END WAS ACCOMPLISHED WERE WHOLLY LAUDABLE AND UNSELFISH; THAT THE COMBINATION WAS FORMED BY THE INDIVIDUAL DEFENDANTS TO PROTECT GREAT INTERESTS WHICH HAD BEEN COMMITTED TO THEIR CHARGE; OR IT MAY BE THAT THE COMBINATION WAS THE INITIAL AND NECESSARY STEP IN THE ACCOMPLISHMENT OF GREAT DESIGNS, WHICH, IF CARRIED OUT AS THEY WERE CONCEIVED, WOULD PROVE TO BE OF INESTIMABLE VALUE TO THE COMMUNITIES WHICH THESE ROADS SERVE AND TO THE COUNTRY AT LARGE.

* * * * * *

IT IS OUR DUTY TO ASCERTAIN WHETHER THE PROOF DISCLOSES A COMBINATION IN DIRECT RESTRAINT OF INTERSTATE COMMERCE; THAT IS TO SAY, A COMBINATION WHEREBY THE POWER HAS BEEN ACQUIRED TO SUPPRESS COMPETITION BETWEEN TWO OR MORE COMPETING AND PARALLEL LINES OF RAILWAY ENGAGED IN INTERSTATE COMMERCE. IF IT DOES DISCLOSE SUCH A COMBINATION, AND WE HAVE LITTLE HESITATION IN ANSWERING THIS QUESTION IN THE AFFIRMATIVE, THEN THE 'ANTI-TRUST ACT' AS IT HAS BEEN HERETOFORE INTERPRETED BY THE COURT OF LAST RESORT, HAS BEEN VIOLATED" (p. 1713).

The above finding necessarily rests upon the inference, that the suppression of competition between the two ~~roads~~ RAILWAY companies will be advantageous to the Securities Co. as owner of their stocks.

The contrary is the fact.

The Court finds that the Northern Securities Company can and may exercise its voting power in a manner beneficial to the public, rather than harmful. It can and may exercise its power in such a way as not to restrain trade to the injury of the patrons of the defendant railway companies and the public, but in such a way as to prove of inestimable value to the communities which the railway companies serve, and to the country at large. The competitive interstate traffic of the defendant railway companies is insignificant, in comparison with their total interstate traffic. Such competitive traffic does not amount to over $600,000 per year out of $18,000,000 of interstate earnings. The interest of the stockholders of both companies lies in the direction of building up traffic, and thereby increasing net earnings. This can only be done by making rates and carrying out a policy that will lead to the settlement of the territory served by them, and develop trade, agriculture, lumbering, manufacturing and mining. The two companies, in order to increase their volume of traffic and reduce rates, purchased the Burlington stock, and through such purchase they have been able to obtain a more direct and permanent access to the best markets for the products of the territory along their lines, and to secure connections which furnish the largest amount of traffic for their respective roads. These connections, and such interchange of traffic, are indispensable to the growth of their business, local as well as interstate, to the development of the country served by them, and to enable them to meet competition with other lines of railway and with European carriers, for interstate and international trade. By such connections and interchange of traffic the defendant railway companies have been

able to reduce rates, provide better facilities, and increase their volume of traffic. Through such connections a permanent basis for the development of their traffic has been secured, which justifies the investment of large amounts of capital in building docks, constructing ships, and providing improved facilities. It must be assumed that the power of the Northern Securities Company as a stockholder will be exercised in such a way as to build up traffic and not to destroy it. Its power to build up traffic is greater than its power to destroy it. Its power to maintain a policy that will enable the defendant railway companies to render good service at low rates, and thus meet the competition of the world, is greater than its power to discourage or prevent the settlement and development of the country through which the lines run, and thus make impossible that growth and extension of traffic upon which their future prosperity absolutely depends. Still it was held by the Court that there is a conclusive presumption that the interest of any single owner of the shares of competing corporations will be such, at all times, and under all circumstances, as necessarily to lead such owner to exercise the voting power of the shares in such way as to influence or coerce directors to restrain trade and destroy competition. It is impossible to understand how the Court reached such a conclusion.

It declined to look at the transactions as a whole, or, to consider the growth and development of trade, intended in fact and sure to follow.

The undisputed evidence shows that since the Northern Securities Company became the owner of the shares

of the defendant railway companies, the traffic of both companies has largely increased and rates have been reduced.

In the year ending June 30, 1902, the number of tons hauled one mile by Northern Pacific exceeded by 859,590,472 those hauled in the year ending June 30, 1901.

In the year ending June 30, 1903, the number of tons hauled one mile by Northern Pacific exceeded by 515,689,806 those hauled in the year ending June 30, 1902.

In the year ending June 30, 1902, the number of tons hauled one mile by Great Northern exceeded by 708,466,287 those hauled in the year ending June 30, 1901. In the year ending June 30, 1903, the number of tons hauled one mile by Great Northern exceeded by 416,617,694 those hauled in the year ending June 30 1902.

In the year ending June 30, 1902, the number of tons hauled one mile by Burlington exceeded by 742,543,188 those hauled in the year ending June 30, 1901. In the year ending June 30, 1903, the number of tons hauled one mile by Burlington exceeded by 929,553,769 those hauled in the year ending June 30, 1902.

Rec., pp. 998, 1009, 944, 952.

In the year ending June 30, 1901, Northern Pacific hauled 1,215,834 tons of lumber; in the year ending June 30, 1902, 1,640,475 tons; in the year ending June 30, 1903, 2,013,510 tons. In the year ending June 30, 1901, Northern Pacific hauled of forest products other than lumber, 1,525,874 tons; in the year ending June 30, 1902, 2,054,219 tons; in the year ending June 30,

1903, 3,076,877 tons. The greater part of this increased movement was to Burlington territory, and but for the purchase of Burlington stock could not have been made. The lumber making up the increase would not and could not have been produced.

Foreign commerce of the Great Northern Railway Company increased over 100 per cent. the first year after the Burlington purchase. One effect of this increase was to enable the company to reduce its rates from 10 per cent. to 15 per cent. on local business in all the territory between St. Paul, Lake Superior and the Pacific coast.

Fols. 2711, 2713.

Shipments of cotton piece goods to the Orient by the Great Northern in 1901 were 13,071 bales; in 1902, 64,542 bales; raw cotton in 1901, 13,230,000 pounds; 1902, 41,243,000 pounds.

Fol. 2707.

Exports of raw cotton to Japan, that, in the year ending June 30, 1901, amounted to 35,879,665 pounds, in the year ending June 30, 1902, were 89,252,696 pounds, and in the year ending June 30, 1903, were 76,413,291 pounds. Practically all this increase came from the efforts of the Northern Pacific, Great Northern and Burlington lines to stimulate the traffic, through low transportation rates, and improved facilities for shipment.

The undisputed evidence of every witness who testified on the subject shows, that commerce of the defendant railway companies has increased, and will increase, through the Burlington purchase, and through making permanent the holding of the stock of the defendant rail-

way companies where it is not likely to pass into the hands of an interest adverse to the building up of the traffic of both companies.

All the evidence on this subject was disregarded. The facts were ignored, because, in the judgment of the Court, there is a conclusive legal presumption that the interest of any single owner of a majority of shares of competing corporations will necessarily lead to the exercise of the stock control so as to influence directors to suppress competition, and thus necessarily regulate commerce in violation of law.

Nothing in connection with the formation of the Northern Securities Company distinguishes its purchase of Northern Pacific and Great Northern stock from purchases made in the usual course of business, by individuals, or by financial concerns of the country in general.

The law deals with acts alone. This case is one of buying by the Northern Securities Company of the shares of competing railway companies. The self interest of the Northern Securities Company, as respects its ownership of such shares, is not different from the self-interest of any single owner of such shares, no matter how acquired. If the interest of a single owner of a majority of shares of competing corporations is to be considered, for the purpose of determining the intent with which the shares were acquired, the question is one of fact, to be determined in each case in the light of the evidence. So far as presumptions are to be considered, it will be presumed that a single owner of stock

will favor the adoption and carrying out of the policy that will make the stock most valuable, and insure the payment of dividends upon it. There is no conclusive legal presumption that the interests of a single owner of shares of competing corporation will be subserved by violating the law through suppressing competition or making unreasonable rates. The Government does not claim that the defendant railway companies have made any agreement, or entered into any understanding, to change their former business methods, or to advance rates, or decrease facilities, or refrain in any way from giving their patrons good service. It is not claimed that the Northern Securities Company has in any way restrained competition.

The motives of those who consulted about the formation of the Northern Securities Company were undeniably to develop and increase trade, and not to restrain it.

Nevertheless, their motives in no way affect the rights of the Northern Securities Company, under its charter.

If we are to inquire into the motive of the Great Northern and Northern Pacific shareholders in selling their shares, the evidence makes it clear that only eight or ten out of 1,800 Great Northern shareholders, and 3,600 Northern Pacific shareholders, owning not to exceed one-fourth of the shares of either company, were consulted in regard to its organization, or had knowledge of it until after it begun to do business. The motive of the eight or ten shareholders cannot be regarded as the motive of the Securities Company. If the motives

of those who sold their stocks to the Securities Company are to be imputed to the latter as its motives, then the motives of the 1,300 holders of Great Northern and Northern Pacific stock, who sold to the Securities Company from time to time, separately and individually, are the ones that must be considered. *The motive of the shareholders who consulted about the organization of the company was not to restrain trade by suppressing competition, but to make permanent and secure the enterprise of the Burlington purchase, and thus make it possible for the defendant railway companies to meet competition in interstate and international trade by increasing their volume of traffic, and thus acquiring ability to reduce rates.*

There is no legal presumption that any owner of corporate shares will vote upon them to impair his own interests. There is no presumption or proof that the raising of rates, the decreasing of facilities or suppression of competition will promote the interest, or increase the profits, of the Northern Securities Company, as holder of the shares of the defendant railway companies. All the proofs in this case show that the interest of the Securities Company lies in precisely the opposite direction.

The Case Is This.

FIRST. It is not denied that the Northern Securities Company is a corporation lawfully organized under the laws of the State of New Jersey, with charter power to purchase and sell securities of all kinds, and to purchase, hold, vote and sell all the shares of stock of any single corporation or of non-competing corporations. Its right to purchase, hold,

vote and sell all the stock of the Great Northern Railway Company alone, or the Northern Pacific Railway Company alone, is not denied.

SECOND. The organization of the company was the result of a plan to form an investment or holding company, which had its inception years before its articles were filed, among not exceeding ten large holders of Great Northern stock, who had taken an active interest in the policy of the company and its administration, but who never had held in the aggregate to exceed one-fourth of its outstanding stock. It was thought that if a company were formed to which they might sell their individual holdings, their shares would be likely to be held together, so long as a majority of the holding company should wish, and that this would tend to give stability to the policy of the company, be of aid to it in its financial operations, and maintain the value of their investments.

THIRD. The Burlington purchase was made to enlarge trade, not restrain it; to increase competition, not to suppress it.

(a) At the time of the purchase it was not contemplated by either purchasing company or its shareholders that any alliance between the purchasing company or their shareholders was needed to preserve to each company its fair share of the advantages secured by the purchase. The purchasing companies had executed joint and several bonds to an amount exceeding $200,000,000.00 on account of the purchase, and the control of the direction of one of them by rival interests would defeat the great enterprise they had undertaken, of building up a large international and interstate traffic, and impose upon the other all the burdens of the joint obligations incurred, while taking from it

all, or a large part, of the benefits of the purchase. It was thought that the manifest interest of each company rendered any further guarantee or security needless.

(b) But pending, or just after the conclusion, of the negotiations for the purchase, Union Pacific interests did purchase Northern Pacific shares, both common and preferred, to the amount of about $78,000,000.00, being a clear majority of the capital stock of the company.

(c) The intent of such purchase was to defeat, and if successful it would have defeated, the carrying out of the purposes for which the Burlington shares had been bought by the Great Northern and Northern Pacific companies, and the enlargement of the interstate and international commerce of each of them, and would have subordinated the policy of each to an interest adverse to both and to the public served by their lines.

(d) To protect the interest of the shareholders of the Northern Pacific Company, J. P. Morgan & Company, on learning of the purchases by the Union Pacific interests, made additional purchases of Northern Pacific common stock, which with the holdings in said stock of Mr. Hill and other Great Northern shareholders who had discussed with him the plan of forming a holding company, constituted about $42,000,000.00, being a majority of Northern Pacific common.

(e) The purchase by J. P. Morgan & Company of additional Northern Pacific common was made in the belief that the Northern Pacific Company had a right to retire its preferred stock on the first day of January, 1902, through an issue of new common, and with the expectation that the stock owned by J. P. Morgan & Company and Mr. Hill and the Great Northern shareholders referred to, would be held for the purpose of retaining stock control of the Northern Pacific Company, as a defensive measure, to protect themselves and other shareholders of the Great Northern and Northern Pacific Companies against the attack of the Union Pacific interests, or a like attempt by some other railroad company to defeat the purpose for which the Burlington shares were purchased.

FOURTH. At the time of the organization of the Northern Securities Company the Great Northern shareholders referred to owned about $30,000,000 of Great Northern stock, and $35,000,000 of Northern Pacific common stock, having increased their holdings of the latter by purchases from J. P. Morgan & Co. They did not control a majority of the shares of either of the defendant railway companies. In view of the injury apprehended to both companies, and their shareholders, and the better to protect their interests in the future, against raids of adverse interests, the Great Northern shareholders referred to deemed it advisable that the holding company which they had considered should be organized, should have power to purchase, not only their own Great Northern and Northern Pacific shares, but also the shares of such other Great Northern and Northern Pacific shareholders as might wish to sell their stock to it, and also the shares of companies already formed, and others that might be formed, for the purpose of aiding the traffic operations of the Great Northern and Northern Pacific companies.

FIFTH. At this time it was not expected by any of the persons concerned, that any Northern Pacific shares, except the $42,000,000 owned by them and by J. P. Morgan & Co. would be acquired by the proposed holding company. The organization of the company was not dependent on any agreement that it should acquire, nor upon the question of, a majority of the shares of either of the defendant railway companies. There was no agreement or understanding between the Great Northern shareholders referred to, that they or either of them would undertake to influence any one of

the other 1,800 Great Northern shareholders, or of the other 3,600 Northern Pacific shareholders, to sell their shares to the company.

SIXTH. The Great Northern shareholders referred to, upon the organization of the Northern Securities Company and the sale of their shares to it, parted with such stock control as they had in the Great Northern and Northern Pacific Companies. They do not own to exceed one-third of the outstanding capital stock of the Northern Securities Company. At the time of the trial the stock of the Northern Securities Company was held by 1,800 separate owners. The stock control of the Northern Securities Company is, therefore, not in the eight or ten Great Northern shareholders referred to, but in the 1,790 other shareholders of the Northern Securities Company, owning at least two-thirds of its outstanding shares.

SEVENTH. Nothing has been done except the purchase by the Northern Securities Company of a majority of the stock of the Great Northern and Northern Pacific companies.

(a) It purchased about $30,000,000 of Great Northern and about $35,000,000 of Northern Pacific common from the eight or ten Great Northern shareholders who consulted with each other concerning its organization.

(b) It bought about $7,000,000 of Northern Pacific common of J. P. Morgan & Co.

(c) It took by assignment from J. P. Morgan & Co. the purchase from Union Pacific interests, in one block, of $78,000,000 Northern Pacific stock, common and preferred, for which it paid, in cash, about $9,000,000, and the balance in its own stock. This purchase was made on the 18th day of November, and by it the Northern Securities Company acquired a majority of Northern Pacific stock.

(d) After it had acquired a majority of Northern Pacific stock, it bought $65,000,000 of Great Northern stock, from time to time, from about 1,200 Great Northern shareholders, the sales in each case being individual and separate, without solicitation of the Northern Securities Company, without concert between the sellers, and without request or influence of any of the shareholders concerned in its organization.

(e) It purchased other Northern Pacific shares from some of the 3,600 shareholders of the company, for which it paid in cash and in its own shares.

(f) It gave notice to Great Northern and Northern Pacific shareholders, when their shares were offered for sale from time to time, that litigation had been threatened or had been commenced, in which the right of the company to purchase their shares was brought in question; thus placing upon each holder of the shares the responsibility to determine whether or not to make the sale.

(g) It was expected that the company would acquire the $42,000,000 of Northern Pacific common, held by those concerned in its organization, and by J. P. Morgan & Co. There was no understanding, or agreement, or assurance, that it could or would acquire Northern Pacific shares in addition to such $42,000,000. Union Pacific interests were not concerned in the organization of the company, and had made no promise, nor given any assurance, respecting the sale of Northern Pacific shares to it. The purchase was made of Union Pacific interests after the Northern Securities Company was organized. A controlling motive of Union Pacific, in making the sale was to avoid litigation growing out of the declared purpose of the Northern Pacific Company to retire its preferred stock.

EIGHTH. The Northern Securities Company, as owner of the stock so purchased, may sell it or pledge it. It has made no agreement as to what it will do with it, or how it will vote it, or how it will dispose of the dividends received upon it. It is not a trustee of those from whom it received such shares, and owes them no

duty or obligation respecting the shares, since they have no further interest in them.

NINTH. It is not claimed or pretended that the defendant railway companies have entered into any contract or combination in restraint of trade, or that either of them has done anything to restrain trade or in violation of law. It is not claimed that the Northern Securities Company can restrain trade, except through the exercise of its right, as owner of the shares it purchased, to vote them at stockholders' meetings, in the election of a separate Board of Directors for each of the defendant railway companies; for the boards must be separate under the laws of the States of Minnesota and Wisconsin.

TENTH. This suit was not brought to prevent or restrain the execution of a contract, or the forming of a combination, in restraint of trade, but to restrain the Securities Company from voting the stock it owns at stockholders' meetings, and from receiving dividends thereon, thereby preventing payment of dividends upon its own shares issued in payment for the shares it purchased, upon the ground that mere possession of the voting power of the shares, is an unlawful restraint and regulation of the interstate commerce of the defendant railway companies.

ELEVENTH. The Government has no financial interest in this suit. The only way in which the Northern Securities Company could restrain the commerce of the two railway companies, is through the voting power of the shares it owns. If it had purchased the shares of only one of the companies, its right to vote such shares

would not be questioned. Trade could not, within the contention of the Government, or the ruling of the Court, be restrained by the Northern Securities Company, should its voting powers be limited to the shares of one of the companies. The decree enjoins it from voting the shares of either company and from receiving dividends from either. The effect of the decree is to deprive it of the means to pay dividends upon its own stock, whether issued in payment for the stock it purchased, or issued for cash. Thus the decree destroys the earning power of the stock of the Northern Securities Company, a large majority of which is now held by over eighteen hundred *bona fide* holders in the usual course of business not parties to the suit.

The Important Questions Are:

1. Does the Commerce Clause of the Constitution of the United States confer upon Congress jurisdiction to regulate the issue, sale and ownership of the capital stock of corporations organized under the laws of any one of the several States, or to inquire into the motives of incorporators, or of the buyers or sellers of their shares?

2. Has Congress, under the Commerce Clause of the Constitution of the United States, power to forbid or regulate the purchase or lease, by one railway company engaged in interstate commerce, of the railway of its competitor, or the purchase or lease by the owner of one ferryboat, stage coach or river steamboat, engaged in interstate trade, of the ferryboat, stage coach or river steamboat, of a competitor, on

the ground that through such purchase or lease competition may be restrained, and commerce regulated?

3. Is the unity of ownership through purchase, partnership, consolidation or lease, of a majority of the shares of competing corporations, engaged in interstate trade, a contract or combination in the form of trust or otherwise, forbidden by the "Anti-Trust Act", as in restraint of trade?

4. Is there anything in connection with the organization of the Northern Securities Company, or its purchases of stock, that in any way distinguishes its right to vote and receive dividends upon such stock from the right of any single interest, individual or corporate, to vote and receive dividends upon shares of competing corporations engaged in interstate trade, purchased in the ordinary course of business, or acquired by gift or inheritance?

5. This suit was brought under Section 4 of the "Anti-Trust Act," which gives the Court jurisdiction to prevent and restrain violations of the Act. Every violation of the Act is criminal. The Court is, therefore, given jurisdiction to prevent and restrain the commission of a crime. Months before the suit was begun, the Securities Company had acquired a large majority of the shares of the defendant railway companies, from time to time, from hundreds of individual shareholders, who sold their holdings in good faith, and much of the stock so taken in payment therefor has since been sold and exchanged, and passed through many hands, in the usual course of business. Does

the "Anti-Trust Act" give the Court jurisdiction to annul the purchases made by the Northern Securities Company, and compel a return of the shares it purchased? Payment for the shares it bought was made in its own stock in part only. It paid cash to the amount of over $40,000,000. The owners of such shares are changing from day to day; they are not before the Court. The decree does not restrain a contract or combination in restraint of trade. It destroys or impairs the value of millions of dollars worth of property, owned by many hundreds of people who acquired their title in good faith. and who are not parties to this suit.

FIRST.

The commerce clause of the Constitution of the United States does not take away from the several States the right to authorize the formation of corporations, define their business, fix the amount of their capital or purchasing power, and regulate the issue, sale and ownership of their capital stock.

The right of the Northern Securities Company to purchase and sell securities. and the stock of other corporations, is the same as though its capital had been fixed at $500,000 instead of $400,000,000. It is said that, if the Northern Securities Company may purchase and hold the shares of the defendant railway companies, the purpose of the "Anti-Trust Act" will

be defeated; that a corporation may be organized with a sufficient capital to purchase the shares of all the railway companies in the United States. Doubtless, under the laws of many, if not all the States, corporations may be organized as manufacturing companies or mercantile companies, with sufficient capital, and lawful right, to purchase an unlimited number of manufacturing or mercantile establishments. Corporations may be organized in many States, with unlimited purchasing power, and with authority to purchase the capital stock of all other corporations. Whether corporations are being organized with powers too extensive, and capital too large, is not a matter for Congress to regulate. As respects the purchase by one corporation of the shares of another, the matter rests with the States which have created the corporations. Should unification of ownership of property in corporations proceed to such an extent as to be thought against public policy, it may be prevented by the several States, through limiting the power of corporations, and restraining their right to engage in business.

It has been the practice, since the infancy of railroads in this country, for one railroad company to purchase or lease the railroad of a competing company, or to acquire a majority of the shares of a competing company, or of two companies competing with each other, or to effect the consolidation of competing companies. This has been done without objection from any branch of the Federal Government, and has invariably proven benfi-

cial to the railway companies concerned, to their shareholders, and to the public.

The extent to which this has been done appears in the record, and is shown by extracts from Poor's Manual and from the annual reports made by the Interstate Commerce Commission to Congress, from 1889 to 1900.

The Union Pacific Railway owns $75,000,000 of the $200,000,000 capital stock of the Southern Pacific Railroad Company. The Oregon Short Line Company, which is controlled by the Union Pacific Railway Company, held a majority of the shares of the Northern Pacific Company, from the 1st of May to the 18th of November, 1901. The Boston and Maine Railroad Company controls, through lease and stock ownership, parallel and competing lines of interstate railway in Massachusetts and Maine. The New York, New Haven and Hartford Railroad Company controls, through lease and stock ownership, the lines of two competing railways between New York and Providence and other New England points; also the Fall River, Providedce and Stonington lines of steambaots. The New York Central and Hudson River Railroad Company owns the line of railwaye xtending from New York to Buffalo, and controls, through lease and stock ownership, the competing line of the West Shore Railroad Company, which extends from Jersey City to Buffalo.

The New York Central and Hudson River Railroad Company also owns a large majority of the stock of the Michigan Central Railroad Company, with its proprietary lines; also of the Lake Shore and Michigan Southern Railway Company, with its proprietary lines, including the New York, Chicago and St. Louis Rail-

road Company, known as the Nickel Plate. Thus the Michigan Central, Lake Shore, and Nickle Plate, three competing lines between Chicago and Buffalo, are controlled, through stock ownership, by the New York Central and Hudson River Railroad Company.

The Pennsylvania Railroad Company and the Pennsylvania Company, th Illinois Central Railroad Company, the Philadelphia and Reading Company, the Louisville and Nashville Railway Company, and the Southern Railway Company, each control, through lease or stock ownership, competing interstate lines of railway.

This subject is discussed at length in the brief of Judge Young with proper reference to the record.

See maps

New York Central lines, Defendants' Exhibit 11.

Pennsylvania lines, Defendants' Exhibit 12.

Boston & Maine, Defendants' Exhibit 13.

Illinois Central Ry. Co., Defendants' Exhibit 14.

Baltimore & Ohio, Defendants' Exhibit 15.

N. Y., N. H. & H., Defendants' Exhibit 16.

SECOND.

Unity of ownership of shares of competing corporations, engaged in interstate trade, does not restrain such trade, and is not forbidden by the "Anti-Trust Act," nor is such unity of ownership a regulation of interstate commerce, and thus subject to exclusive Federal jurisdiction under the commerce clause of the Constitution.

The "Anti-Trust Act" does not forbid, and make criminal, all restraints of trade among the several States, but only such restraints as are the direct and necessary result of contracts or combinations, entered into for the purpose, between those who own or control separate instrumentalities of commerce or separate mercantile or manufacturing establishments. The Act forbids contracts or combinations, in the form of trust or otherwise, between those owning or controlling competitive instrumentalities or establishments, that they will not, in their separate interstate operation, compete with each other. Selling transportation is trade. Trade is restrained when competitors, whether merchants, manufacturers or carriers, agree with each other, to limit output, and not to sell goods or transportation except at a given price, or at a governing price to be fixed by an agency or association formed for the purpose. It may be that the price fixed is reasonable, but the agreement fixing the price, or giving to an agency the power to fix the price, is unlawful, because the parties

to it thereby restrain the exercise of their right, power and duty to themselves fix a price for the thing sold. In such case, by the terms of the contract, competitors agree not to compete.

In the *Freight Association Case*, 166 U. S., 290, and in the *Joint Traffic Association Case*, 171 U. S., 505, competing railway companies entered into a contract, by which each company restrained itself from making rates, and gave to an agency formed for the purpose, authority to make rates, which should be the governing rates for all the companies. Thus, each company restrained itself, and agreed not to compete with any other company party to the contract. Whether the rates made by the agency or association were or were not unreasonable was immaterial. The agency had no power except such as was given by the contract. The contract creating the agency was void, not because it gave power to the agency to make rates, but, because, by the terms of the agreement, competition was suppressed. The parties to the agreement bound themselves not to compete, and thus trade was, by the terms of the contract, directly restrained,

In *Addystone Pipe and Steel Company vs. United States*, 175 U. S., 211, six corporations engaged in the manufacture, sale and transportation of iron pipe, and being located in different States, entered into an agreement parcelling among themselves the business of a large number of cities in different States, with the purpose and intent of increasing the price at which iron pipe should be furnished to such cities. When any such city desired to buy iron pipe, one of the corporations, party to the agreement, would make a bid much above a fair market price. The other companies would present higher bids to give the appearance of

competition. In this way the company designated would get the contract, but would have to pay a large bonus to be divided among the other companies. Here also there was an agreement between the parties to the contract not to compete with each other.

(a) If, instead of entering into such contracts, the corporations, parties to each contract, had become one corporation, by consolidation under authority of the laws of the several states where each corporation was organized, would the consolidation be held unlawful, as a regulation of interstate commerce, and in violation of the "Anti-Trust Act," because of the power acquired through unity of ownership? Would the laws of the several states authorizing such consolidation be held to be void, as regulations of interstate commerce, by reason of giving to one corporation, the consolidated company, the right and power formerly exercised by several competing interstate corporations in the conduct of their business.?

(b) If, under the laws of the states where each corporation, party to the several contracts, was organized, the sale of all the stock held by the owners of each corporation to a single interest, individual or corporate, were authorized, would such sale be held to suppress competition, and thus to restrain trade, and, for that reason, unlawful and criminal under the "Anti-Trust Act?"

(c) Has Congress power to forbid, and does the "Anti-Trust Act" forbid, the purchase by one ferry company of the boats of a competing ferry company, running between New York and Jersey City, or a majority of all the shares of the competing ferry company, because, through such unity of ownership, trade would be restrained?

(d) Should two citizens of New Jersey, engaged in raising potatoes for the New York market, agree that they would not sell in the market for less than $2 per bushel, and to cease competing for a lower price, the agreement would be void as in

restraint of trade, though there were many other persons engaged in the business of raising and selling potatoes. But suppose one of them should buy the farm of the other, or his entire crop, would the sale be void. The necessary result wolud be to give the buyer power to fix the price of the crops of both farms, and also power to withhold from sale the entire crop of both farms? Is such a sale a regulation of commerce?

(e) All the stock of two competing corporations operating ferryboats between New York and Jersey City is held by ten separate owners. They form a mercantile partnership, and transfer to it, as partnership assets, all their shares in both companies. Is the transfer void as a regulation of interstate commerce, in violation of the "Anti-Trust Act", because the partnership has acquired power to vote the shares of both companies?

(f) Has the Federal Government any more authority over the transfer or sale of stock of competing corporations, engaged in interstate trade, than over the ownership of the property of such corporations? Should the state of Minnesota and the Great Northern Railway Company agree that the railway of the latter, situated within the state, may be abandoned, and the tracks removed, has the Federal Government power to object, upon the ground that competition has been destroyed, and interstate trade restrained, through the destruction of a competitive instrumentality of interstate commerce? The wharves in the city of New York, used and occupied by foreign steamship lines, are as direct and indispensable instruments of foreign trade carried on by those lines, as are the ships themselves. Has the Federal Government authority to determine who may own, lease or control such wharves in the city of New York? If a single individual, or a single corporation, should, through contract or combination, lease or buy the entire waterfront of Manhattan Island, has the Federal Government the right to object, and would such purchase, by reason of the power acquired as incident to ownership, be in violation of the "Anti-Trust Act?" If the docks were owned

by separate corporations, would the purchase by a single owner of the capital stock of the corporations be held to be illegal and criminal in violation of the "Anti-Trust Act?"

(g) If the Northern Securities Company had purchased the stock of the railway companies it now holds, under special laws of the states of Minnesota and Wisconsin, authorizing the purchase in specific terms, it would have acquired no other or different power than it now possesses. Would the laws authorizing such sale, and the acquisition of such powers be held inoperative and void as a regulation of interstate commerce?

(h) If unity of ownership of a majority of the shares of competing corporations, engaged in interstate trade, is not forbidden by the "Anti-Trust Act," is a contract or combination to bring about such ownership forbidden and criminal? In such case, would not the contract or combination be lawful as having been entered into for a lawful purpose?

Distinction between contracts or combinations, in the form of trust or otherwise, in restraint of trade, and unity of ownership of corporate shares or competing properties through purchase, partnership, consolidation, corporations, or by gift or inheritance.

The Anti-Trust Act does not define what shall constitute a restraint of trade. What constituted a restraint of trade before the act was passed constitutes a restraint now, and what constitutes a restraint now would have constituted a restraint then. Contracts or combinations in restraint of trade, forbidden and made criminal by the "Anti-Trust Act", are contracts or combinations in restraint of trade as defined by the common law. At common law some contracts in re-

straint of trade are legal; others are illegal. The "Anti-Trust Act" makes every contract in restraint of trade illegal and criminal. What constitutes a restraint is a question to be determined under the common law. Would unity of ownership of competing establishments engaged in interstate trade, or of the stock of competing corporations engaged in interstate trade, be held in restraint of trade at common law? A contract between competing railway companies not to compete with each other is a contract in restraint of trade and, whether unlawful or not under the common law, is made unlawful by the "Anti-Trust Act." The uniform characteristic of contracts or combinations held to be in restraint of trade has been that they were executory agreements. They provided expressly, or by implication, for the doing or not doing of an act or acts directly connected with competitive trade operations, and having the effect of an immediate restraint of commerce. It has never been held, under any common law definition of the term, that trade is restrained, or competition necessarily destroyed, by the purchase of property, or unity of ownership of competing railroads, steamboats, stage coaches, or mercantile or manufacturing establishments. For years innumerable instances have occurred in which trade, industrial or transportation competitors have bought out the establishments or business of each other or entered into partnership with each other, or formed corporations to buy the plant or establishment of all, and operate them in the same line of business. Doing this has been a feature of the business organization of every trading and industrial people. It does not appear to have been suggested in any Court that unification of ownership of competing establishments or in-

strumentalities is forbidden by the common law, or defined by the common law as a restraint of trade.

There is a distinct difference between an agreement between the owners of competing concerns, to divide territory, to restrain output, or to maintain prices, and the unconditional sale of the property or business of one of them to the other, or of the property or business of both to another person. In the former case, the agreement in terms restrains competition in trade operations, between separate owners or establishments, or instrumentalities engaged in such operations. The agreement relates to the manner in which competitors shall conduct their business. If one competing concern buys the plant or business of its competitor, competition is not thereby directly restrained. The restraint in such case, if any, is merely an incident to the ownership of property, and the fact that there may be such a restraint does not forbid the acquiring of such ownership. By unity of interest output is not necessarily limited, prices are not necessarily increased. On the contrary, the public may be benefited, prices may be less by reason of greatly increased volume of business and less cost per unit of production.

THIRD.

The "Anti-Trust Act" is a penal statute and, as construed by the Court below, it makes unity of ownership of a majority of the shares of competing corporations engaged in interstate trade, no matter how such ownership is acquired, criminal, because such ownership gives power to commit crime.

It is conceded that such ownership, so far as it may control the policy of the corporations, can be exercised for a lawful purpose, for building up trade, increasing competition and reducing prices.

It is not claimed or pretended that in the case under review trade has been restrained, yet the Court below held that unity of ownership of a majority of the stock of the defendant railway companies was unlawful, and, therefore, criminal, because such ownership has necessarily caused the doing of something that has not been done; has necessarily restrained trade, though trade has not been restrained.

Stated in another way, the Court below decided that ownership by the Northern Securities Company of a majority of stock of the defendant railway companies regulates the commerce of the companies, and though such commerce has in fact been so regulated as to build up trade, increase competition and reduce prices, in law it

has necessarily been so regulated as to restrain trade, suppress competition and increase prices because through unity of ownership motive to compete has been destroyed.

Every violation of the "Anti-Trust Act" is unlawful and criminal. There can be no crime in the absence of criminal intent. If the purchase of the shares of the defendant railway companies by the Northern Securities was unlawful, it was criminal. It was not unlawful unless it was criminal. It was not criminal unless criminal intent is to be inferred from the fact of the purchase, and the acquisition of power to elect a separate Board of Directors for each of the defendant railway companies. The decree must be reversed unless, under the evidence disclosed in the record, the officers of the Northern Securities Company, who negotiated the purchase of the shares of the defendant railway companies, could be convicted under an indictment charging the facts stated in the bill. It is the function of legislatures and not of the courts to define crime. It is the province of the Legislature to declare in explicit terms how far a citizen should be restrained in the exercise of that power over property which ownership gives, and it is the province of the Court to apply the facts to the law. If the Legislature undertakes to define a new offense by statute, and provide for its punishment, its will should be expressed in such language as not to deceive or mislead the common mind

In Tozer vs. United States, 4th I. C. C. Rep., 246, BREWER, Circuit Judge, said:

"In order to constitute a crime, the act must be one which the party is able to know in advance whether it

is criminal or not. The criminality of an act cannot depend upon whether a jury may think it reasonable or unreasonable. There must be some definiteness and certainty. In the case of R. R. Co. v. Dey, 2nd I. C. C., 325, I had occasion to discuss this matter, and I quote therefrom as follows:

'Now, the contention of complainant is, that the substance of these provisions is that if a railroad company charges an unreasonable rate, it shall be deemed a criminal and punished by fine, and that such statute is too indefinite and uncertain, no man being able to tell in advance what in fact is, or what any jury will find to be, a reasonable charge. If this were the criticism to be placed on this act as a whole, it would be certainly obnoxious to complainant's criticism, for no penal law can be sustained unless its mandate shall so clearly express that any ordinary person can determine in advance what he may do, and what he may not do, under it.'"

In Schooner "Paulina's" Cargo vs. United States, 7 Cranch, 61, the Court said:

"It is the province of the legislature to declare in explicit terms how far the citizen shall be restrained in the exercise of that power over property which ownership gives, and it is the province of the court to apply the rule to the case thus explicitly described, not to some other case which Judges may conjecture to be equally dangerous."

In United States vs. Reese, 92 U. S., 214, the Court said:

"Laws which prohibit the doing of things, and provide a punishment for their violation, should have no double meaning."

We come again to the point that the "Anti-Trust Act" does not define what shall constitute a restraint of trade. It does not in terms forbid the purchase, by a single owner, of a majority of the shares of competing corporations engaged in interstate trade, or the

purchase by the owner of a ferryboat running between New York and Jersey City of the boat of a competitor. By whom is the question as to whether such a purchase is a restraint of trade, or not, to be determined? Such a purchase does not necessarily restrain trade under any common law definition of "Restraint." If an individual in good faith, and from a desire to make a profitable investment, should purchase a majority of shares of competing ferry companies, running boats between New York and Jersey City, can he be indicted and convicted as a criminal under the provisions of the "Anti-Trust Act?" From reading the "Anti-Trust Act," would he be held to have known that it forbade such purchase, and therefore charged with knowledge that he was committing a crime?

In the Joint Traffic case, 171 U. S., 505, and the Freight Association case, 166 U. S., 291, the contracts under review in terms restrained trade. The parties to the contract agreed not to compete with each other. It was not for them to say that they did not intend to restrain trade, when they had entered into an agreement by which they had deliberately restrained themselves from making rates. It was not for them to say that they did not intend that the agency given power under the contract to make rates should not make unreasonable rates.

The officers of the Northern Securities Company have done nothing criminal, unless in the act of purchasing a majority of Great Northern shares, after having first purchased a majority of Northern Pacific shares, yet, under the decision of the trial Court, they committed a criminal act, and are liable to be indicted because they negotiated the purchase of a majority of the shares of the Great Northern and Northern Pacific

Companies in good faith, not knowing or believing that such a purchase was forbidden, or that it would necessarily restrain the interstate commerce of the railway companies.

FOUR.

Trade has not been restrained through the exercise of the voting power of these stocks. The ruling that trade has been restrained, is contrary to the facts, and charges the individuals engaged in this transaction with a crime, that has not been committed nor intended.

When this suit was begun, the shares of the Northern Securities Company were held by over eighteen hundred separate owners who had purchased them in good faith, in the usual course of business (fol. 3123). The shareholders of the defendant railway companies, who were instrumental in organizing the Securities Company, have never owned to exceed one-third of its stock (fol. 3118). The control of the Northern Securities Company, so far as stock ownership can control it through the election of a Board of Directors, is not in the eight Great Northern shareholders who were concerned in the organization of the company, but in the seventeen hundred and ninety shareholders owners of more than two-thirds of its stock. **The combination of which the Court convicted the eight individual defendants, was not one by which they were to acquire control over the two**

railway companies, for themselves, but one through which such control would necessarily be conferred upon the 1,790 other stockholders of the Securities Company.

The eight shareholders, if they ever had control of the Great Northern and Northern Pacific Companies, parted with such control upon the organization of the Northern Securities Company, and the acquisition by the latter of a majority of the shares of the defendant railway companies. Control of the railway companies, so far as it rests upon stock ownership, is in the voting power of the Northern Securities Company, and that voting power is not held by those consulted about the formation of the Securities Company, but by the seventeen hundred and ninety other shareholders, who in the aggregate own more than two-thirds of its shares.

The ruling of the Court, that the possession of the voting power of a majority of the shares of the defendant railway companies by the Northern Securities Company, necessarily restrains trade through suppressing competition, finds no support in facts. The Boards of Directors of both railway companies may be elected by the Northern Securities Company. The executive officers of the two companies will be elected by these boards, and the ruling of the Court rests upon the proposition, that such boards and officers will be influenced, persuaded or coerced in such way, that they will lack their former incentive to compete for traffic, to obtain

it from each other, and to underbid each other for the purpose of getting it; that they will enter into contracts or in some way through concert of action, maintain higher rates than ought to be maintained; in other words, that they will charge unreasonable rates, will not provide adequate facilities, nor extend construction of lines.

The Northern Securities Company has no power or motive to restrain trade which any single owner of a majority of the shares of defendant railway companies would not have, and which the individual owners of the shares did not have, by lawful conference and concert of action, before they transferred their shares to it. The shareholders who were concerned in the organization of the Northern Securities Company had a financial interest in their investment in the shares, and an interest in the railway companies, and in the business and policy to be adopted and carried out by them. Had they, in anticipation of a stockholders' meeting of each company, agreed between themselves that they would vote for individuals selected by them as directors for each company, and would try to influence the majority of the shareholders of each company to join in voting with them for such individuals, would the agreement, and action under it, have been unlawful and criminal, as a contract or combination in restraint of trade? Would an agreement respecting the exercise of the voting power of the shares be unlawful and criminal? Had a large majority of the shareholders of both companies, by concert of action, given proxies to a single person, to vote their shares at a meeting of stockholders of

each company, in the election of a board of directors, would the proxies have been void and the act unlawful? In such case there would have been a unity of power in one person to elect directors for each company.

There is no presumption that the defendant railway companies will not give good service, at reasonable rates, because the majority of the stock of each is, for the time being, in the hands of a single owner, where it may be retained until such owner makes sales of the shares which he is at liberty to do at any time. It does not necessarily follow from the unity of ownership of a majority of shares of the two railway companies by the Northern Securities Company, that good service will not be given at reasonable rates.

The lawful rates of competing railway corporations are, in nearly every instance, made through conferences between the rate making officers of the companies.

Rates must be published, and the rates of one carrier must be as low as the rates of others, to avoid a loss in competitive traffic. Substantially all rates are made by conference between rate-making officers. This is necessarily so, because there is a relation between them, as respects markets and market conditions, which requires, to a large extent, co-operation in rate making. There is no pecuniary inducement to reduce rates except to get more business. Since rates must be published, and when published will be met, no advantage will accrue to one competitor over another through a reduction of published rates, because relations will not be changed. Under the "Interstate

Commerce Act" there has been, and can be, but little lawful competition in rates. Inducement to reduce rates does not exist when volume of traffic will not be increased thereby. Again, competition between markets, the conditions of markets, the relation of rates, all make necessary and unavoidable, concert of action between carriers in making rates. Conditions will not be changed, or their operation, because the ownership of the stock of the defendant railway companies is in the hands of one owner instead of many. This is not a case where carriers have agreed not to compete; it is a case where one owner has purchased a majority of shares of competing interstate carriers. Because of this ownership, the relation of the defendant railway companies will not be changed as respects circumstances and conditions, from time to time, which control rates and which both companies must observe.

Good Service and Low Rates.

The defendant railway companies were hampered, and placed at disadvantage with other transcontinental railways, as well as with ocean competitors by the want of sufficient direct connection with traffic centres offering the best markets for the products of the country along their lines, and with places of production and distribution from which their traffic must be supplied. Through the purchase of the Burlington shares, they acquired permanent access to markets and sources of supply, instead of a temporary one resting upon joint rates subject to change at any time without regard to their interests. Having made the purchase and assumed the resulting joint and several

obligations, it became a matter of the highest importance to each company that the burdens should be equally borne and the advantages equally shared. Through placing the ownership of a majority of the shares of both companies in the hands of a single owner, the benefits of the Burlington purchase became better assured than would be the case if the shares were held in many hands, and liable at any time to be sold to an interest adverse to the building up of the business of the defendant railway companies and the country which their lines traverse.

Good service, at low rates, is assured through an increase in the volume of traffic. Cost of operation, repairs and maintenance is about the same, whether trains run light, half loaded or with full loads. With a full train all the transportation power is sold, and the net earning of the train is much larger than it would be if but half loaded. The defendant railway companies are in competition with the Canadian Pacific Railway Company, which extends across the Dominion of Canada from ocean to ocean ; with the Union Pacific and Southern Pacific Companies and other lines of railway ; as respects both interstate and international traffic. To meet such competition, and increase their volume of traffic, and thus be able to improve facilities and reduce rates, they must have permenent access to the great traffic centres and a large volume of interstate and international tonnage. *Through the Burlington purchase and the ability of the shareholders of the defendant railway companies to preserve the enterprise from the attack of the Union Pacific interest, traffic has been created, its volume largely increased and rates have been reduced.*

MR. HILL:

Q. Is the business of defendant companies to and from the Coast, and their other business, such as to put them in the same position in regard to the necessity of such a purchese as that of the Burlington?

A. I think so. In fact, I know that is the case. Both the Great Northern and Northern Pacific, as far as that business is concerned, would have to limit the eastward movement, or else increase the westward movement in order to furnish the facilities. In order to do that we have got to compete with the Suez Canal; we have got to compete with anything that floats on the high seas, and it is a big undertaking, but we are doing it, and doing it successfully.

We compete, not only with lines of transportation, but with markets. We compete with goods. The goods are counted at their value laid down there, and competition extends all the way through, from the production, the transportation and the cost of laying them down; with Germany and Great Britain as far as the production and transportation, with Norway and Sweden as respects transportation alone. They do not produce so much, but they furnish a great deal of cheap transportation. We compete with the lines across the American Continent, the Isthmus and the Panama Route. The latter is hardly called competition, because the Suez Canal is so much more effective that our competition with it leaves the Panama Route practically out of the question (fols. 2697 to 2699).

Q. What, if any, has been the effect of that purchase upon commerce between the states and with foreign nations.

A. It has very greatly increased it. It has increased it more rapidly than I have ever known commerce of the same extent to be increased in the same time. The increased tonnage, eastbound, growing out of the increased tonnage westbound has very largely increased the total tonnage. Foreign commerce has increased over 100 per cent., which is a very unusual increase in one year, and the effect of the increase of the entire business has made a large increase in the revenue of the company, and it has been able to reduce rates from 10 per cent. to 15 per cent. in a year on the local business between the Pacific Coast and the Twin Cities and Lake Superior. When I say from 10 to 15 per cent. I speak

of business in a general way, and that is very nearly the actual reduction (fols. 2696-2713).

Q. Can you give the quantity of raw cotton, or piece goods, carried in 1901 and in 1902 ?

A. Yes. By the Great Northern in 1901 the amount of cotton piece goods was 13,070 bales ; in 1902, 64,542 bales ; raw cotton in 1901, 13,230,000 pounds ; 1902, 41,243,000 pounds (fol. 2707).

MR. MELLEN :

Q. Did the acquisition of the stock of the Burlington Road by the Great Northern and Northern Pacific have any effect or influence to restrain or hinder trade or commerce between the states and with foreign nations ?

A. I have thought it promoted rather than hindered it. It resulted in a much freer interchange of business between the Northern Pacific and the Burlington. The business has increased very much ; it has been more to the interest of the two companies to work more closely together ; it has opened a much wider market to the products tributary to the line of the Northern Pacific, and the business has increased. I have no figures to show, but it is my impression that business has increased very considerably, and it is bound to increase from month to month and from year to year (fols. 3417, 3418).

MR. HARRIS :

Q. Will the acquisition by the Great Northern and Northern Pacific of the Burlington shares restrain trade and traffic between the states and with foreign countries ?

A. On the contrary, I think it will promote business very greatly and develop latent resources and enable forest, mineral and other products and resources to be utilized which are now idle (fol. 2971).

3. It has not been shown that the power of the defendant railway companies to restrain competition can affect more than three or four per cent. of their interstate traffic, or that it has affected or can affect construction

or extension of their lines, or the amount or quality of their equipment. Through their ownership of Burlington shares, and by reason of the obligation assumed in paying for the shares, they have a common interest in building up the traffic of each in connection with the Burlington Company. This connection became necessary to their prosperity, to the welfare of their patrons, and to the successful meeting of a world-wide competition. What has been done was done, not to restrain competition, but to enlarge it.

The unity of ownership of their shares has not restrained the commerce of either, and the extent to which such unity can restrain it, is as nothing compared with the great increase in volume of interstate and international commerce which was intended, and which will result from the carrying out of the enterprise of the two companies in the purchase of the Burlington stock, and the preservation of the purchase, and its benefits, by placing the stock of the railroad companies where it is less likely to become scattered and to pass under control of adverse interests, than it would if held by many owners.

M. D. GROVER,
Counsel for Great Northern R. Co.

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IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1903. No. 277.

NORTHERN SECURITIES COMPANY, J. PIERPONT MORGAN, ROBERT BACON, DANIEL S. LAMONT and others, Appellants, vs. THE UNITED STATES.	14 December, 1903.

ON APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

BRIEF,

FOR THE APPELLANTS MORGAN, BACON AND LAMONT.

In view of the scope and detail of the elaborate arguments presented by the counsel for the appellant corporations, it is considered sufficient that these personal appellants should treat more particularly those questions which may be supposed to have been adjudicated directly by this Court, rather than attempt again to open the discussion of the general principles involved in this case.

The appellants, the Northern Pacific Railway Company and the Great Northern Railway Company, are common carriers engaged in the transportation of freight and passengers through various states. The Northern Pacific system extends from Ashland in Wisconsin via Duluth, Minnesota, and from St. Paul, Minnesota, across Minnesota. North Dakota, Montana, Idaho and Washington, passing through Helena, in the state of Montana, and Spokane, in the state of Washington, and extending to Tacoma and Seattle, in

Washington, and to Portland, in Oregon. The Great Northern system extends from St. Paul across Minnesota, North Dakota, Montana, Idaho and Washington, passing through Spokane and extending to Everett and Seattle, in the state last aforesaid. These lines connect with other railway lines, and, either directly or by means of such other railway lines, with lines of steamships on the Great Lakes and the ocean.

The petition alleges that early in the year 1901, these companies acquired control of the system of railway lines known as the Burlington system. This, however, is not shown to have any connection with the cause of action alleged, and is not suggested to have been in any respect contrary to law.

The Northern Pacific Rail*way* Company was formed in 1896, upon a reorganization of the Northern Pacific Rail *Road* Company. Its capital stock consisted of $75,000,000 preferred stock and $80,000,000 common stock, and the charter provided that the preferred stock might be retired at par on any first day of January up to 1917. Both classes of stock were made subject to a voting trust in this defendant Morgan and others, continuing until November 1, 1901, but terminable, in the discretion of the trustees, at an earlier date. The voting trust was accordingly terminated by the trustees upon January 1, 1901. Prior to that time, too, the retirement of the preferred stock was practically decided upon, but it was not made the subject of formal action by the Board of Directors until November 13, 1901, and it was completed upon January 1, 1902.

During the reorganization of the Northern Pacific Rail *Road* Company, the firm of J. P. Morgan & Company, of which these defendants, Morgan and Bacon, are members, acted as reorganization manager, and ever since has been the fiscal agent of the new company. Accordingly at all times the firm has desired to further the best interests of the new company and of all its stockholders, and especially to aid in steadily developing the business of the company and the prosperity of the country which it serves. The firm considered that these results were accomplished so far as possible by the policy of the company during the existence of the aforesaid voting trust. Not long after the termination of the voting trust, however, and very early in May, 1901, the firm became aware that unusually large purchases of the stock of the company were in progress in the stock market, apparently in a single interest. The firm was apprehensive that these purchases were for the purpose of securing control of the direction

of the Northern Pacific Company, and of thus managing it, not for what the firm conceived to be the best interest of the company, but for some ulterior purpose of which the firm was not informed. Accordingly, prior to May 7, 1901, the firm purchased common stock of the Northern Pacific Company in considerable amounts, and upon that day their holdings amounted to about two hundred thousand shares. In making these purchases, the firm acted on its own account, and in behalf of no other person whomsoever, and was actuated by no motives save those above stated.

For some years the defendant Hill and others who were interested in the Great Northern Company, but not including these defendants, contemplated the formation of a corporation which should purchase their separate interests in that company, with the general object that said interests should be held together, and that the policy and course of business of the Great Northern Company should be continuous in developing the company's system and the territory served by it and should not, from time to time, be subject to radical change and possible inconsistency. In or about August, 1901, as this plan was approaching maturity, for similar reasons, said parties determined that they would also sell to such new company when formed their considerable interests in the Northern Pacific Company, and that the capital of such new company should be made large enough to enable it to purchase all shares of the Great Northern and the Northern Pacific which any holders thereof might desire to sell, and also any other shares which the new company might deem it advisable to acquire.

By this time it had become known that the above mentioned purchases in the market of the shares of the Northern Pacific Company had been made in behalf of a corporation known as the Oregon Short Line Railroad Company, controlled by the Union Pacific Railroad Company, and that in that interest there were held shares of the Northern Pacific Company to about the amount of $41,000,000 of preferred stock, which, however, were to be retired on January 1, 1902, and $37,000,000 of common stock, together making seven hundred and eighty thousand shares and constituting an absolute majority of the total capital stock of the Northern Pacific Company. Thereupon and therefore, with the view, and for the purpose of protecting the Northern Pacific Company and the holders of its common stock against the possible control and direction of the company in an adverse interest, these

defendants determined to sell, and advised their friends to sell their Northern Pacific stock to the new company.

Accordingly, upon November 13, 1901, the Northern Securities Company was organized pursuant to the Laws of New Jersey. It possesses all the powers set forth in its certificate of incorporation and has full power to do every act which in fact it has done. Neither the petition nor the proof contains anything to the contrary.

It becoming known then that the Oregon Short Line Company was not disinclined to sell its holdings of the major part of the Northern Pacific stock upon terms satisfactory as to price, the firm of J. P. Morgan & Company, deeming such action for the best interest of the Northern Pacific Company, purchased from said Oregon Short Line Company all its holdings of the capital stock of the Northern Pacific Company, agreeing to pay therefor partly in cash and partly in shares of the new company when formed.

After its organization the Northern Securities Company duly purchased all shares of the Northern Pacific Company and of the Great Northern Company hereinbefore mentioned (including those purchased by the firm of J. P. Morgan & Company from the Oregon Short Line Company), making payment therefor partly in cash and partly in its own shares. It was willing to purchase also the shares of any other shareholders of the Great Northern Company, who might desire to sell the same, for the price of $180 for each share of the Great Northern Company, payable in its own shares, and it actually did purchase and pay for considerable amounts of said stock at such price.

The foregoing states the material facts. The petition contains many adjectives, adverbs and conclusions which are unsupported by proof and which, of course, are without value in stating a cause of action, because the acts done being lawful the question of their intent is without importance. The only ground for relief pleaded in the petition is that the ultimate effect of these transactions may be in some degree to diminish competition between the Railway Companies, and that, therefore, they constitute a restraint of interstate commerce within the Federal statute known as the Sherman act (26 U. S. Stat., 209). This is not established by the proof, and in any case would not support the action.

The petition alleges that in the case of *Pearsall vs. Great Northern Co.*, 161 U. S., 646, it was held that the Great Northern Company was prohibited by the Minnesota statutes from acquiring

stock of the Northern Pacific Company. No such effort by the Great Northern has been charged or proved in the present case, and, of course, those statutes are no ground for relief in this Court. On the contrary, the action really taken was fully authorized by law, and the only question is whether it is to be defeated by the Federal statute on the ground just stated. It should be added, that in the Pearsall case the question involved only the power of the Railway corporation, while here no action whatever was taken by either of the Railway corporations. The present situation has resulted solely from the action of some (not all) of the stockholders, and it is settled by controlling authority that the rights and powers of stockholders are entirely distinct from those of the corporation itself (*Pullman Car Co. vs. Missouri Pacific Co.*, 115 U. S., 587).

So, too, the case of *Commonwealth vs. South Pennsylvania Railroad Co.*, 1 Penna. County Court, 214, January, 1886, affirmed by the Supreme Court of Pennsylvania, has no present application. There it was held that a constitutional provision against a railroad company controlling a parallel and competing line applied to its controlling the same by stock ownership. The question there was not whether the mere control restrained trade or commerce, but was simply whether a control of the stock carried a control of the railroad. The authority of that case is greatly weakened by *Commonwealth vs. Erie Co.*, 132 Penn. St. 591, decided in 1890. There it was held that one corporation owning all the stock of another did not thereby acquire or hold the real estate of the other so as to violate a statute against the former corporation acquiring or holding such real estate "directly in the corporate "name, or by or through any trustee or other device whatsoever, "unless specially authorized." But, the South Pennsylvania Railroad case has no present application, because, as just pointed out, in the present case there are here involved no such provisions of law and no such facts as were decisive there. Moreover, even if there were, under controlling authority the rights of the stockholders would not be affected by such limitations upon the power of the corporation (*Pullman Car Co. vs. Missouri Pacific Co., supra*).

If the Congress had intended to prohibit a transaction such as that now presented, it would have said so in terms as plain as those of the statutes adopted by the legislature of South Carolina in 1894 (Ch. 543) and very tardily by the legislature of Minnesota in 1903 (Ch. 86).

It is submitted that the judgment of the Circuit Court must be reversed, and that the action must fail, because (1) the transactions were lawful, and (2) if construed as applying to such transactions, the statute would be unconstitutional for then it would deprive the Securities Company of the right to purchase property, and the stockholders of the Railway Companies of the right both to sell their own shares, and to acquire an interest in the shares of others.

FIRST.

The transactions alleged are entirely lawful in their character.

These transactions have consisted merely in the organization of a lawful corporation of New Jersey, and in the sale to, and purchase by, it of property lawfully salable. All acts done in relation to the organization of the Securities Company, and to the purchase by it of the shares of stock of the Railway Companies, and to the sale thereof by the owners, were expressly authorized by law. The legal effect of the transaction has been that the owner of stock in one of the Railway Companies has sold the same to the Securities Company, and has received therefor stock of the Securities Company, which company owns the stock not merely of one of the Railway Companies, but the stock of both. So that each individual who has transferred his property to the Securities Company has obtained therefor something entirely different—namely, an interest in a company holding stock of the other Railway Company as well. It is manifest that in the fullest possible sense this constituted a sale of the property (*Berger vs. U. S. Steel Corp.*, N. J., Oct., 1902; 53 Atl. Rep., 68). The title passed for valuable consideration to a purchaser authorized to hold the property. Aside from the corporate form of the transaction, the effect, too, was that each stockholder in one of the Railway Companies transferred an interest in his holdings to every other such stockholder.

These transactions being lawful are not affected by allegations as to the motive which actuated them. As the means employed were lawful, the only question must be whether the result accomplished was unlawful (*Pettibone vs. U. S.*, 148 U. S., 197, 203). In *United States vs. Isham* (17 Wall., 496), it was claimed that the defendant had adopted a certain course for the purpose of avoiding a statute imposing a tax, but the court held that this was of no importance, and that the defendant was acting entirely within his rights, if the device was carried out by legal forms. This was in accordance with elementary rules.

> "An act legal in itself, and violating no right, cannot be "made actionable on account of the motive which superin- "duced it" (*Adler vs. Fenton*, 24 How., 407, 410).
>
> "The exercise of a legal right cannot be affected by the "motive which controls it" (*Kiff vs. Youmans*, 86 N. Y., 324, 329; cited with approval in *Connolly vs. Union Sewer Pipe Co.*, 184 U. S., 540, 546).
>
> "No action can be maintained against one on account of "the exercise of a legal right, whatever the motive that dic- "tated such exercise" (*Randall vs. Hazleton*, 12 Allen, 412, 418).
>
> To the same effect are *Dickerman vs. Northern Trust Co.*, 176 U. S., 181, 190; *Strait vs. National Harrow Co.*, 51 Fed. Rep., 819; *Phelps vs. Nowlen*, 72 N. Y., 39, 45; *Wood vs. Amory*, 105 N. Y., 278, 281; *Lough vs. Outerbridge*, 143 N. Y., 271, 282; *National Assn. vs. Cumming*, 170 N. Y., 315, 326, 340; *Mogul Steamship Co. vs. McGregor*, App. Cas., 1892, pp. 25, 41, 42; *Allen vs. Flood*, L. R., App. Cas., 1898, p. 1; *Pender vs. Lushington*, L. R., 6 Chancery Div., 70, 75.

All the action had being authorized by law, the motive thereto clearly is unimportant. But, as hereafter considered an intent to violate the anti-trust act, and therefore to commit a crime, could not in any case be inferred, but must be actually proved.

SECOND.

No indirect or remote effect of these lawful transactions upon competition between the Railway Companies, could bring them within the Federal anti-trust act.

The proofs show that they have had no such effect.

Aside from this, they are not within the anti-trust act of July 2, 1890, which provides that "every contract, combination in the "form of trust or otherwise, or conspiracy in restraint of trade or "commerce among the several states or with foreign nations, is "hereby declared to be illegal" (26 U. S. Stat., p. 209, ch. 647).

The present effort is to annul action authorized expressly by the statutes of New Jersey, upon the ground that it is contrary to this Federal statute as constituting a restraint of interstate commerce. Obviously it must be established beyond doubt that the case comes within the description of the Federal statute in order to warrant thus overriding the statutes of New Jersey. The claim is based upon the ground, not that in themselves the transactions constitute a restraint of interstate commerce, but that their effect will be to enable the Securities Companies to restrain interstate commerce, should it see fit to do so. In other words, the transactions pleaded consist of nothing but the sale and the purchase of the stock of the Railway Companies—which have not the remotest connection with interstate commerce. Any possible restraint of interstate commerce is placed by the petition itself not upon the transactions which have actually taken place, but upon the claim that they put the purchaser in such a position that in the future it may restrain interstate commerce. It needs no argument to show that the claim rests not upon what has been done, but upon the possible future result of that which has been done. But, in order to come within the statute, the subject matter must be interstate commerce, and the restraint thereof must be directly and immediately accomplished by the provisions of the contract, and not be merely its indirect, remote or possible effect. It is obvious that the present case does not meet either requirement.

The subject matter was the shares of the Railway Companies and the transaction was the purchase and sale of such shares. The fact

that the purchaser of the shares might be in a position to take action affecting interstate commerce did not establish that in itself the subject matter was interstate commerce. The transaction here was outside of interstate commerce even more clearly than that, which in *U. S. vs. E. C. Knight Co.* (156 U. S., 1.), was recognized as not prohibited by the statute. There the question was in regard to the union under one control of a number of manufacturing establishments, of which in the usual course of business the product was shipped out of the state, thus becoming part of the interstate commerce. It was held that, although these manufactories were carrying on an interstate business, the question of their union was a matter not coming within the Federal statute. The court said that contracts connected with manufacturing "to raise or lower prices or wages, "might unquestionably tend to restrain external as well as "domestic trade; but the restraint would be an indirect result, "however inevitable and whatever its extent, and such result would "not necessarily determine the object of the contract, combination "or conspiracy" (p. 16), and that Congress did not attempt by the statute "to limit and restrict the rights of corporations "created by the states or the citizens of the states in the acquisi- "tion, control or disposition of property" (p. 16). So, too, *Hopkins vs. United States*, 171 U. S., 578, there was an exchange, of which the members dealt in live stock largely shipped from other states, and the exchange had numerous regulations, of which the effect would be to diminish competition among the members. It was held that the subject matter was not interstate commerce, but was the dealings with the cattle after they had reached their destination, and therefore that the effect on interstate commerce was merely indirect. The Court said "an agreement may in a variety "of ways affect interstate commerce, just as state legislation may, "and yet, like it, be entirely valid, because the interference produced "by the agreement or by the legislation is not direct" (p. 594).

It is equally clear that the purchase and sale of the stock of these Railway Companies is not a matter of interstate commerce merely because the companies carry on an interstate business.

It is well settled that the mere fact that a contract has the effect of restraining trade or suppressing competition in some degree does not render it injurious to the public welfare and thus bring it within the police power (*Oregon Co. vs. Winsor*, 20 Wall., 64; *Gibbs vs. Gas Co.*, 130 U. S., 396; *Hyer vs. Richmond Co.*, 168 U. S.,

471, 477, affg., 80 Fed. Rep., 839; *Continental Ins. Co. vs. Board*, 67 Fed., 310; *Diamond Match Co. vs. Roeber*, 106 N. Y., 473; *Hodge vs. Sloan*, 107 N.Y., 244; *Leslie vs. Lorillard*, 110 N. Y., 519; *Tode vs. Gross*, 127 N. Y., 480; *Matthews vs. Associated Press*, 136 N. Y., 333; *Lough vs. Outerbridge*, 143 N. Y., 271, 145 N. Y., 601; *Oakes vs. Cattaraugus Co.*, 143 N. Y., 430; *Curran vs. Galen*, 152 N. Y., 33, 36; *Watertown Co. vs. Pool*, 51 Hun, 157, affd. 127 N. Y., 485; *Central Shade Roller Co. vs. Cushman*, 143 Mass., 353).

Under the decisions of this Court in the cases of *U. S. vs. E. C. Knight Co.* (156 U. S., 1), *Hopkins vs. U. S.* (171 U. S., 578), *Anderson vs. U. S.* (171 U. S., 604), and *Addyston Pipe & Steel Co. vs. U. S.* (175 U. S., 211, 246), the Anti-Trust Act concerns only those agreements of which the direct and immediate effect is to restrain commerce. The transaction now under review was lawful, and, however considered, was not prohibited by the Anti-Trust Act, because such restraint upon interstate trade or commerce, if any, as it might impose, would be indirect, collateral and remote.

The effect of the decisions in the cited cases (already abundantly and sufficiently discussed in detail by other counsel) was fully recognized by the learned Court below, but declared to be irrelevant to the present transaction, because, in the opinion of the Court, the present transaction directly and immediately affected interstate commerce.

This conclusion of the Court rests upon the postulate that in this transaction

> " *the object and necessary effect* is to give to a single person
> " or to a coterie of persons full control of all the means of
> " transportation owned by two competing and parallel lines
> " of road engaged in interstate commerce, as well as the
> " power to fix the rate for the transportation of persons and
> " property."

If the " *necessary* effect " of the transaction be to affect interstate commerce, then all argument is at an end, for such " necessary effect " must have shown itself concretely. But neither in fact or in proof is there any such concrete effect. Therefore, we must examine the postulate somewhat critically to ascertain its exact meaning and to demonstrate what to us seems to be its unsoundness.

For its validity, in the present case, the postulate involves two propositions of which as we think neither can be maintained:

FIRST, That though in and of itself a transaction, does not directly and immediately affect interstate commerce, *such an unlawful object and necessary effect may be imputed to the transaction;* and, SECOND, that such unlawful object and necessary effect is to be imputed to a transaction which gives to a single person or to a coterie of persons full control of two competing lines, with the power to fix the rate for transportation thereon, even though there be no act of control and no exercise of the power; and no agreement either to exercise, or to refrain from exercising, such power or such control.

As to these two propositions, it may be respectfully observed:

FIRST. The defendants undertook by proof to establish, as matter of fact, they were acting for a sufficient and lawful purpose not condemned by the anti-trust act; but all proof tending in this direction was deemed wholly immaterial by the Court below, which said:

> "It may be that the motives which inspired the combi-
> "nation are unselfish; that the combination was formed
> "by the individual defendants to protect great interests
> "which had been committed to their charge; or it may be
> "that the combination was the initial and a necessary
> "step in the accomplishment of great designs, which, if
> "carried out as they were conceived, would prove to be of in-
> "estimable value to the communities which these roads serve
> "and to the country at large. We shall neither affirm nor
> "deny either of these propositions, because they present
> "issues which we are not called upon to determine, and some
> "of them are issues which no court is empowered to decide,
> "involving, as they do, questions of public policy which
> "Congress must determine."

All evidence as to the actual and controlling motive and purpose of the defendants being disregarded, the Court proceeded next to invoke "the familiar rule that everyone is presumed to intend what "is the *necessary* consequence of his own acts when done wilfully "and deliberately."

Thus invoked as appropriate and sufficient for the disposition of the present case, this "familiar rule" implies that the original transaction, the purchase of the railway stocks, was followed by some concrete violation of the Sherman Law, made possible by reason of such purchase.

Unless, as matter of fact, some such subsequent violation of the law did result, none can now be imagined as a consequence, certainly not as a "*necessary* consequence," of the original transaction. But, indisputably in this case, there has been no subsequent act in anywise affecting interstate commerce, and no consequential basis from which to infer an illegal purpose in any antecedent act. The "familiar rule," therefore, is inapplicable, and the validity of the original transaction must be determined by consideration solely of its own elements.

It is never to be forgotten that this act "*is a criminal statute* "*pure and simple*" and that its meaning and effect as now determined must also be its meaning and effect when made the basis of a criminal proceeding. Conversely, the act should now receive such construction only as it would receive upon the trial of those indicted for violating its provision. In such case it is the established rule (*People vs. Wiman*, 148 N. Y., 29–33) that "criminal intent is "essential to constitute a crime, and the testimony bearing thereon "is always a question for the jury." It is improper, merely as matter of law, *to infer* the existence of an intent to violate this criminal statute from the mere doing of an act in itself not contravening the statute and not followed by any consequent violation of the statute. "However clear the proof may be or however in- "controvertible may seem to the Judge to be the inference of a "criminal intention, the question of intent can never be ruled as a "question of law, but must always be submitted to the jury" (*People vs. Flack*, 125 N. Y., 324, 334–336).

In the present case, all evidence as to the facts having been disregarded, it would seem to follow that it was permissible to entertain the following, and only the following presumptions as to the object of the transaction: *(a)* The primary object was to promote the several pecuniary interests of the parties to the transaction through the purchase of corporate stocks, including those of the two railway companies; and *(b)* the promotion of such pecuniary interests was to be effected lawfully, for as we have seen, the possibility of a controlling lawful purpose has not been excluded or even challenged by proof of any actual condition or any actual consequence of the original transaction, which in and of itself was lawful.

SECOND. The actual conditions being thus lawful, it became vitally necessary for the Circuit Court to establish the second proposition above stated and in its opinion often repeated in many

different forms, of which one may be quoted, viz., that the object and *necessary* effect of a transaction is unlawfully to affect interstate commerce if the transaction gives

> " to a single corporate entity, or more accurately, to a few " men acting in concert and in its name and under cover of " its charter *the power to control* all the means of transporta- " tion that are owned by two competing and parallel rail- " roads engaged in interstate commerce," etc., etc.

That the Court had in mind the mere possession of power, and not any concrete act in exercise of that power (for none was proved), is made clear by its subsequent statement that

> " the power was not only acquired by the combination, but it " is effectually exercised, and it operates directly on interstate " commerce, *notwithstanding the manner of its exercise, by* " *controlling the means of transportation*, to wit, the cars, " engines and railroads, by which persons and commodities " are carried, *as well as by fixing the price* to be charged for " such carriage." *(Note:* There was no proof that any rate had actually been so fixed or altered.)

That such acts might be those not of the organizers, but only of executive agents of the several railway companies, whom it was said that they might control (though it was not proved that they did control them), was deemed immaterial by the Court which said :

> " It matters not, we think, through how many hands the " orders come by which these aims are accomplished or " through what channels."

In thus ruling, the Court accepted the propositions upon page 30 of the brief below of the counsel for the United States, which may well be quoted here :

> " (B) Under this Act it is only necessary to show that " the defendants have acquired the **power** to monopolize or " restrain trade.
>
> * * * * * * *
>
> " I want to make this point as clear and decided as I can, " because in my judgment this is one of the controlling posi- " tions in the case. If your Honors will allow me to say so, " I don't have the slightest doubt as to its correctness. And " that point is this: It is *a question of the possession of the* " *power*, and not a question of the *exercise of the power to* " *monopolize*, and no *overt* act in the exercise of the power " that the monopoly gives need be shown. In fact, in nearly " all these cases there was no overt act at all. Let me state " it again, so your Honors will get my thought: to create a

> " monopoly or an attempt to monopolize or a conspiring to
> " monopolize, it is not necessary to show that the person or
> " corporation that monopolized or attempted to monopolize
> " or combined to monopolize ever exercised the *power* that
> " was gained. The offense which the law forbids **is the**
> " **obtaining of the power.**"

The theory upon which this suit was prosecuted and decided is thus clearly disclosed.

Regardless of all other considerations presented on this argument, the judgment under review must be reversed unless it is to be established *as matter of law* that the mere possession of the power to control all the means of transportation of two competing interstate commerce carriers operates as the effectual exercise of such power and directly affects interstate commerce, notwithstanding the fact that such power has never been exercised by its possessors, and the further fact that it is perfectly practicable for them to exercise it in a perfectly proper way.

Support for the proposition now under review was sought below in the *Pearsall* case (161 U. S., 674), the *Joint Traffic* case, the *Trans-Missouri* case and the *Addyston Pipe* case. The proposition, however, can be deduced from these cases only by what to us seems violent distortion.

In the *Pearsall* case the opinion expressly recognizes the right of the stockholders of either company, by individual purchases, lawfully to acquire a majority, or even the whole, of the stock of the other company, and thus possibly obtain its ultimate control—the companies, however, still remaining separate corporations, with no interests as such in common. Therefore, instead of affirming, the opinion expressly denied, that the mere, ownership of the stocks of two competing corporations would constitute a legal offense. This effect of the opinion was recognized, and vigorously and justly expounded, by Judge LOCHREN, in the case of *Minnesota vs. Northern Securities Co.* (123 Fed. Rep., 692-705).

No one of the other three cases cited by counsel for the Government in support of this extraordinary proposition has any just relation to the question of stock ownership. In each of the cases there was an express agreement manifestly intended to operate and actively operating in immediate and direct violation of the Anti-Trust Act.

A doctrine so momentous and far-reaching as this is not to be spelled out from the incidental reasoning in any judicial opinion, but must be found in some clear, direct and unmistakable adjudication before this Court shall be bound by any rule of *stare decisis*.

Mr. Thorndike, in his admirable and cogent review of "The decision in the 'Merger Case'" (Boston, 1903), points out that the decision itself shows that the three cited cases cannot be invoked in support of this doctrine (p. 5):

> "These are the decisions referred to by the Circuit Court, "but, while they establish that a contract between two or "more rival companies regulating their rates or prices is a "violation of the act, they contain no suggestion that a single "person, or two or more persons jointly, may not own con- "trolling interests in rival enterprises and exercise the con- "trol that arises from their ownership. Applying to the "case before the Circuit Court the language used by that "court itself in stating the effect of the decisions of the "Supreme Court *(b)*, there was no *agreement* between the "two companies *which required them to act in concert* in fix- "ing the rate for the carriage of passengers or freight over "their respective lines, or which *restricted the right* of either "of them to charge such rates as it might please. The case "is consequently not within the effect of the decisions as so "stated *(c)*"

Of course, nothing that was said in the opinion of Judge FINCH in the New York Court of Appeals in the *Sugar Refining* case has any real relation to this question, for there the Court decided only that corporations had no power to enter into a partnership.

It is not too much to say that outside of the present case, no decision can be found directly holding the extraordinary proposition that "the offense which the law forbids is the obtaining of the power" to do an act, and that it is not necessary to show any overt act in the exercise of that power.

(c) "In the other cases under the act previously decided by the Circuit Court "and Court of Appeals, as in the three cases decided by the Supreme Court, the "combinations had been formed by corporations or individuals engaged in busi- "ness independently of one another and they had agreed to regulate their prices or "mode of carrying on their business by the rules of the combination, *e. g.*, *U. S.* "*v. Jellico Coal Co.*, 46 Fed. R., 432; *U. S. v. California Coal Dealers Association*, "85 Fed. R., 252; *Chesapeake Fuel Co. v. U. S.*, 115 Fed. R., 610; *Gibbs v. Mc-* "*Neeler*, 118 Fed. R., 120."

We cannot fail to feel the sense of injustice that led to the vigorous disclaimer of Judge LOCHREN in the *Minnesota* case (123 Fed. Rep., 692–702):

> "*I am compelled to reject the doctrine that any person can "be held to have committed, or to be purposing and about to "commit, a highly penal offense, merely because it can be "shown that his pecuniary interests will be thereby advanced, "and that he has the power, either directly by himself or indi-"rectly through persuasion or coercion of his agents, to compass "the commission of the offense,*"

Nothing less than an adjudication in this Court necessarily and directly involving this doctrine can command its general acceptance.

When reduced to its simplest form, the proposition seems to us not unlike a statement that the mere possession of the innocent means or power to commit a crime may be equivalent under certain conditions to the very commission of the crime itself. But it is difficult to believe that the learned author of the opinion now under review, justly and equally distinguished for his ability and his acumen, can have had any such idea. It is more natural to assume that in his expressions he was constrained by his spirit of loyal deference to what he felt to be the effect of the judgment of this Court overruling his learned colleague, Judge SANBORN and himself in the *Trans-Missouri Freight* case (58 Fed. Rep., 58; 166 U. S., 288), though, as it seems to us, he has disregarded the very wholesome limitations stated in that judgment of this Court.

However, be that as it may, the limitations prescribed by this Court in the cited cases preclude the possibility of its acceptance of these propositions, however construed, of the opinion of the Circuit Court.

If the mere possession of power to do an act affecting interstate commerce, in and of itself, and without any actual exercise of such power by its possessors, constitutes directly and immediately a restraint of such commerce, then the words "direct and immediate," used again and again by this Court in the cited decisions, are stripped of their legitimate meaning. The terms lose their accustomed significance, if it can be maintained that the mere possession of absolute power to control all the means of transportation of two competing interstate commerce carriers, directly and immediately constitutes an act of control. Be-

tween such possession of power and any act in exercise thereof, something must intervene, at least a further volition, which, if involving more than one person, may be the combination or conspiracy prohibited by the statute. The necessity of such intervening volition and of action pursuant thereto demonstrates that the exercise of the power is not an *immediate* consequence of its possession. Again, such intervening act or volition may tend towards a perfectly lawful end and, therefore, the mere possession of the power does not of necessity involve a violation of the statute.

In fine, the fundamental proposition of the decision now under review can be maintained only by rejecting the repeated and familiar determination of this Court that the Anti-Trust Statute of 1890 prohibits only those acts and agreements which directly and immediately restrain inter-state commerce.

> " The contract condemned by the statute is one whose
> " direct and immediate effect is a restraint upon that kind of
> " trade and commerce which is inter-state * * *. There
> " must be some direct and immediate effect upon inter-state
> " commerce to come within the act. * * * A tax is not
> " one upon inter-state commerce because it affects it only
> " incidentally and remotely, *although certainly*" (*Hopkins v.*
> " *U. S.*, 171 U. S., 578–592).

These decisions of this Court must be controlling for the additional reason that they define the extent to which contracts in restraint of trade may be prohibited without infringing upon the constitutional guaranties of liberty and property.

It has been held repeatedly that such restraints as result from the sale or the purchase of property are not within the provisions of anti-trust statutes. Indeed, it is the settled law that the transfer of a business is not illegal because it restrains trade, even by an express covenant (*Oregon Co. vs. Winsor*, 20 Wall., 64; *Union Co. vs. Connolly*, 99 Fed. Rep., 354, affd. 184 U. S., 540; *Fisheries Co. vs. Lennen*, 116 Fed., 217; *Harrison vs. Glucose Co.*, 116 Fed., 304; *Hodge vs. Sloan*, 107 N. Y., 244; *Leslie vs. Lorillard*, 110 N. Y., 519; *Tode vs. Gross*, 127 N. Y., 480; *Oakes vs. Cattaraugus Co.*, 143 N. Y., 430; *Watertown Co. vs. Pool*, 51 Hun, 157, approved 127 N. Y., 485; *Wood vs. Whitehead Co.*, 165 N. Y., 545; *Walsh vs. Dwight*, 40 App. Div., 513; *Park & Sons Co. vs. Druggists' Association*, 54 App. Div., 223; s. c., 175 N. Y., 1). As was said in *Diamond Match Co. vs. Roeber*, 106 N. Y., 473, " we suppose a party

" may legally purchase the trade and business of another for the " very purpose of preventing competition, and the validity of the " contract, if supported by a consideration, will depend upon its rea- " sonableness as between the parties " (p. 483).

So, too, it has been ruled precisely that the formation of associations or corporations is not illegal, because the result will be to restrain competition.

In *Hopkins vs. U. S.*, 171 U. S., 578, and *Anderson vs. U. S.*, 171 U. S., 604, the associations in various ways restricted competition among their own members and prohibited dealing with non-members. These were recognized as being legitimate purposes of association.

In *U. S. Vinegar Co. vs. Foehrenbach*, 148 N. Y., 58, it was held that the formation of a corporation was not unlawful, although the prevention of competition between its members was a purpose of the organizers; and the same thing was held in *Matthews vs. Associated Press*, 136 N. Y., 333, for reasons stated in the opinion of the Court by Judge PECKHAM: and also in *Central Shade Roller Co. vs. Cushman*, 143 Mass., 353.

In *Rafferty vs. Buffalo City Gas Co.*, 37 App. Div., 618, the contract was by one corporation to purchase the stock and bonds of a company owning a franchise, which, if operated adversely to or in rivalry with the former company, might be ruinous to its business, and to pay therefor with stock and bonds issued by it. It was contended that this was illegal, as it would create a monopoly or an unlawful restraint of trade under the provisions of Section 7 of the Stock Corporation Law of New York prohibiting monopolies and restraints of trade. The court (PATTERSON, J.) said: "A monop- " oly is not constituted. No exclusive privilege or right as " against individuals or corporations to manufacture and sell " and distribute gas is acquired. Nor, in a more restricted " use of the word 'monopoly,' is that condition brought " about by force of this contract " (p. 622). To the objection that the contract was bad as preventing competition, the court said that a contract made to prevent or avoid competition was not necessarily invalid, and repeated with approval the rule laid down in *Diamond Match Co. vs. Roeber* as quoted above, as follows: "We suppose a party " may legally purchase the trade and business of another for " the very purpose of preventing competition, and the val- " idity of the contract, if supported by a consideration, will " depend upon its reasonableness as between the parties " (p. 623). The court, therefore, held that this contract by one corporation to acquire the stock and bonds of a competing corporation was not illegal (see also remarks of PECKHAM, J., in *Gamble vs. Queens County Water Co.*, 123 N. Y., 91–104).

In re Greene, 52 Fed. Rep., 104, the facts were that a corporation had acquired the plants of seventy others engaged in the same line of business and controlling seventy-five per cent. of the product. It was claimed that this constituted a monopoly. The court said (JACKSON, C. J.): "All persons, "individually or in corporate organizations, carrying on "business avocations and enterprises involving the purchase, "sale or exchange of articles or the production and manu- "facture of commodities, which form the subjects of commerce, "will, in a popular sense, monopolize both state and inter- "state traffic in such articles or commodities just in proportion "as the owner's business is increased, enlarged and developed. "But the magnitude of a party's business, production, or "manufacture, with the incidental and indirect powers "thereby acquired, and with the purpose of regulating prices "and controlling interstate traffic in the articles or com- "modities forming the subject of such business, production, "or manufacture, is not the monopoly or attempt to monop- "olize which the statute condemns (p. 115). * * It was "certainly not a 'monopoly' in the legal sense of the term, "* * * to own 70 distilleries and the products thereof, "whether such products amounted to the whole or a large "part of what was produced in the country. Their ownership "and control of such products as subjects of trade and com- "merce, is not what the statute condemns, but the monopoly "or attempt to monopolize the interstate trade or commerce "therein. In this acquisition and operation of the 70 dis- "tilleries which enabled the accused or (his) company to "manufacture and control the sale of 75 per cent. of the "distillery products of the country, it does not appear, nor "is it alleged, that the persons from whom said distilleries "were acquired were placed under any restraint by contract "or otherwise, which prevented them from continuing or "re-engaging in such business. All other persons who "chose to engage therein were at liberty to do so. The "effort to control the production and manufacture of dis- "tillery products by the enlargement and extension of busi- "ness, was not an attempt to monopolize trade and com- "merce in such products within the meaning of the statute" (p. 116).

The same thing was held in *United States vs. Greenhut*, 51 Fed. Rep., 205, 211, the court saying:

"If these acts are illegal and in restraint of trade, and if "they constitute a monopoly under this act, it may well "be denominated an act to restrain legitimate enterprise, "and to limit and qualify the ownership in property" (p. 211). This opinion was fully approved *In re Terrell*, 51 Fed. Rep., 213.

In *Trenton Potteries Co. vs. Oliphant*, 58 N. J. Eq., 507, the rule was carried much further than the present facts. The Court held that, "although contracts to restrain and "limit competition in the production of some commodity, in "the manufacture and sale of which the public have an in- "terest, are repugnant to public policy, a restraint or limit "upon competition may result from contracts which the "courts are bound to enforce. Thus, in the absence of legis- "lative prohibition, if such could be imposed, courts would "be obliged to recognize and enforce contracts for the pur- "chase by an individual manufacturer of the business of his "competitors, even to the last one, although such purchases "tend to eliminate competition, and the last purchase would "completely exclude it, at least for a time.

"Under our liberal corporation laws, corporations may "be formed to engage in and carry on almost every con- "ceivable manufacture or trade. They are empowered to "acquire property and the control of other corporations. "Acts which corporations do under these broad legislative "grants cannot be pronounced by the courts to be repugnant "to public policy. The legislative grants of power fix the "character and limit of public policy in that regard. A cor- "poration thus empowered to engage in and carry on a cer- "tain manufacture may buy the business of its competitors, "and courts cannot pronounce contracts for such permitted "purchases invalid, although they tend to produce, and may "temporarily produce, a monopoly of such manufacture."

In the well-known case of *Mogul Steamship Co. vs. McGregor*, App. Cases, 1892, page 25, it was held that an association which was lawful in its character was not rendered unlawful by the fact that it was of such size as to enable it to control the greater part of the business. The court said: "But in this case the thing done, the trading by a number of "persons together, effects no more and is no more, so to "speak, a combined operation than that of a single person. "If the thing done is rendered unlawful by combination, the "course of trade by a person who singly trades for his own "benefit and apart from partnership or sharing profits with "others, but nevertheless avails himself of combined action, "would be open to the same objections. The merchant who "buys for him, the agent who procures orders for him, the "captain who sails his ship, and even the sailors (if they "might be supposed to have knowledge of the transaction) "would be acting in combination for the general result, and "would, whether for the benefit of the individual, or for an "associated body of traders, make it not the less combined "action than if the combination were to share profits with "independent traders; and if a combination to effect that "object would be unlawful, the sharers in the combined

" action could, in a charge of criminal conspiracy, make no " defense that they were captain, agent or sailors, respect- " ively, if they were knowingly rendering their aid to what, " by the hypothesis, would be unlawful if done in combi- " nation " (pp. 38, 39). * * * " What one trader may do " in respect of competition, a body or set of traders can law- " fully do; otherwise a large capitalist could do what a " number of small capitalists, combining together, could not " do, and thus a blow would be struck at the very principle " of co-operation and joint stock enterprise. I entertain no " doubt that a body of traders, whose motive object is to " promote their own trade, can combine to acquire and " thereby in so far to injure the trade of competitors, pro- " vided they do no more than is incident to such motive " object, and use no unlawful means " (p. 50). This case was approved in *Lough vs. Outerbridge*, 143 N. Y., 283. See also, the very recent case of *State vs. Continental Tobacco Co.* (Mo. Sup. Ct.), 75 S. W. Rep., 737.

If the result of restricting competition should follow from the lawful transactions involved herein, it would be not their direct result but only an incidental and collateral result, such as must always follow when business interests of a similar character pass into the same ownership. It would be precisely such a result as those recognized as lawful by the Court in *U. S. vs. Joint Traffic Association* (171 U. S., 505). In reply to the suggestion that, as construed in the Trans-Missouri case, the act would apply to the "*formation of a corporation to carry on any par-* " *ticular line of business by those already engaged therein; a con-* " *tract of partnership or of employment between two persons pre-* " *viously engaged in the same line of business*" (p. 567); the Court said that the "*formation of corporations for business or manufactur-* " *ing purposes has never, to our knowledge, been regarded in the* " *nature of a contract in restraint of trade or commerce. The same* " *may be said of the contract of partnership*" (p. 567).

Therefore, no indirect or remote effect upon competition between the Railway Companies, could bring the transactions within either the first section or the second section of the Anti Trust Act.

As an indirect and remote result cannot bring the transaction within the prohibition of the first section of the act, as being an agreement in restraint of commerce, no more can it bring the transaction within the second section denouncing monopolies. Under the second section as under the first, the forbidden result must be direct and immediate.

But, it has been denied and it is very doubtful whether in any case the second section of the act applies to railroads.

Professor LANGDELL concludes his admirable discussion of this point as follows:

> "As, therefore, the only thing that a railway company "can monopolize is the carriage of goods and passengers "for hire, and as such carriage does not constitute trade or "commerce, it follows that railway companies are not within "section 2 of the Act. The only monopoly which section 2 "forbids is a monopoly of the goods which constitute the "subjects of trade and commerce, so far as the trade and "commerce in such goods is subject to the control of the "United States. This explains the fact that section 2 forbids "the monopoly of any part of such trade or commerce. To "forbid a monopoly by a railway company of the carriage "of any part of the goods carried by it would be absurd, as "every railway company necessarily has a monopoly of the "carriage of by far the greater part of the goods carried by "it, and no railway company could live without such "monopoly. It is only at what are known as competing "points that a 'shipper' of goods has any choice as to the "railway by which he shall 'ship' them."
>
> 16 Harvard Law Review, 545, June, 1903.

MR. THORNDIKE says ("Merger Case," pp. 32, 33):

> "But even if it were established that a combination for "the purpose of acquiring all the trade of a particular kind "in the country might be a monopoly, that would be very "far from establishing the proposition that the acquisition "of a controlling interest in two competing railway com- "panies by a single person or corporation, or even the con- "solidation of such railway companies into one company, "would be a monopoly. If one of them by itself was not a "monopoly, the two combined into one would not be. A "single company might originally have constructed and "owned both railways. The consolidation of the two com- "panies would have the same effect as if this had been done. "The combination would not prevent other people from "owning or building other railways. In the case of the "Northern Pacific and Great Northern railways, the only "ground for claiming that there is a monopoly is that they "have been competitors and that the effect of the control "acquired would be to extinguish the competition. But it is "not pretended that it would interfere with the competi- "tion of other existing railways or of others that may be "built. If it could be made out that the two companies "have been consolidated into one, it would be only one

> " of hundreds of cases in which two rivals in trade have " united. There is no authority for saying that such a " union would constitute a monopoly or be contrary to any " rule of law."

In this statement Mr. Thorndike cannot have overlooked the statements of Mr. Justice BROWN in the PEARSALL case upon which in the Circuit Court the counsel for the United States relied as establishing this point in their favor. What did or did not constitute a monopoly was not involved in that case. The one question there presented and decided, was whether an unexercised corporate right was so vested as to be beyond the power of subsequent legislative repeal, by a statute forbidding not monopolies, but the consolidation of parallel and competing railroads. Had there been no State statute forbidding such consolidations, or if the acquisition of the stock of one company had in no wise involved its corporate absorption by the other company the transaction would have been legitimate.

> " Doubtless these stockholders could lawfully acquire " by individual purchases a majority or even the whole of the " stock of the reorganized company and thus possibly obtain " its ultimate control, *but the companies would still remain* " *separate corporations with no interests as such in common.*"

This language (at p. 671–2) must have been used by Mr. Justice BROWN intentionally and significantly. It has had vast significance for parties and counsel giving advice upon the faith thereof, and also for Courts below. In the *Minnesota* case (123 Fed. Rep., 692–705) Judge LOCHREN expresses the view generally taken by the bar :

> " I am not able to agree with the suggestion that this " expression may be regarded as one not necessary to the " decision, and therefore perhaps not carefully considered. " On the contrary, it seems to me to be a carefully considered " and necessary limitation or explanation of general language " elsewhere made use of in that decision. * * * The " two companies still remain separate corporations, with no " interests as such in common."

In the Joint Traffic cases the Court did not specifically define "monopoly," but said that it had the meaning given to it in the body of the Anti-Trust Act, which was not involved in the Pearsall case, and the decision there cannot now be urged upon this Court as a limitation upon its freedom of construction of the statute. As

Judge McCormick discreetly observed (*Laredo vs. International Bridge Co.*, 66 Fed. Rep., 246-8): "It has therefore generally been "deemed wise and safe to use rather a process of exclusion and de- "termine what is not a monopoly so far as the case in hand re- "quired."

Obviously, a consolidation of two railroads authorized by the laws of every State which they enter would not be condemned as constituting a monopoly; nor would a purchase of all the stock of one road by a competing road similarly authorized be so condemned; nor would a combination to induce the legislatures of the several States to authorize such a consolidation or such a purchase. It cannot be that, in prohibiting monopolies, the Congress intended to forbid these familiar processes of railroad amalgamation, and if, when authorized by State law, the consummated act is not a monopoly, it would not be such merely because it has not been not so authorized.

THIRD.

The construction claimed would make the statute unconstitutional because it would deprive the Securities Company of its property without due process of law.

It is, of course, well settled that corporations are entitled to the same constitutional protection of their property rights as natural persons. "Corporations can invoke the benefits of the provisions "of the constitution and laws which guarantee to persons the enjoy- "ment of property or afford to them the means for its protection, "or prohibit legislation injuriously affecting it" (*Minneapolis Railway Co. vs. Beckwith*, 129 U. S., 26, 28). "It is now settled that "corporations are persons within the meaning of the constitutional "provisions forbidding the deprivation of property without due "process of law, as well as a denial of the equal protection of the "laws" (*Covington Turnpike Co. vs. Sandford*, 164 U. S., 578, 592; *Gulf Co. vs. Ellis*, 165 U. S., 150, 154; *Lake Shore Co. vs. Smith*, 173 U. S., 684, 690). "The fifth amendment to the constitution

" declares that no person shall 'be deprived of life, liberty or prop-
" 'erty without due process of law.' This is a limitation upon the
" federal government similar to that which exists in the constitu-
" tion of several of the states against their own legislative bodies ;
" and the term 'person' thus used has always been held, either by
" tacit assent or express adjudication, whenever the question has
" arisen, to extend, so far as property is concerned, to corporations,
" because to protect them from spoliation is to protect the corpor-
" ators also" (*County of Santa Clara vs. Southern Pacific R. R. Co.*, 18 Fed. Rep., 385, 404 ; see, also, *County of San Mateo vs. Southern Pac. Co.*, 13 Fed. Rep., 722, 745, 760).

This constitutional provision protects the right to acquire property equally with the right to hold the same after it has been acquired. "As the possession of property of which a person cannot " be deprived doubtless implies that such property may be acquired, " it is safe to say that a state law which undertakes to deprive any " class of persons of the general power to acquire property would " also be obnoxious to the same provision" (securing due process of law). "Indeed, we may go a step further and say that, as prop-" erty can only be legally acquired as between living persons by " contract, a general prohibition against entering into contracts with " respects to property or having as their object the acquisition of " property would be equally invalid" (*Holden vs. Hardy*, 169 U. S., 366, 391 ; *State vs. Goodwill*, 33 W. Va., 179 ; *State vs. Julow*, 129 Mo., 163, 173). These rights are not affected by the statute now invoked. As the court said in *U. S. vs. E. C. Knight Co.*, 156 U. S., 1, 16, Congress did not attempt by the statute "to limit and " restrict the rights of corporations created by the states, or the " citizens of the states in the acquisition, control or disposition of " property."

The *Pearsall* case (161 U. S., 646), distinctly recognizes that a natural person would be entirely at liberty to buy all the shares which his means permitted of the stock of the Northern Pacific Railway Company and the Great Northern Railway Company. The state creating a corporation might limit its power in this respect, but Congress had no such general authority to cut down the powers granted by the states to their corporations, merely because they are artificial instead of natural persons. Therefore, it is obvious that a corporation having authority by its charter to make such purchases cannot, merely because it is a corporation, be prevented from so doing without depriving it of

that right without due process of law. It is a lawful artificial person having power to acquire this property and fully entitled to the constitutional protection. This has all the more force because the statute now invoked makes no distinction whatever between the rights of natural persons and artificial persons.

FOURTH.

As construed and applied by the Circuit Court the Anti-Trust Act is unconstitutional, in that it discriminates between persons in the matter of property rights and privileges on grounds that are purely arbitrary and are without justification in reason.

The vesting of the control or the ownership of two competing railroads in a single individual consummated in any other way would have all the effect for good or for ill that would result from such a vesting through a conspiracy or a combination. But, by the act and by the decision under review, condemnation is placed not upon a single ownership under all conditions, but only upon such single ownership when effected in a particular way; thus establishing a discrimination that is arbitrary, unreasonable and invalid.

1. That such a discrimination exists as the result of the Court's view of the statute is unquestionable. Thus—

(a) One person may acquire a majority of the shares of each of two competing interstate railroads without violating this act; for, as observed by Professor Langdell, "no person can contract "or combine, or conspire with himself."

But that which may be done by one man of adequate means can not reasonably be forbidden to several, simply because they must club their means in order to make them adequate.

Indeed the acquisition by one man might well be claimed to be more mischievous than when made by several, because of the greater secrecy as well as the greater efficiency of the one-man power.

Surely it is contrary to the general policy of the law to distinguish between the rich and the poor to the prejudice of the poor; to confer upon the large capitalist privileges which are withheld from small capitalists by denying to them the right to pool their resources.

It may be suggested that the Legislature, and not the Courts, determines questions of policy, and that if the Anti-trust Act forbids to several persons what it permits to one, Congress simply avails itself of the rule that numbers may make unlawful, and may justly make unlawful, that which when done by a single individual, is not unlawful.

But, though well settled, the rule necessarily is limited to cases in which of themselves numbers are a force—in which many, simply because they are many, do more and can do more, than it is possible for one to do.

The rule, however, does not apply where the capacity of several persons acting in concert can be no greater than that of one person similarly situated—where, to illustrate by the case at bar, as majority stockholders of two competing interstate railroad companies several persons have no greater power over them than would one man being a majority stockholder.

This criticism of the act, which is applicable generally and to all interstate commerce carriers, large or small, is not to be disregarded merely because in this case the acquisition of the two railroads would be beyond the power of one individual. The rule announced in this case would equally affect two ferries between Cincinnati and Covington, or two toll bridges crossing a boundary stream, which easily might be acquired and be operated by a single person.

(*b*) Besides thus discriminating between one person and several persons in the matter of their respective property rights, the Anti-trust Act as interpreted by the Court below in like manner arbitrarily discriminates between groups of persons.

If A, B and C, acting in concert, acquire a majority of the shares of two competing interstate railroads, the acquisition is unlawful.

But if D, E and F acquire the same majority by inheritance, by accident, by operation of law, in short in any way not involving concert of action for that purpose, the acquisition is lawful.

Yet of course D, E and F, have the same powers and interests as A, B and C, are subject to the same influences and temptations, and may use the acquired property to bring about the same public mischiefs.

There is absolutely no distinction between the two cases except A, B and C's concert of action in acquiring their property—a circumstance having no reasonable relation to the constitutional objects of the statute.

The power to suppress competition between two competing interstate railroad companies being always existent and under the theory of the Circuit Court always attaching to a majority of the shares of both, whether owned by one person or by several, the Anti-trust Act, if understood as intended to do away with such power, should be enforced so as to prevent any one person, as much as any two or more persons, from acquiring stock in both of such competing companies.

2. If as construed by the Court below, the Anti-trust Act, on the grounds above stated, arbitrarily and without reason discriminates between persons in the matter of their property, rights and privileges, the act is beyond the power of Congress as clearly as it would be beyond the power of any State Legislature.

The Fifth Amendment to the Federal Constitution secures all persons in their "liberty" and invalidates any legislation by Congress depriving them of "liberty" "without due process of law."

(a) As thus used, "liberty," means not merely bodily liberty—freedom from physical duress, but in effect comprehends substantially all those personal and civil rights of the citizen which it is meant to place be- yond the power of the general government to destroy or impair.

Mr. Justice SWAYNE:

> "Liberty is freedom from all restraints but such as are "justly imposed by law. Beyond that line lies the domain of "usurpation and tyranny. Property is everything which has "an exchangeable value and the right of property includes "the power to dispose of it according to the will of the "owner. Labor is property and as such merits protection."
> *Slaughter House Cases*, 16 Wall., 36, p. 127.

Mr. Justice BRADLEY:

> "In my view, a law which prohibits a large class of citi- "zens from adopting a lawful employment or from follow- "ing a lawful employment previously adopted does deprive "them of liberty, as well as property, without due process of "law. Their right of choice is a portion of their liberty; "their occupation is their property."
> 16 Wall., p. 122.

Mr. Justice FIELD:

> "By the term 'liberty' as used in the provision something "more is meant than mere freedom from physical restraint "or the bounds of a prison. It means freedom to go where "one may choose, and to act in such a manner, not incon- "sistent with the equal rights of others, as his judgment "may dictate for the promotion of his happiness; that is, to "pursue such callings and avocations as may be most suit- "able to develop his capacities, and give to them their "highest enjoyment." *Munn vs. Illinois* (94 U. S., 113, p. 142), cited with high appreciation by Judge PECKHAM (*People vs. Walsh*, 117 N. Y., 60).

The statement of a great English Judge may well be quoted in this connection:

> "The liberty of a man's mind and will to say how he "should (shall) bestow himself and his means, his talents, "and his industry, was (is) as much a subject of the law's "protection as was (is) that of the body."
>
> *Regina vs. Druitt*, 10 Cox C. C., 592, 600.

See among other authorities to the same point:

Butchers' Union Co. vs. Crescent Co., 111 U. S., 746.
Allgeyer vs. Louisiana, 165 U. S., 578.
United States vs. Joint Traffic Association, 171 U. S., 505, p. 572.
Addyston Pipe and Steel Co. vs. United States, 175 U. S., 211, pp. 228–9.
Bertholf vs. O'Reilly, 74 N. Y., 509.
In re Jacobs, 98 N. Y., 98.
People vs. Gillson, 109 N. Y., 389.
People vs. King, 110 N. Y., 418.
Godcharles vs. Wigeman, 113 Pa. St., 431.

(b) From the adjudications and principles made and affirmed in the cases above cited, it follows that, as used in the Fifth Constitutional Amendment, "liberty" includes equality of rights under the law and secures citizens similarly situated against discriminations between them which are arbitrary and without foundation in reason. Though perhaps unnecessary, it cannot be improper here to recall some of the notable affirmations of the doctrine by this Court.

Thus, in *United States vs. Cruikshank*, 92 U. S., 542, p. 554–555, after explaining the scope of that clause of the Fourteenth Amendment, preventing a State from depriving any person of life, liberty or property without due process of law, Chief-Justice WAITE com-

ments upon the next clause securing the equal protection of the laws in the following terms:

> "This provision does not, any more than the one which "precedes it, * * * add anything to the rights which "one citizen has under the Constitution against another. "The equality of the rights of citizens is a principle of "republicanism. Every republican government is in duty "bound to protect all its citizens in the enjoyment of this "principle, if within its power. That duty was originally "assumed by the States, and it still remains there. The "only obligation resting upon the United States is to see "that the States do not deny the right. This the amend- "ment guarantees, but no more."

Mr. Justice MATTHEWS:

> "When we consider the nature and the theory of our "institutions of government, the principles upon which they "are supposed to rest, and review the history of their de- "velopment, we are constrained to conclude that they do not "mean to leave room for the play and action of purely per- "sonal and arbitrary power."
>
> *Yick Wo vs. Hopkins*, 118 U. S., 356, p. 369.

Mr. Justice BREWER:

> "No duty rests more imperatively upon the courts than "the enforcement of those constitutional provisions intended "to secure that equality of rights which is the foundation of "free government."
>
> *Gulf, Colorado & Santa Fe Ry. Co. vs. Ellis*, 165 U. S., 150, p. 160.

(c) Hence, the principles affirmed and acted upon by this Court in applying the Fourteenth Amendment to State legislation, are equally applicable to legislation by Congress, and, as construed by the Court below, the Anti-trust Act is invalid as trespassing upon the "liberty" of citizens, by denying them equality of rights and discriminating between them in the matter of their property rights, arbitrarily and without reason.

Thus—to refer only to some of the latest and most important adjudications—this Court has held invalid statutes—

> Singling out railroad companies and requiring them to pay attorneys' fees to successful adverse litigants.
>
> *Gulf, Col. & S. F. Ry. Co. v. Ellis, supra.*

> Singling out a single stock yard company—under pretense of classification—for reduction of charges.
>
> *Cotting v. Kansas City Co.*, 183 U. S., 79.

Permitting two or more live-stock raisers to combine to prevent competition, while making it criminal for two or more persons holding property for sale or exchange to combine for the same purpose.

Connolly v. Union Sewer Co., 184 U. S., 540.

In these cases, the State law attempted to make classification of persons; in the *first* case between railroad companies on the one hand and all other corporations and persons on the other; in the *second* case between the largest and wealthiest stock yard company of the State, and all other stock yard companies, and in the *third* case between some persons engaged in domestic trade or commerce and other persons also so engaged. In each case the Court held in substance that the classification was without justifiable basis, declaring

"But arbitrary selection can never be justified by calling "it classification" (165 U. S., p. 159).

"Classification can not be made arbitrarily. * * * "That must always rest upon some difference which bears a "reasonable and just relation to the act in respect to which "the classification is proposed and can never be made arbi- "trarily and without any such basis." * * *

"The differences which will support class legislation "must be such as in the nature of things furnish a reason- "able basis for separate laws and regulations" (165 U. S., p. 155).

"* * * In all cases it must appear, not only that a "classification has been made, but also that it is one based "upon some reasonable ground—some difference which "bears a just and proper relation to the attempted classifica- "tion—and is not a mere arbitrary selection" (165 U. S., p. 165).

"The Fourteenth amendment, in declaring that no state "'shall deprive any person of life, liberty or property, without "due process of law, nor deny to any person within its juris- "diction the equal protection of the laws, undoubtedly in- "tended not only that there should be no arbitrary deprivation "of life, or liberty, or arbitrary spoliation of property, but "that equal protection and security should be given to all "under like circumstances in the enjoyment of their personal "and civil rights; that all persons should be equally entitled "to pursue their happiness and acquire and enjoy prop- "erty." * * *

Barbier vs. Connolly, 113 U. S., 27, p. 31, cited in the opinion in *Cotting vs. Kansas City Stock Yards Co.*, 183 U. S., p. 106.

In view of the discriminations in the act as construed in the Circuit Court, is it not plain that the principles affirmed by this Court and applied in the cases above cited, require the act so construed to be held unconstitutional?

As so construed, the act undertakes to classify the persons who may, and the persons who may not, legally acquire a majority of the shares of two competing interstate railroads. On the one hand is the class which may acquire such majority, and which consists of any one person or of any two or more persons who get the same by inheritance, by operation of law, or in any manner not involving their mutual co-operation. On the other hand is the class which may not acquire such majority, and which consists of any two or more persons who get the same by concert of action. The classification is void, because arbitrary and without reason, and without just relation to the object of the law—because the one class is as likely to use its shares in violation of law as is the other, and has the same selfish interest to serve, and has the same incentives to disregard the law.

FIFTH.

As construed and applied by the Circuit Court, the statute is unconstitutional because without due process of law, it would deprive these defendants and all others who sold to the Securities Company of their property.

As already said, the transactions consisted of a sale by the stockholders to the Securities Company; or, if the corporate form of the transaction be left out of view, of a sale by each stockholder of an interest in his shares to every other stockholder. One of the objects of this suit is to annul all sales of stock of the Railway Companies to the Security Company, and to cancel all certificates of stock of the latter company issued in purchase thereof. Even if there were any prohibition in the premises on the Railway Companies, it would not apply to their stockholders.

In *Pullman Car Co. vs. Missouri Pacific Co.*, 115 U. S., 587, there was an agreement by a railway company to haul cars over all roads which it controlled or might control by ownership, lease or otherwise. It was held that this did not oblige it to haul cars over the connecting road of another company in whose stock it acquired subsequently to the agreement a controlling interest. The point decided was that an obligation resting upon a company did not apply to a stockholder therein. The court said as to the position of the latter: "Its rights and its powers are those of a stock-" holder only. It is not the corporation, in the sense of that " term as applied to the management of the corporate busi-" ness or the control of the corporate property" (p. 597).

So, too, in *Wattson v. Bonfils*, 116 Fed. Rep., 157, it was held that a corporation and its stockholders are entirely different entities, even although all the stock is held by one person.

To the same effect are *American Preservers Co. vs. Norris*, 43 Fed. Rep., 711; *Electric Co. vs. Jamaica Co.*, 61 Fed. Rep., 655, 678.

Any effort to limit the right to sell necessarily would deprive these defendants of their property without due process of law. " The value of property results from the use to which it is put and " varies with the profitableness of that use, present and prospective " actual and anticipated. There is no pecuniary value outside of " that which results from such use" *(Cleveland Co. vs. Backus*, 154 U. S., 439, 445). " The value of property is determined by what it can " be bought and sold for" *(People ex rel. Manhattan Co. vs. Barker*, 146 N. Y., 304, 312). " Salability is an essential element of prop-" erty, and the destruction or the diminution thereof is a taking of " property that cannot be done except through the exercise of the right of eminent domain, or of the police power" *(Ingersoll vs. Nassau Co.*, 157 N. Y., 453, 463). " Depriving an " owner of property of one of its essential attributes, is depriving " him of his property within the constitutional provision, and a " legislative declaration that upon the publication of notice a nego-" tiable security shall no longer be transferable, is not due process " of law, working a forfeiture of the right given by the contract" *(People ex. rel. Manhattan Institution vs. Otis*, 90 N. Y., 48, 52). Such an effort to prevent the sale of property or to regulate the conditions on which the owners might sell the same would be unconstitutional because it would deprive the owners of their property without due process of law *(Holden vs. Hardy*, 169 U. S., 366, 391; *People vs. Marx*, 99 N. Y., 377, 386; *People vs. Gillson*, 109

N. Y., 389; *Forster vs. Scott*, 136 N. Y., 577; *Ingersoll vs. Nassau Co.*, 157 N. Y., 453, 463; *Purdy vs. Erie R. R. Co.*, 162 N. Y., 42, 49; *City vs. Collins Baking Co.*, 39 App. Div., 432; *Rochester Turnpike Co. vs. Joel*, 41 App. Div., 43; *People vs. Meyer*, 44 App. Div., 1; *Ingraham vs. National Salt Co.*, 72 App. Div., 582; *Janesville vs. Carpenter*, 77 Wisc., 288, 301).

It has been already pointed out that the sale being lawful, the motive is immaterial *(supra*, pp. 6, 7). This principle seems to sufficiently answer the doctrine of *Commonwealth vs. Pennsylvania Co.*, 1 Pa. C. C., 214, that the lawfulness of a sale may be denied because of the motive of the purchaser.

If complainant's contention should be sustained, the right of an owner of property to sell the same would be dependent upon what the courts at any future time might hold to be the intention of the purchaser in buying the property. Such a result would seriously impair the liberty of the owner, and the value of his property.

SIXTH.

But whatever view be taken of the character of the transaction, the decree of the Circuit Court transcended the authority of the Court under the statute, which was the sole ground and source of its jurisdiction.

Upon this point it is sufficient to refer to the keen dissection of the terms of the decree by Mr. Thorndike (pp. 34, 35).

> " By s. 4 of the statute the court has jurisdiction "*to prevent and restrain violations of this act.*" The decree, " after enjoining the Northern Securities Company from acquiring any further stock of either of the two railway companies, also enjoins it from voting at any meeting of the " stockholders of either of them or exercising any control or " influence over their acts and doings, and enjoins the two " railway companies from paying it any dividends on account " of the shares, with a proviso declaring that it shall not be " prevented by the decree from returning the shares. This " puts the entire control of the affairs of each of the railway " companies into the hands of a minority of the shareholders,

" and takes away from the owner of a majority of the shares " the power of using even its influence for the protection of " its property. It leaves to the Northern Securities Com- " pany the property in the shares, but without the right to " the dividends, which is the only thing that gives them any " value. A return of the shares would not carry with it any " right to dividends payable during the time when the shares " were held by that company. The result is that, according " to the decree, nobody can ever receive those dividends, " and they are thus confiscated for the benefit of the railway " companies.

" The part of the decree that relates to the dividends " has nothing to do with the object of preventing the sup- " pression of competition, and is only punishment, and the " act gives no authority to inflict such punishment. The " receipt of the dividends would not affect competition and " would not be a violation of the act.

" The part that restrains voting and exercising any con- " trol or influence, does more than prevent the Northern " Securities Company from using its power to suppress " competition. It would not be a violation of the act to " vote or to exercise control and influence as to matters " that concerned only traffic within any one state, or that " did not relate to commerce between different states. " Even as to matters that did relate to commerce between " the states, it would not be a violation of the act if the " control was so exercised as not to interfere with competi- " tion.

" In the *Addyston Pipe Co.'s case*, where an agreement " had been made to restrict the sales and prices of iron pipe " in several states, the Supreme Court was careful to limit " the decree so that it should not apply to transactions " wholly within any one state, as they would not be within " the provisions of the act. If a similar course had been fol- " lowed in the present case, the decree would only have en- " joined the Northern Securities Company from doing what " would have been (according to the decision) a violation " of the act, namely, using its control or influence in such " a way as to suppress competition in so much of the traf- " fic of the two railways as was carried on between differ- " ent states. The only ground upon which the act is held " to have been violated is that the acquisition of the shares " gives a power to suppress competition, which is likely to " be exercised, but if the exercise of the power is restrained, " the evil is prevented. This power too would continue only " so long as the controlling interest in both railway com- " panies was retained, and would cease if the Northern Se- " curities Company should cease to hold a majority of the

" shares in one. Therefore the injunction should also have " been limited to the time during which it might hold a con- " trolling interest in both of them. The decree could not " have gone beyond that without exceeding the jurisdiction " given to the court 'to prevent and restrain violations of " 'this act.'"

CONCLUSION.

The judgment of the Circuit Court should be reversed and the petition dismissed.

The very important point as to the power of Congress, as well as other points sufficiently presented in the other briefs, need not be repeated here.

December 14, 1903.

FRANCIS LYNDE STETSON,
DAVID WILLCOX,
Of Counsel for Appellants Morgan, Bacon and Lamont.

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Clerk

UNITED STATES SUPREME COURT,

OCTOBER TERM, 1903.

THE NORTHERN SECURITIES COMPANY and others,
Appellants,
vs.
THE UNITED STATES,
Appellees.
No. 277.

BRIEF OF JOHN W. GRIGGS FOR THE NORTHERN SECURITIES COMPANY, APPELLANT.

JOHN W. GRIGGS,
Of Counsel for
Northern Securities Company.

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vs.
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No. 277.

BRIEF OF JOHN W. GRIGGS FOR THE NORTHERN SECURITIES COMPANY, APPELLANT.

I.

THE ACTS OF THE DEFENDANTS DO NOT CONSTITUTE A CONTRACT, COMBINATION, OR CONSPIRACY IN RESTRAINT OF INTERSTATE TRADE OR COMMERCE WITHIN THE MEANING AND PROHIBITION OF THE ACT OF JULY 2, 1890, KNOWN AS THE SHERMAN ACT.

The United States rests its case upon two allegations:

First.—That the Northern Securities Company has been formed and has taken over a majority of the shares of the two railroad companies in the manner indicated by the pleadings and proofs.

Second.—That the intended and the necessary effect of those acts is to destroy competition between the two railroad companies.

After reciting the formation of the Northern Securities

Company and the acquirement by it of the shares of the Northern Pacific and the Great Northern Railway Companies, the Attorney-General, in his petition, describes his view of the effect of the arrangement as follows:

> "In this manner, by making the stockholders of each system jointly interested in both systems, and by practically pooling the earnings of both systems for the benefit of the former stockholders of each, and by vesting the selection of the directors and officers of each system in a common body, to wit, the holding corporation, with not only the power but the duty to pursue a policy which would promote the interests, not of one system at the expense of the other, but of both at the expense of the public, all inducement for competition between the two systems was to be removed, a virtual consolidation effected, and a monopoly of the interstate and foreign commerce formerly carried on by the two systems as independent competitors established" (Par. VI).

And again (in Par. VIII):

> "By reason whereof, a virtual consolidation under one ownership and source of control of the Great Northern and Northern Pacific railway systems has been effected, a combination or conspiracy in restraint of the trade or commerce among the several States and with foreign nations formerly carried on by the defendant railway companies independently and in free competition, one with the other, has been formed and is in operation, and the defendants are thereby attempting to monopolize, and have monopolized, such interstate and foreign trade or commerce."

Again (in Par. XII):

> "If the Government fails to prevent the carrying out of the combination or conspiracy aforesaid, and the defendant, the Northern Securities Company, is permitted to receive and hold and act as owner of the stock of the Northern Pacific and

Great Northern Railway Companies as aforesaid, not only will a virtual consolidation of two competing transcontinental lines, with the practical pooling of their earnings, be effected, and a monopoly of the interstate and foreign commerce formerly carried on by them as competitors be created, and all effective competition between such lines in the carrying of interstate and foreign traffic be destroyed, but thereafter, to all desiring to use it, an available method will be presented, whereby, through the corporate scheme or device aforesaid, the Act of Congress of July 2, 1890, may be circumvented and set at naught, and all transcontinental lines, indeed the entire railway systems of the country, may be absorbed, merged and consolidated, thus placing the public at the absolute mercy of the holding corporation."

Again (Paragraph XI):

"The defendant, the Northern Securities Company, was not organized in good faith to purchase and pay for the stocks of the Great Northern and the Northern Pacific Railway Companies. It was organized solely to incorporate the pooling of the stocks of said companies and to carry into effect the unlawful combination or conspiracy aforesaid. The Northern Securities Company is a mere depositary, custodian, holder and trustee of the stocks of the Great Northern and the Northern Pacific Railway Companies, and its shares of stock are but beneficial certificates issued against said railroad stocks to designate the interest of the holders in the pool. The Northern Securities Company does not have, and never had, any capital sufficient to warrant such a stupendous operation."

The answer of the defendants is:

First.—That the formation of the Northern Securities Company and the acquirement by it of stock of the two railroad companies was a lawful transaction, governed

solely by local State laws, and not in contravention of any provision of the federal constitution or statutes.

Second.—That the acts of the defendants were all done in good faith, without any purpose to destroy competition or restrain trade.

To put it more concisely: The defendants contend that what they have done is lawful, has no direct effect in restraint of competition, and was not intended to restrain competition.

The formation of the Northern Securities Company was the result of a broad and enlightened business policy that is directed towards the enlargement of trade, the development of a great and rich section of our country, and the firm establishment of a transportation system large enough and strong enough to enter into and maintain itself in competition for the transcontinental trade of America as well as in the trans-Pacific trade between America and the Orient, against the carrying systems not only of the United States, but also of Canada and the European States by way of the Suez Canal.

The defendant, the Northern Securities Company, is a corporation lawfully organized for the transaction of lawful business. Nevertheless, the United States alleges that the Company was not organized in good faith to purchase and pay for the stocks of the Great Northern and Northern Pacific Railway Companies; that it was organized solely to incorporate the pooling of the stocks of said companies and to carry into effect an unlawful combination and conspiracy, having for its object the practical merger of the two railway companies and the monopolizing of the trade and commerce carried on by them respectively, in violation of the Act of July 2, 1890.

What proof have the United States offered to support this allegation?

We can confidently say—nothing, beyond the fact that

the Securities Company has been organized and holds a a majority of the stock of both railway companies. But that is a long way from proving that it was organized "solely to carry into effect an unlawful combination and conspiracy."

The Court will not impute bad motives where the acts of the parties are consistent with honest and lawful purpose, unless the *mala fides* is clearly shown by proofs that would justify conviction in a criminal action, and that exclude the existence of good faith.

The answers of the Northern Securities Company and of the other defendants set forth *in extenso* the history of the transactions extending over many years which gradually led up to the consummation of the long-existing desire and design of the leading stockholders of the Great Northern to combine their holdings of stock in that road so as to prevent it from becoming scattered. The facts alleged in the answers are more than supported by the testimony of the principal participants in the organization of the Securities Company.

The Great Northern and the Northern Pacific, while competitors in some degree, have never been hostile to each other. There is a great difference between rivalry and hostility. Competition can be, and is, carried on between individuals and corporations, not only without rancor and jealously, but in a spirit of friendliness and with a mutual desire to promote good relations in all matters that touch the mutual interests of the competitors. And, with due respect, it is submitted that the law does not forbid that.

The complainant has introduced the testimony of James J. Hill, given in the case of Power *v.* Northern Pacific Railway Company.

Mr. Hill was searchingly questioned as to whether there was any agreement or understanding of any kind

between the Northern Pacific and the Great Northern with reference to the policies of the respective roads touching one another in regard to their territory or operation, or their interests with the public, and Mr. Hill emphatically and in detail denied that there was any such understanding or agreement.

Similar denials are made by John S. Kennedy, William P. Clough, J. P. Morgan and Charles S. Mellen.

In particular, Mr. Mellen testifies that "there was a general understanding between all the railroad companies that nobody will do anything that affects his neighbor unfavorably without advising the neighbor before doing it, and that agreement is no different with the Northern Pacific and the Great Northern than it is with the Northern Pacific and the Chicago and North western or any other railroad connecting, competitive or otherwise."

Mr. Mellen says that "each company is continuing in competition, offering superior facilities, and bringing pressure to bear, and influence, personal and otherwise, in its own behalf."

Among other facts in disproof of the Government's allegation that the Securities Company was formed solely to create a merger of the two railroad companies is that testified to by Mr. Hill, that it purchased the stocks of the Crow's Nest Coal Company and two other coal companies, paying for them from three to four millions of dollars.

Another fact to be constantly kept in mind is that none of the parties, nor all of the parties put together, who formed the Securities Company, were holders of a majority of the capital stock of the Great Northern Railway Company. There were about 1,600 different stockholders in that company and from 400 to 500 different stockholders in the Northern Pacific. Only a few

of these were actually consulted, and the action of the incorporators was not made dependent upon their approval or confirmation. They were merely offered the opportunity to come in and sell their stock to the Securities Company, which some, but not all of them, did.

At the time the Securities Company was formed there was no certainty that a majority of the stock of either of the railroad companies would be acquired by it, and it would have been formed and have continued if no other persons than the original projectors of the company had come in and exchanged their stock. Such is the testimony of all the persons participating in the organization.

The original conception, the primordial germ, out of which the Northern Securities grew, is to be found much further back than the transactions of 1901. The dramatic incidents of that year merely hastened the development and maturity of the conception.

The purpose and intent of the originators of the scheme cannot be subject to dispute. It rests not only upon the sworn testimony of the most eminent and successful business men of the country, but is substantiated by collateral facts that furnish the most adequate and sstisfactory reasons for the action that was finally taken, without requiring us to resort to an imputation of illegal and criminal motive.

Briefly stated, the circumstances are these:

The defendants, Messrs. Hill, Kennedy, James, and Mr. Samuel Thorne and others, not exceeding ten in number, formed a group of active and influential persons, who had developed and maintained the Great Northern enterprise from its origin, and who, not holding a majority of its stock, yet had the concurrence, support and good-will of the other stockholders, and were, because of their successful management and their influence, continued from year to year in control.

As early as 1893 these gentlemen took up for consideration the subject of continuing their policy in the management of the Company by some arrangement which would prevent their stock from being scattered in case of death. This was the original conception out of which the Northern Securities Company developed.

At the time of the reorganization of the Northern Pacific in 1896 these same gentlemen, independently of each other, acquired about twenty millions of dollars of stock in the New Northern Pacific Company, which substantially they held down to the formation of the Northern Securities Company.

Here we find that as early as 1896 a duality of interest had arisen whereby these gentlemen became concerned in the welfare of both companies.

In April, 1901, the Northern Pacific and the Great Northern made the purchase of the stock of the Burlington, and in payment for it issued their bonds. This indicated a very close relationship, and a perfect confidence by each company in the co-operation of the other in the broad policy which the purchase of the Burlington was intended to make possible and to carry out. That policy was to fit the Great Northern and the Northern Pacific to enter into competition for transcontinental traffic as rivals of the other transcontinental lines. It was an arrangement in favor, and not in suppression, of competition. How splendid have been the results of this policy, not only to the companies themselves, but to the vast extent of country penetrated by the two parallel lines, appears from the evidence of Mr. Hill and others. A new commercial empire has been thereby created in the Northwest, and it has become possible for the products of that region to be profitably transported and marketed in the East and Middle West to an extent that could not have been accomplished in many years without the joint purchase of the Burlington.

This mutuality of interest possessed by Mr. Hill and his associates in the two companies, and this mutuality of interest of the two companies in the Burlington system, and their obligation upon the bonds, required that the relations between the two companies should not only be friendly but intimate in all matters of policy that did not relate merely to local traffic arising and ended upon their own original and proper lines.

The so-called "raid" upon the stock of the Northern Pacific in May, 1901, threatened the stability of the structure so carefully and beneficently erected, and it was this that hastened to a final consummation the old conception of a plan of placing the stock owned by Mr. Hill and his associates in such a position that it could not be dislodged by any ordinary assault, thereby securing permanency and stability of management, and the continuance of the policy which looked to the development of both the roads and the country which they traversed through the operation of the Burlington as a joint property, constituting one united system toward the East, of which the Great Northern and Northern Pacific were two radiating lines toward the Pacific Coast.

This original purpose, limited to the participation of Mr. Hill and his immediate associates, grew naturally and justly into a plan, which, out of considerations of fair dealing only, extended to all the other stockholders the opportunity to come in upon the same basis.

Thus every step of the proceeding which is set forth and explained in detail by these gentlemen in their evidence without the gainsaying or contradiction of any person, was natural and progressive and consistent with the original honest and beneficent purpose of the parties.

When the Northern Securities Company had acquired a majority of the stock of the two railroad companies it did not any more certainly or firmly control the policy

of the two railroads than did Mr. Hill and his associates under the former conditions. It is perfectly credible that no idea of any pooling or merger in the sense charged in the bill of complaint ever entered the head of any of them. Whatever influence they desired in both companies they already possessed. There existed mutuality of interest, and so far as control that depends upon moral and not upon legal conditions was concerned, they possessed that. The objects, motives and purposes of the parties were entirely different from the criminal ones charged by the Government. Those motives and purposes are reasonable, intelligent, creditable to the hearts and consciences of the actors, and in no wise injurious to the public. They did not change in any practical way the situation, so far as competition between the two companies was concerned. They did not change the legal status of one company toward the other, nor in anywise interfere with the internal organization, rights, privileges, or duties of either company.

Neither of the railroad companies, as such, participated in any way in the formation of the Securities Company, and neither of the railroad companies had any more relation to the matter than has a corporation to the daily purchases and sales of its outstanding stock in the public market.

In answer to the allegation of the Government in its bill of complaint, that this is a practical pooling of the stocks of the two companies, we answer that the word "pooling" as used by the complainant is intended to have an offensive meaning and an application which cannot be derived from the lawful acts which the defendants have done. The stocks are not pooled under any trust arrangement or agreement whatever, and that term is no more applicable to the arrangement than it would be if one natural person had purchased in his own right.

Of course, it is a natural consequence of the ownership of the stock that the dividends declared and paid thereon go to the owner, and this is no more true with reference to the Northern Securities Company as owner than it would be as to any other holder.

The proofs clearly establish the fact that the co-operation of these two railway companies, both before and after the formation of the Securities Company, was intended, not for the purpose of monopolizing trade and commerce, but for the purpose of strengthening, augmenting and extending the trade and business of the two companies in both transcontinental and worldwide competition with other public carriers. The result is not pernicious, but beneficial, and should be marked with public approval, rather than by legislative and governmental obstruction.

II.

THE CREATION OF RAILWAY CORPORATIONS; THE FORM OF THEIR CORPORATE ORGANIZATION; THE CHARACTER AND QUALITIES OF THEIR CORPORATE STOCK; THE ROUTES WHICH THEIR ROADS SHALL TAKE, WHETHER THEY MAY CONNECT WITH OTHER ROADS RUNNING IN THE SAME GENERAL DIRECTION, WHETHER THEY MAY OR MAY NOT CONSOLIDATE WITH PARALLEL LINES, OR OPERATE PARALLEL LINES THROUGH DIFFRENT PORTIONS OF A STATE—ALL THESE MATTERS ARE, AND ALWAYS HAVE BEEN, SUBJECTS OF STATE JURISDICTION.

As was said in Louisville and Nashville R. Co. *v.* Kentucky (161 U. S., 702):

> "In the division of authority with respect to interstate railways, Congress reserves to itself the superior right to control their commerce and forbid interference therewith, while to the States remains the power to create and to regulate the

instruments of such commerce, so far as necessary to the conservation of the public interests."

It has been frequently held that it is within the power of the States to impose restrictions upon the general authority of railroad corporations engaged in interstate commerce to consolidate; also, that the States possess the power to forbid the purchase of, or consolidation with, competing lines (see Louisville and N. R. Co. *v.* Kentucky, and cases there cited). The franchise, therefore, of a railroad corporation being derived from the State, the extent of its power to become interested in, or to become subject to, the control of another corporation has always been a question solely of State regulation. Congress has never assumed any such power over the internal affairs of corporations or their corporate shares, nor has Congress ever attempted to regulate in any way the method by which corporate franchises might be extended, merged or consolidated.

Nor was the Sherman Act intended to have such effect. On the contrary, the process of lease, merger and consolidation has gone on without impairment ever since the passage of that act. Consolidation has been the rule rather than the exception, and all by virtue of State authority, unchallenged and unquestioned by the Federal Government. If these consolidations were fraught with such great evil, it is to be assumed, first, that the States would not have permitted them; and second, that Congress, if it had the power to interfere, would have taken steps to check them. The courts of the United States, in numerous cases since the passage of the Sherman Act, have been called upon to restrain projected consolidations upon the ground that they were contrary to State statutes, but in not one of these suits has any suggestion been made that the

legislation of Congress, expressed in the Sherman Act, had any bearing on the subject.

The case of Pearsall *v.* Great Northern R. Co. (161 U. S., 648) was decided March 30, 1896. This was a stockholders' suit, and the law against the consolidation was the law of the State of Minnesota.

The case of Louisville and N. R. Co. *v.* Kentucky was decided March 30, 1896, and was a suit on behalf of the Commonwealth of Kentucky to enforce a provision of the State Constitution.

The power exists in each State by appropriate enactments not forbidden by its own nor the Federal Constitution, to regulate the relative rights and duties of all persons and corporations within its jurisdiction so as to provide for the public convenience and the public good. State legislation relating to commerce is not to be deemed a regulation of interstate commerce simply because it may, to some extent, or under some circumstances, affect such commerce. (Lake Shore and Mich. Southern Ry. Co. *v.* Ohio, 173 U. S., 285.)

The opinion in the case last above cited refers to the previous decisions of the Supreme Court on the same subject, and gives extracts from many of them.

In Missouri, Kansas and Texas Ry. *v.* Haber (169 U. S., 613) it was held that the authority given by Section 5258 of the Revised Statutes of the United States to carry "freight and property" over their respective roads from one State to another State, did not authorize a railroad company to carry into a State cattle known, or which by due diligence might be known, to be in such condition as to impart or communicate disease to the domestic cattle of such State.

And in the case of Lake Shore, &c., *v.* Ohio, *supra*, it was expressly adjudged that the above statutory provision was not intended to interfere with the authority

of the States to enact such regulations, with respect, at least, to a railroad corporation of its own creation, as were not directed against interstate commerce, but which only incidentally or remotely affected such commerce, and were not in themselves regulations of interstate commerce, bue were designed reasonably to subserve the convenience of the public.

In Cleveland, Cincinnati, Chicago and St. Louis Ry. Co. *v.* Illinois (177 U. S., 514: 1900) the same subject was further discussed in an opinion by Mr. Justice Brown, and the decision in the Lake Shore case was approved.

The learned Circuit Court, from whose decree this appeal is taken, did not find as matter of fact that the defendants had in any way restrained trade or commerce; or that they had attempted so to do; or that they had contracted or combined so to do.

What the Court did find and decide was, that the defendants had done certain things whereby they had *obtained the power* to suppress competition between two interstate carriers who own and operate competing and parallel lines of railroad. This idea is repeated again and again throughout the opinion. It speaks of "a direct restraint of interstate commerce because it would have placed in the hands of a small coterie of men *the power to suppress competition* between two competing interstate carriers."

Again:

> "By what has been done *the power* has been acquired to suppress competition between two interstate carriers."

And, in another place:

> "The reasoning which led to the acquisition of that charter would seem to have been that while as individuals the promoters could not, by agree-

ment between themselves, place the majority of the stock of the two competing and parallel railroads in the hands of a single person or a few persons, giving him or them *the power to operate* the roads in harmony and stifle competition, yet that the same persons might create a purely fictitious person termed a corporation, which could neither think nor act except as they directed, and by placing the same stock in the name of such artificial being, accomplish the same purpose."

Again:

"It is pertinent, therefore, to inquire in what way the existing combination that has been formed does affect interstate commerce. It affects it, we think, by giving to a single corporate entity, or more accurately, to a few men acting in concert and in its name and under cover of its charter, *the power to control all the means of transportation* that are owned by two competing and parallel railroads engaged in interstate commerce; in other words, *the power to dictate every important act which the two companies may do;* to compel them to act in harmony in establishing interstate rates for the carriage of freight and passengers; and generally to prescribe the policy which they shall pursue."

Again:

"*The power* was not only acquired by the combination, but it is effectually exercised, and it operates directly on interstate commerce, notwithstanding the manner of its exercise, by controlling the means of transportation, to wit, the cars, engines and railroads by which persons and commodities are carried, as well as by fixing the price to be charged for such carriage."

Again:

"Congress aimed to destroy *the power to place any direct restraint on interstate trade or commerce*, when by any combination or conspiracy,

formed by either natural or artificial persons, *such a power had been acquired.*"

Again:

"It is our duty to ascertain whether the proof discloses a combination in direct restraint of interstate commerce—that is to say, *a combination whereby the power has been acquired to suppress competition.*"

If that be the true test of the applicability of the Sherman Act, then the question hereafter will always be, not have the defendants restrained trade, but have they the power to do so?

The process by which a railroad company is created and gradually evolved into an interstate line has generally been something like this:

A State grants a charter for a road wholly within its own jurisdiction. Afterwards, by further legislative grant, the company is empowered to extend its line into an adjoining State. In order to do this the authority of the second State is also required. So that the vitalizing acts which give life to the enterprise are solely derived from State governments. When traffic is begun from one State to the other, interstate commerce is being carried on. But the Federal Government has done nothing; it has not given any consent, nor has its consent been asked. The company, when it engages in interstate commerce, becomes at once subject—as to that portion of its business which is interstate—to the laws of the United States passed to regulate commerce between the States. As to all other business, it is regulated solely by State legislation. Now, the form of its charter, the amount and character of its shares, the internal conduct of its affairs, corporate meetings, officers, directors, dividends, right of stockholders to vote, the negotiability of the shares—all these, it is submitted, are purely internal,

and not in any wise subject to Federal jurisdiction, under the guise of regulating interstate commerce.

Suppose, now, that there are two such corporations operating parallel and competing lines. The States which granted their franchises authorize the two companies to consolidate their stock and franchises into one corporation; or they allow one road to be leased to and operated by the other; or they permit one to buy the capital stock of the other. Here again the States have been acting within the sphere of their peculiar and appropriate power. Is there any Federal regulation of interstate commerce which forbids such action by the two States?

None has ever been suggested prior to this case.

Would the Sherman Act prevent the State of Minnesota from repealing the charter of the Great Northern Railway Company?

Would it prevent the stockholders from effecting a voluntary dissolution of the corporation?

Would it compel the corporation to operate the road if they saw fit to abandon it?

It is apparent that each one of these things, if done, would destroy whatever competition existed between the two roads; but that result would, of course, be incidental, and not different in principle from an act which resulted in the merger of the two companies.

The right to be a corporation, to engage in interstate commerce, to contract or expand its field of operations, to own one, or two, or many lines, whether parallel or merely continuous, is conferred by the State.

The power of Congress to regulate is confined to the actual conduct of the interstate business, to commerce itself, and that which directly affects commerce.

It can regulate rates, forbid preferences, institute inspection, prevent contracts or agreements or combina-

tions between different corporations, the direct object and effect of which is to restrain commerce.

It will be going a much longer way than any Federal court has ever gone before to adjudge that Congress, under *its power to* regulate commerce, can regulate the *ownership of the instrumentalities of commerce*, prescribing that one company or one person may own but one road or one line of vessels operating between the same points.

Congress may regulate rates and fares, but cannot, without doing violence to the right to acquire and own property, forbid one person from purchasing and using what may lawfully be owned and used by another.

In the case in hand each railroad company remains a separate corporation. There is no merger, no consolidation, no agreement to combine. Each corporation, as before, has its own property, its own capital stock, its own charter, its own directors, officers, and everything else, dependent in no way upon the action or interest of the other company.

All that has been done, even as contended by the Government, has been to concentrate the ownership of a majority of the shares of the two companies into one hand, the owner being a corporation controlled by the same men who would own and control a majority of the capital stock of both railroad companies if the holding company had not been formed.

The Government asks for an injunction and a dissolution of the Northern Securities Company, not because it has done any act or entered into any agreement which has the direct effect of destroying competition between the two railroads, but because as the owner or holder of the majority of shares of the two railroad companies *it has the power*, by virtue of its identity or

partial identity of officers, of controlling both those companies and *may* thereby affect competition.

The Government does not show that competition has been affected. It occupies a *quia timet* attitude. Because the stockholders of the two railroad companies have effected a combination of ownership of their shares, the Attorney General says, they have put it in the power of the Northern Securities Company to do something which will injuriously affect competition.

Conceding, as it must be conceded, that a holding company is a lawful organization, when does it by force of peculiar circumstances become unlawful?

If it holds less than a majority of the shares of two parallel and competing companies, is it unlawful?

If holding less than a majority, nevertheless, by virtue of its influence it is able to and does control the personnel of the two boards of directors, is it then an unlawful organization?

If holding more than a majority, it exercises no control whatever; if its shares came to it incidentally in the course of time and of ordinary purchase and sale—is it unlawful the moment its holdings attain a majority in both companies? and does it become a lawful concern when it has parted with enough shares to put it in a minority?

Suppose Mr. James J. Hill, holding stock in both companies, but less than a majority, were able by his influence to secure the election of separate boards of directors who would act solely according to his dictation and wishes, could he be restrained from exercising his influence to that end?

Could Mr. Hill be enjoined if he owned a majority of shares of both railroads?

Is it not apparent that the Court cannot control lawful acts that result from lawful ownership of stock? The

Court will not assume to dictate how a stockholder shall vote at a corporation meeting; nor will it interfere with him in exercising any influence he may possess in the choice of officers or in any other line of corporate conduct or discretion or policy. *What it will do, and all it can do, is to direct its mandate against things that the two railroad companies may do by way of agreement or combination in direct restraint of trade or competition.*

If they agree on a joint tariff or division of territory, or do any other act which as between other companies would be contrary to the statute of 1890, they may be stopped, their arrangement dissolved, and their officers indicted.

But to say that one person, or several persons, cannot acquire or own a majority of the stock of two competing railroad corporations because they are thereby occupying a vantage ground from which they can, if they choose, effect an agreement or understanding between the two companies in restraint of competition, is to say that the power to commit a crime is equivalent to its actual commission.

If the Northern Securities Company has done anything that directly affects trade or commerce as carried on over these two roads, let us know what it is.

Where is the agreement? What evidence has the Government brought forward to prove a single thing done, or agreed to be done, or even secretly contemplated that as a direct act touches anywhere or in any way the conduct, policy, or operation of either road?

All parallel lines of railway or steamships do not neecssarily and actually compete. There must exist a spirit of competition in the respective managements in order to have actual competition. No law can compel railroad companies to compete, and no law has ever assumed to do so. No law has ever assumed to forbid all

the arrangements of business, the ownership of stock, the voluntary suppression of active rivalry in trade, by which actual competition may be prevented. The most that statutes have done is to forbid consolidations of corporate entities, by which two or more concerns in a position where actual competition would naturally and probably exist are fused into one; combinations, contracts or agreements whereby naturally competing rivals voluntarily undertake to do away with competition by arranging a common rate, a division of territory or a pooling of earnings. In all these cases it is the actual consolidation, or combination, or contract, or other arrangement by whatever name known, which is forbidden. The law does not denounce the motive, or spirit, or judgment of the managers or owners of enterprises which are naturally rivals where their motive, or spirit, or judgment is friendly to each other and disposed to avoid actual and injurious competition.

Nor does the law forbid the respective owners or managers of such enterprises from acquiring an interest in rival concerns by way of gift, purchase or bequest. To do so would be to forbid the exercise of the natural right to acquire and hold property. No law forbids one person to buy and hold stock in two corporations engaged in business naturally competitive. It does not forbid the ownership of a minority of stock in such companies, and no more does it forbid the ownership of a majority of stock in both companies.

The companies remain distinct; the stockholders are not the corporation; each company is just as much subject to all the requirements of the law as though its stockholders were entirely different.

Pullman Car Co. *v.* Missouri Pacific Ry., 115 U. S., 587.

The companies may not combine, consolidate or agree in violation of law; they are still separate persons, distinct entities. But the law cannot compel them to fly at each other's throats, or to take and hold a positive and active attitude of hostility to each other.

To express it shortly, the law forbids some things which tend to destroy competition; it does not forbid everything which may tend to enable rival companies to exist in a state of harmony.

A state of non-competition is not required by the law; hostility or rivalry is not commanded as a corporate duty.

The fallacy of this whole argument against community of interest in the stock of competing companies lies in mistaking the object of the statutory provision for the means and methods enacted to attain that object. The object is to maintain competition; the means chosen to attain that object are the statutory commands against conspiracies, combinations and mutual agreements.

The legislative command is not that companies shall compete, but that they shall abstain from certain enumerated acts which tend to prevent competition. All acts not expressly enumerated and forbidden are lawful, even though they may tend to lessen the spirit of competition.

No legislature has ever been or ever will be able to enumerate all the things which tend to interfere with active rivalry in business.

Merely because a specific act has such a tendency is no justification whatever for calling it unlawful, unless it be one falling within the category of acts forbidden. The holding by one person of a majority of stock of two competing railroad companies is not forbidden and is not unlawful.

Cannot companies whose stock is owned by the same person compete?

Because the beneficial owner of two steamboats is the same person cannot the boats compete?

It may be said that they probably will not; or at any rate that they will not compete as actively as though they belonged to rival owners.

No law compels them to compete. The law leaves them to their own inclinations as to whether they will cut each other's throats.

It does not require them to fly at one another.

What it does do is to say that they shall not make any contract or combination in restraint of trade or competition.

It does not forbid one owner from selling his steamboat to the other, although thereby competition which would otherwise exist might be prevented. The resulting effect upon competition would be an indirect result of a lawful act.

It never yet has been held that any sale of property anywhere was void under this Federal statute. Things that corporations have done and agreed to do in actual operation of the instruments of commerce the courts have restrained, but they never yet have said that the right and title to purchasable property depend on the amount of it that one has, or upon the effect that his possession of it may have upon commerce or business. The States have never set a limit to the amount of property a man may buy. Of course the courts can not set such a limit. All the property that one can lawfully buy he has a right to buy and hold, and no man can draw the line between a majority of the stock of a corporation and a minority, and say you have a right to own one and you have no right to own the other.

Government cannot say to a citizen of Maryland who

is doing a wagon express business across the Potomac with Virginia, "You cannot buy the wagon and outfit of your competitor because thereby you are tending to restrain competition!" It can say "You have no right to make a bargain with your competitor that you and he will each charge fifty cents a hundred pounds for what you transport." The one is a direct agreement affecting the interstate commerce they carried on, the other is a sale of property. And if a man engaged in the express business across the river has not the right to have the benefit of the market with his competitor for the sale of his property, then he is restrained in the free exercise of the right to dispose of that which he has, and probably the best customer that he might have is cut off.

It is not the possession of the power, but the using of the power in an unlawful manner, that constitutes a violation of the law.

Contracts and combinations, such as the statute refers to, are not such as are created by the ownership of property.

One company or one man might build two parallel lines of railroad; why should the same company not buy them after they are built?

The idea of the law is that separate and independent persons shall not agree to so use or operate their several properties as to restrain trade. It does not naturally or logically refer to those who own properties which may by reason of circumstances be more or less capable of being engaged in competition. The act of 1890 was not intended as a restraint on alienation.

Of these defendants, only the two railroad companies are engaged in interstate commerce. The Securities Company is a mere investment company, a purchaser of corporate shares, with no power to engage in transportation.

It owns no railroad, it operates none. Nor are the individual defendants engaged in interstate commerce.

The railroad companies have not contracted or combined to restrain trade. They have taken no part whatever in anything that has been done. *They* cannot be indicted or punished, therefore.

Nor have the individual defendants done anything to affect the operations of the railroad companies. They stand as mere vendors of stock; the Securities Company as a purchaser.

There is no proof whatever that it is not a genuine *bona fide* owner of all the stock it acquired.

Hence, we contend that the Sherman Act did not contemplate any interference with, or restraint upon, the *bona fide* purchase and sale of property, although it might consist of the instruments or means by which competing interstate commerce is carried on.

To hold otherwise would be to say that every purchase of a vessel by one transatlantic steamship company from another was illegal, because it removed that ship from competitive international trade.

It would render illegal every sale of cars or locomotives by one railroad company to another.

It would invalidate every lease, consolidation or merger of competing railroad or steamship lines that has been made since 1890.

It would prevent one person, or firm or company, from buying stock in two competing corporations engaged in interstate traffic, when the purchase of a controlling interest might be necessary or advisable for its benefit or protection.

It would forbid the exercise of ordinary influence for the purpose of securing friendly management through the election of directors of known tendencies or disposi-

tion towards the question of active or aggressive competition.

And, eventually all such transactions would come to depend for their validity, not upon the lawfulnes of the acts done, but upon the possible indirect consequences that might flow therefrom.

Now, the natural and direct result of community of control would be the making of agreements by or through the boards of directors and the officers to the two companies, which agreements would govern the action of each. Such an agreement could be reached and dealt with.

But the present proposition of the Government is that it can reach remote and intangible influences which affect the general policy of persons or corporations engaged in commerce.

III.

THE ACTS OF THE DEFENDANTS BEING *prima facie* LAWFUL, THE BURDEN OF PROOF IS UPON THE GOVERNMENT TO SHOW THAT THEY WERE, AS THE ATTORNEY-GENERAL CHARGES, NOT *bona fide*, BUT A MERE FORMAL DEVICE INTENDED TO DEFEAT THE PROVISIONS OF THE SHERMAN ACT.

Where a contract, agreement, or arrangemeut of any kind is challenged as a combination in restraint of trade or commerce, the Court will look at the form of the agreement, and if it appears on its face to have as a necessary and direct result the effect of restraining trade or commerce, no inquiry into the intention or motives of the parties is requisite (U. S. *v.* Joint-Traffic Association).

But if the arrangement is one which in itself is lawful, and is claimed to be invalid only because its ultimate object is to restrain commerce or competition, then it is

necessary to examine the facts and circumstances to see if the forms of law are being used to further an illegal purpose.

The distinction intended to be made is clearly pointed out in the following extract from the opinion of the Court in United States *v.* Trans-Missouri Freight Association (166 U. S., 341):

> "Although the case is heard on bill and answer, thus making it necessary to assume the truth of the allegations in the answer which are well pleaded, yet the legal effect of the agreement itself cannot be altered by the answer, nor can its violation of law be made valid by allegations of good intention or of desire to simply maintain reasonable rates; nor can the plaintiffs' allegations as to the intent with which the agreement was entered into be regarded, as such intent is denied on the part of the defendants. And if the intent alleged in the bill were a necessary fact to be proved in order to maintain the suit, the bill would have to be dismissed."

In this case, to use the language of the Court above quoted, "the intent alleged in the bill is a necessary fact to be proved in order to maintain the suit." And the Government having utterly failed to bring forward any proofs to sustain its allegation, it must be defeated upon the principle above declared.

This principle is further illustrated by the case of United States *v.* Hopkins (171 U. S., 578), where the Court says:

> "The first question, whether there is any combination in restraint of trade or commerce, or a combination to monopolize any part of trade or commerce, on the part of the defendant association, is to be determined, not alone from what appears upon the face of its preamble, rules and by-laws, but from the entire situation and the

> practical working and results of the defendants' methods of doing business as disclosed by the testimony in the case."

In United States *v.* Workingmen's Amalgamated Council (54 Fed. Rep., 994: 1893) it was held that in order to sustain the allegations of a bill praying an injunction against an alleged combination in restraint of interstate commerce, the Government might offer in evidence the official proclamation of the various officers, and also newspaper reports, supported by affidavits, containing manifestoes and declarations of the defendants.

So, too, in Addyston Pipe Co. case (175 U. S., 211), it is declared:

> "It is the effect of the combination in limiting and restricting the right of each of the members to transact business in the ordinary way, as well as its effect upon the volume or extent of the dealing in the commodity, that is regarded. All the facts and circumstances are, however, to be considered in order to determine the fundamental question—whether the necessary effect of the combination is to restrain interstate commerce."

In State *v.* Shippers' Compress and Warehouse Company (67 S. W. Rep., 1049) the State of Texas insisted that the defendant, by reason of its purchase of a number of compresses in different parts of the State of Texas, had violated the anti trust law of Texas, which prohibits combinations of capital, skill or acts, by two or more persons, firms, corporations, or associations of persons, for the purpose of creating and carrying out restrictions in aid of commerce. The Court held that there was no evidence that the purchase of the compresses by the defendant was made for the purpose of affecting competition, and that in the absence of such evidence the defendant corporation could not be dissolved.

Among other things, the Court said:

> "One may, if financially able, acquire much or all of the property of a given class, provided the purchase was not made for the purpose of injuring or accomplishing harmful results to the public, and from a bare exercise of this privilege it cannot be inferred that the purpose and intention was to create a monopoly, or that a monopoly necessarily results from such extensive acquisition."

This case was affirmed (69 S. W. Rep., 58).

The burden of proof is upon the Government to show that, while the act itself is in form lawful, the ultimate object and aim of the actors is to avoid the statute and violate the law. For instance, it is lawful to form a corporation to purchase and hold stock of railroad companies, and to do so does not make a case of violation of the Trust Act. There may be many such corporations, none of which has the slightest reference to the control of competition in railroad traffic. They are not *prima facie* illegal. They do not need to prove their lawful motives. Every presumption is in favor of their legal purpose. If, however, it be charged that they are intended as means for violating the act, and that they do violate it, that fact must be proved. Just as it is necessary to prove that a corporation is a mere device for cheating creditors, &c.

Now, if the contract is an agreement between separate railroad companies to regulate rates, or between separate companies engaged in interstate commerce to fix prices and regulate competition in bidding, there is no need to look into the motives of the parties—those motives are such as the agreement directly discloses, as was the case of the Addyston Pipe Company and its associates. So, also, it was in the case of the Jellico Coal Company, and its associates, and the California combi-

nation of coal dealers, which was dissolved by the Circuit Court for the Ninth Circuit. The agreements of the Trans-Missouri Freight Association and of the Joint-Traffic Association were also direct agreements between separate companies, the effect of which was a direct and obvious restraint of trade and commerce.

The case of the sugar manufacturers, however, was different. There the American Sugar Refining Company acquired by the purchase of stock the control of four other sugar refining companies and by reason of this control of practically all the sugar refineries of the United States, it was alleged that it was in a position where it would be enabled to create a monopoly in the purchase and sale of refined sugar. The ulterior motive of the purchasing company was relied upon as indicative of an intention to violate the Anti-Trust Act, and its ability to do so by reason of purchases of stock of the other companies was claimed by the Government to be a sufficient ground for dissolving the arrangement — merely because that arrangement put it in the power of the American Sugar Refining Company to create a partial monopoly in the purchase and sale of refined sugar, and that such was its purpose and intent.

In that case the Government alleged that the contract for the purchase by the American Sugar Refining Company of the shares of capital stock of the four other companies was an unlawful and fraudulent scheme by which the American Sugar Refining Company attempted to control all the sugar refineries for the purpose of restraining the trade thereof with other States, and that the contracts were made with the intent to enable the American Sugar Refining Company to restrain the sale of refined sugar in Pennsylvania and among the several States, and to increase the regular price at which refined sugar was sold.

One of the facts found by the Circuit Judge was that the object in purchasing the Philadelphia refineries was to obtain a greater influence, or more perfect control, over the business of refining and selling sugar in this country. But the Court would not go beyond the direct results of the acts done, which were to put the control of the manufacture of sugar in the Sugar Refining Company. The Court rejected the contention that the ulterior motive of the parties was to be considered, and that they were to be condemned and their association dissolved merely because they had assumed a position whereby they might in the future exercise control over interstate commerce in refined sugar. That result, if it followed from the acts done, was held to be not the direct consequence of the lawful acts of the parties, but an indirect result affecting, not directly, but only collaterally and incidentally, interstate trade and commerce; and, therefore, the Court held that the defendants, although they were undoubtedly in a position to control the prices of manufactured sugar throughout the States of the Union, had not come within the purview of the act.

The Knight case, in its principle, is absolutely conclusive of the present case. The two cases resemble each other in that the thing done is the acquirement of the capital stock of other companies, and they are further identical in this, that neither has entered into any agreement or arrangement whatever affecting competition or restraining trade, but both alike are merely so situated by reason of certain lawful purchases which they have made, that it is possible hereafter that they may exert some influence or control over the companies whose stock they own, which influence or control will have an effect upon interstate commerce. But this effect, if any there be, is only incidental to the lawful exercise of the

right of the Northern Securities Company to acquire, hold and vote stock in the two railroad companies. The charters of these railroad companies declare their stock to be personal property capable of purchase and sale without restriction, and in acquiring their shares the Northern Securities Company has exercised an ordinary right conferred upon it by the statutes of the State of its organization, and not in conflict with the statutes of any of the States which have given existence to the railroad corporations. The same things that have been done by the Northern Securities Company might have been done by a natural person.

IV.

ANY RESTRAINT OF TRADE OR COMMERCE WHICH MAY RESULT FROM THE ACTS DONE BY THE DEFENDANTS IS INDIRECT AND INCIDENTAL ONLY, AND NOT COVERED BY THE ACT OF JULY 2, 1890.

In every instance where the Supreme Court has had occasion to pass upon the meaning of that act it has been extremely careful to distinguish between acts which directly restrain commerce, and acts which only indirectly or incidentally have that effect.

> *United States* v. *E. C. Knight Co.*, 156 U. S. 1 (12, 16).

The American Sugar Refining Company, one of the defendants, was incorporated under the laws of New Jersey, with authority to purchase, refine and sell sugar. Four other companies, incorporated under the laws of Pennsylvania, with the same authority, located in Philadelphia, and engaged in refining sugar in competition with the American Sugar Refining Company, were separately taken into the control of the latter company

by purchase from the stockholders of each of the Philadelphia corporations of their holdings of stock in exchange for stock in the American Sugar Refining Company.

The bill of complaint alleged that this was an unlawful and fraudulent scheme by which the American Sugar Refining Company attempted to control all the sugar refineries for the purpose of restraining the trade thereof with other States as theretofore carried on independently by the defendants.

As pointed out in the opinion of Mr. Chief Justice Fuller, the subject-matter of the sale was *shares of manufacturing stock.*

> "The argument is that the power to control the manufacture of refined sugar is a monopoly over a necessary of life, to the enjoyment of which by a large population of the United States interstate commerce is indispensable, and that, therefore, the general government, in the exercise of the power to regulate commerce, may repress such monopoly directly and set aside the instruments which have created it. But this argument cannot be confined to necessaries of life merely, and must include all articles of general consumption. Doubtless the power to control the manufacture of a given thing involves in a certain sense the control of its disposition, but this is a secondary and not the primary sense; and although the exercise of that power may result in bringing the operation of commerce into play, it does not control it, and affects it only incidentally and indirectly."
>
> "It was in the light of well-settled principles that the Act of July 2, 1890, was framed. Congress did not attempt thereby to assert the power to deal with monopoly directly as such; *or to limit and restrict the rights of corporations created by the States or the citizens of the States in the acquisition, control, or disposition of property;* or to

regulate or prescribe the price or prices at which such property or the products thereof should be sold; *or to make criminal the acts of persons in the acquisition and control of property which the States of their residence or creation sanctioned or permitted.* Aside from the provisions applicable where Congress might exercise municipal power, what the law struck at was combinations, contracts, and conspiracies to monopolize trade and commerce among the several States or with foreign nations; but the contracts and acts of the defendants related exclusively to the acquisition of the Philadelphia refineries and the business of sugar refining in Pennsylvania, and bore no direct relation to commerce between the States or with foreign nations. The object was manifestly private gain in the manufacture of the commodity, but not through the control of interstate or foreign commerce. It is true that the bill alleged that the products of these refineries were sold and distributed among the several States, and that all the companies were engaged in trade or commerce with the several States and with foreign nations; but this was no more than to say that trade and commerce served manufacture to fulfill its function. Sugar was refined for sale, and sales were probably made at Philadelphia for consumption, and undoubtedly for resale by the first purchasers throughout Pennsylvania and other States, and refined sugar was also forwarded by the companies to other States for sale. Nevertheless it does not follow that an attempt to monopolize, or the actual monopoly of the manufacture was an attempt, whether executory or consummated, to monopolize commerce, even though, in order to dispose of the product, the instrumentality of commerce was necessarily invoked. *There was nothing in the proofs to indicate any intention to put a restraint upon trade or commerce, and the fact, as we have seen, that trade or commeree might be indirectly affected was not enough to entitle complainants to*

a decree. The subject-matter of the sale was shares of manufacturing stock, and the relief sought was the surrender of property which had already passed and the suppression of the alleged monopoly in manufacture by the restoration of the *status quo* before the transfers, yet the Act of Congress only authorized the circuit courts to proceed by way of preventing and restraining violations of the Act in respect of contracts, combinations or conspiracies in restraint of interstate or international trade or commerce."

In the United States *v.* Joint-Traffic Association (171 U. S., 505, 566), Mr. Justice Peckham, to a limited extent, indicates the classes of contracts or transactions which are not within the prohibition of the Sherman Act. He says:

"In dwelling upon the far-reaching nature of the language used in the act as construed in the case mentioned, counsel contend that the extent to which it limits the freedom and destroys the property of the individual can scarcely be exaggerated, and that ordinary contracts and combinations, which are at the same time most indispensable, have the effect of somewhat restraining trade and commerce, although to a very slight extent, but yet, under the construction adopted, they are illegal.

"As examples of the kinds of contracts which are rendered illegal by this construction of the act, the learned counsel suggest all organizations of mechanics engaged in the same business for the purpose of limiting the number of persons employed in the business, or of maintaining wages; the formation of a corporation to carry on any particular line of business by those already engaged therein; a contract of partnership or of employment between two persons previously engaged in the same line of business; the appointment by two producers of the same person to sell

their goods on commission; the purchase by one wholesale merchant of the product of two producers; the lease or purchase by a farmer, manufacturer or merchant of an additional farm, manufactory or shop; the withdrawal from business of any farmer, merchant or manufacturer; a sale of the good-will of a business with an agreement not to destroy its value by engaging in a similar business; and a covenant in a deed restricting the use of real estate. It is added that the effect of most business contracts or combinations is to restrain trade in some degree.

"This makes quite a formidable list. It will be observed, however, that no contract of the nature above described is now before the Court, and there is some embarrassment in assuming to decide herein just how far the act goes in the direction claimed. Nevertheless, we might say that *the formation of corporations for business or manufacturing purposes has never, to our knowledge, been regarded in the nature of a contract in restraint of trade or commerce.* The same may be said of the contract of partnership. It might also be difficult to show that the appointment by two or more producers of the same person to sell their goods on commission was a matter in any degree in restraint of trade.

"We are not aware that it has ever been claimed that a lease or purchase by a farmer, manufacturer, or merchant of an additional farm, manufactory, or shop, or the withdrawal from business of any farmer, merchant, or manufacturer, restrained commerce or trade within any legal definition of that term; and the sale of a good-will of a business with an accompanying agreement not to engage in a similar business was instanced in the Trans Missouri case as a contract not within the meaning of the act; and it was said that such a contract was collateral to the main contract of sale, and was entered into for the purpose of enhancing the price at which the vendor

sells his business. The instances cited by the counsel have, in our judgment, little or no bearing upon the question under consideration. In *Hopkins* v. *United States*, decided at this term, we have said that the statue applies only to those contracts whose direct and immediate effect is a restraint upon interstate commerce, and that to treat the act as condemning all agreements under which, as a result, the cost of conducting an interstate commercial business may be increased, would enlarge the application of the act far beyond the fair meaning of the language used. *The effect upon interstate commerce must not be indirect or incidental only. An agreement entered into for the purpose of promoting the legitimate business of an individual or corporation, with no purpose to thereby affect or restrain interstate commerce, and which does not directly restrain such commerce, is not, as we think, covered by the act, although the agreement may indirectly and remotely affect that commerce.* We also repeat what is said in the case above cited, that 'the Act of Congress must have a reasonable construction, or else there would scarcely be an agreement or contract among business men that could not be said to have, indirectly or remotely, some bearing upon interstate commerce, and possibly to restrain it.' To suppose, as is assumed by counsel, that the effect of the decision of the Trans-Missouri case is to render illegal most business contracts or combinations, however indispensable and necessary they may be, because, as they assert, they all restrain trade in some remote and indirect degree, is to make a most violent assumption, and one not called for or justified by the decision mentioned, or by any other decision of this Court."

"Where the grantees of this public franchise are competing railroad companies for interstate commerce, we think Congress is competent to forbid any agreement or combination among them by means of which competition is to be smothered.

"Although the franchise, when granted by the State, becomes by the grant the property of the grantee, yet there are some regulations respecting the exercise of such grants which Congress may make under its power to regulate commerce among the several States. This will be conceded by all, the only question being as to the extent of the power.

"We think it extends at least to the prohibition of *contracts relating to interstate commerce*, which would extinguish all competition between otherwise competing railroad corporations, and which would in that way restrain interstate trade or commerce. We do not think that when the grantees of this public franchise are competing railroads seeking the business of transportation of men and goods from one State to another, that ordinary freedom of contract in the use and management of their property requires the right to combine as one consolidated and powerful association for the purpose of stifling competition among themselves, and of thus keeping their rates and charges higher than they might otherwise be under the laws of competition. And this is so, even though the rates provided for in the agreement may, for the time, be not more than are reasonable. They may easily and at any time be increased. It is the combination of these large and powerful corporations, covering vast sections of territory and influencing trade throughout the whole extent thereof, *and acting as one body in all matters over which the combination extends*, that constitutes the alleged evil, and in regard to which, so far as the combination operates upon and restrains interstate commerce, Congress has power to legislate and prohibit."

Addyston Pipe and Steel Co. v. *United States* (175 U. S., 211) involved a direct agreement between six separate, independant corporations, the direct, immediate and intended effect of which was to restrain trade

by preventing competition for contracts and enhancing prices.

It was held that it was to obtain that particular and specific result that the combination was formed.

But the Court, in rendering its judgment, is very careful to distinguish between a combination whose direct and immediate effect is to restrain trade and destroy competition, and those cases, such as Hopkins *v.* United States, Anderson *v.* United States, and United States *v.* E. C. Knight Co., where the agreement entered into does not directly relate to and act upon and embrace interstate commerce, but was executed for another and entirely different purpose, which it was calculated to attain, and where the effect upon interstate commerce is only indirect and incidental.

In commenting upon the Knight case, after quoting the language of Mr. Chief Justice Fuller, the opinion goes on to say:

> "The *direct* purpose of the combination in the Knight case was the control of the manufacture of sugar. There was no combination or agreement, in terms, regarding the future disposition of the manufactured article; nothing looking to a transaction in the nature of interstate commerce. The probable intention on the part of the manufacturer of the sugar to thereafter dispose of it by sending it to some market in another State was held to be immaterial and not to alter the character of the combination. The various cases which had been decided in this court relating to the subject of interstate commerce and to the difference between that and the manufacture of commodities, and also the police power of the States as affected by the commerce clause of the Constitution, were adverted to, and the case was decided upon the principle that a combination simply to control manufacture was not a violation of the Act of Congress, because such a con-

tract or combination did not directly control or affect interstate commerce, but that *contracts for the sale and transportation to other States* of specific articles were proper subjects for regulation, because they did form part of such commerce.

"We think the case now before us involves contracts of the nature last above mentioned, not incidentally or collaterally, but as a direct and immediate result of the combination engaged in by the defendants.

"While no particular contract regarding the furnishing of pipe and the price for which it should be furnished was in the contemplation of the parties to the combination at the time of its formation, yet it was their intention, as it was the purpose of the combination, to directly and by means of such combination increase the price for which all contracts for the delivery of pipe within the territory above described should be made, and the latter result was to be achieved by abolishing all competition between the parties to the combination. *The direct and immediate result* of the combination was, therefore, necessarily a restraint upon interstate commerce in respect of articles manufactured by any of the parties to it to be transported beyond the State in which they were made. The defendants, by reason of this combination and agreement, could only send their goods out of the State in which they were manufactured for sale and delivery in another State *upon the terms and pursuant to the provisions of such combination.* As pertinently asked by the Court below, was not this a direct restraint upon interstate commerce in those goods?"

United States v. *Chesapeake and Ohio Fuel Co.*, 105 Fed. Rep., 93.

This was a contract by which the Chesapeake and Ohio Fuel Company, a corporation, entered into an

agreement with a number of persons, firms, and corporations engaged in mining coal and making coke in a certain district to take their entire product which was intended for western shipment, to sell the same at not less than a minimum price to be fixed by an executive committe appointed by the producers, and to account for and pay over to such producers the entire proceeds above a fixed sum per ton, to be retained as compensation—the stated purpose being to enlarge the western market.

This was held to be a contract affecting interstate commerce, and subject to the provisions of the Sherman Act. The prime object of the contract, as repeatedly expressed therein, was to enlarge the sale of, and extend, the western market for Kanawha coal and coke. This case was affirmed by the Circuit Court of Appeals, 115 Fed. Rep., 610.

V.

IF THE SHERMAN ACT CAN BE SO CONSTRUED AS TO FORBID THE SALE OF STOCK IN TWO COMPETING RAILROAD CORPORATIONS TO ONE PURCHASER, THEN THAT ACT IS AN ATTEMPTED INTERFERENCE ON THE PART OF CONGRESS WITH TRANSACTIONS WHICH ARE WHOLLY WITHIN THE CONTROL OF THE STATES OF THE UNION, AND IN THAT RESPECT THE ACT IS UNCONSTITUTIONAL.

Every specific act which enters into the substance of the Government's complaint was done under the clear authority of State legislation.

The incorporation of the Northern Securities Company was authorized by the corporation laws of New Jersey, which laws confer upon it the powers enumerated in its charter.

The shares of the two railroad companies were made personal property, purchasable by all persons natural and

corporate without restriction, by the States of Wisconsin and Minnesota, respectively.

The transactions resulting in the actual purchase of those shares by the Securities Company did not, in any way, embrace any act of interstate commerce.

The right of the Securities Company to hold the shares, to vote upon them, and to receive dividends upon them, is derived from State laws, and the United States has no constitutional power to forbid, restrain or regulate the Company's rights in any of these respects, without trenching upon powers that are reserved to the several States.

There are many cases in which the extent of State legislative power over the instrumentalities of interstate commerce has been considered. (See Louisville & N. R. Co. *v.* Kentucky, 161 U. S., 702; C. & C. Bridge Co. *v.* Kentucky, 154 U. S., 204).

But there is no case where the United States has been held to have the concurrent power of police regulation merely because some of the objects of such regulation may ultimately affect or enter into interstate commerce.

Regulation of commerce, to be constitutional, must be confined to commerce itself, and cannot reach out to those things which, not being designed as agencies of such commerce, or not being actually engaged in commerce, may yet have an indirect or ultimate relation to it.

Such a construction of the constitution would vest in Congress the regulation of all branches of productive business from their first beginnings.

As is remarked in the License Tax cases (72 U. S., 462):

> "Over this (internal) commerce and trade, Congress has no power of regulation, nor any direct control. This power belongs exclusively to the States. No interference by Congress with the

> business of citizens transacted within a State is warranted by the Constitution, except such as is strictly incidental to the exercise of powers clearly granted to the legislature."

The fact that an article was manufactured for export to another State does not make it an article of interstate commerce.

Coe *v.* Errol, 116 U. S., 517.
Kidd *v.* Pearson, 128 U. S., 1.

The creation of State corporations and the regulation of the sales of corporation shares belong to the class of business affairs over which the States have exclusive jurisdiction.

When a State, by its grant of a charter, has given certain valuable qualities to capital stock, Congress cannot by legislation take away any of those qualities; for instance, limit the extent of its negotiability by making its purchase or sale dependent upon the uses which the purchaser intends to make of it.

In U. S. *v.* Boyer (85 Fed. Rep., 425) Acts of Congress empowering the Secretary of Agriculture to make inspection of cattle, &c., at slaughter houses located in the several States, the products of which were intended for sale in other States or foreign countries, were declared to be without any constitutional warrant, and therefore void, although the Government sought to sustain them as a legitimate exercise of the commerce powers.

Whatever any of the corporations defendants in this suit may do in the actual transaction of interstate commerce is properly subject to the laws of the United States regulating that subject, but the internal affairs of the corporations, as distinguished from the transportation business that they carry on, are not commerce in any sense of the word.

All the acts done by the defendants might have been

done in any foreign state or kingdom. If the Northern Securities Company had been formed in Canada, and the stock of the two railroad companies transferred to it there, would any one deem that transaction to be one affecting directly interstate or international commerce?

As a matter of fact, the sale of the stock of the two railroad corporations, no matter to whom it may be sold, nor how often such sales and transfers of the stock may take place, cannot, in any proper sense, be said to affect the transportation business carried on by the company.

Very pertinent and emphatic on this point is the opinion of Mr. Justice Jackson, sitting in the U. S. Circuit Court at Savannah, in the case of Clarke *v.* Central R. R. & Banking Co. of Georgia (June 30, 1893), which is printed in the appendix to this brief.

> "I concede," he says, "that the State of Georgia may put in limitations and restrictions upon corporations in respect to the amount of property they shall acquire; in respect to the amount of stock they may authorize a corporation to issue; but I say that when that corporation has issued that stock, when it goes abroad as property, there is no power in this land that can deny to the owner the right to sell it, nor deny to the individual the right to buy it; and if a corporation is created by any State with power to own and purchase stock, that that corporation is entitled to buy that stock, and that Georgia, in her constitution and in her legislature, could not prohibit it." * * * *
>
> "The Terminal had a right to acquire that stock, had a right to own it and to vote it. But it is said it might lead, or may lead, or was intended to lead, to a condition that would prevent competition. How so? How so?

"Is there any competition in point of fact between the Central Railroad and Banking Company and the Georgia Pacific leading out to the Northwest from Atlanta—that is, the lessee? What competition in the eye of the law? I can suggest to you, gentlemen, a case that would have fallen within the constitution of Georgia, perhaps. If the East Tennessee, Virginia and Georgia Railroad Company, running a line from Atlanta to the coast, parallel to the Central Railroad Company, had as a corporation—had as a corporation—I emphasize that, had, as a corpofation, undertaken to buy up the stock of the Central Railroad Company you would then have had a case coming within the purview and principle of the constitution of Georgia. But they say because a stockholder in two corporations had stock in two corporations that that stockholder cannot vote in both corporations. It is an anomaly beyond expression to my mind. But it does not come within any inhibition of the constitution of Georgia. When those contracts are purchased, personal properties are made beyond the jurisdiction of Georgia. To say that is illegal by Georgia law cannot be sustained.

"For Georgia law cannot reach the transaction, Georgia law cannot deal with those stocks and inhibit their purchase and their sale, and the only question in this case that ever would have given trouble would have been the power of that corporation, the Terminal Company and the North Carolina Company to have held and owned such stock. but they each had the power of the sovereigns that created them to purchase, acquire and hold these stocks, and there is nothing in the constitution of Georgia or in its laws to deny them their rights and interests as such holders in this property."

Equally emphatic in its language is the decision of Mr. Justice Jackson, sitting in the Circuit Court for the

Southern District of Ohio, *in re* Greene, 52 Fed. Rep., 104 (112):

> "Congress may place restrictions and limitations upon the right of corporations created and organized under its authority to acquire, use and dispose of property. It may also impose such restrictions and limitations upon the citizen in respect to the exercise of a public privilege or franchise conferred by the United States. But Congress certainly has not the power or authority under the commerce clause, or any other provision of the Constitution, to limit and restrict the right of corporations created by the States or the citizens of the States in the acquisition, control and disposition of property. Neither can Congress regulate or prescribe the price or prices at which such property, or the products thereof, shall be sold by the owner or owners, whether corporations or individuals. It is equally clear that Congress has no jurisdiction over and cannot make criminal, the aims, purposes and intentions of persons in the acquisition and control of property which the States of their residence or creation sanction and permit. It is not material that such property, or the products thereof, may become the subject of trade or commerce among the several States or with foreign nations." * * *
>
> "It is not very clear what Congress meant by the second section of the Act of July 2, 1890, in declaring it a misdemeanor to 'monopolize,' or 'attempt to monopolize,' any part of the trade or commerce among the States or with foreign nations. It is very certain that Congress could not and did not, by this enactment, attempt to prescribe limits to the acquisition, either by the private citizen or State corporation, of property which might become the subjects of interstate commerce, or declare that, when the accumulation or control of property by legitimate means and lawful methods reached such magnitude or pro-

portions as enabled the owner or owners to control the traffic therein, or any part thereof, among the States, a criminal offense was committed by such owner or owners. All persons, individually or in corporate organizations, carrying on business avocations and enterprises involving the purchase, sale or exchange of articles, or the production and manufacture of commodities, which form the subjects of commerce, will, in a popular sense, monopolize both State and interstate traffic in such articles or commodities just in proportion as the owner's business is increased, enlarged and developed. But the magnitude of a party's business, production, or manufacture, with the incidental and indirect powers thereby acquired, and with the purpose of regulating prices and controlling interstate traffic in the articles or commodities forming the subject of such business, production or manufacture, is not the monopoly, or attempt to monopolize, which the statute condemns."

The familiar language of Mr. Justice Brown in Pearsall *v.* Great Northern Railroad Company (161 U. S., 646, 671) also applies:

"Doubtless, these stockholders could lawfully acquire, by individual purchases, a majority, or even the whole, of the stock of the reorganized company, and thus possibly obtain its ultimate control; but the companies would still remain separate corporations, with no interests as such in common."

See also

Rogers *v.* Nashville, etc., R. Co., 92 Fed. Rep., 312.

VI.

BUT ASSUMING THAT CONGRESS MAY, UNDER THE COMMERCE CLAUSE OF THE CONSTITUTION AND AS A REGULATION OF COMMERCE, RESTRAIN THE STATES IN THE

EXERCISE OF THEIR PREROGATIVES FROM PERMITTING TWO OR MORE CORPORATIONS TO WHICH THE STATES HAVE GIVEN LIFE FROM MERGING, YET SUCH A PURPOSE ON THE PART OF THE GOVERNMENT OUGHT TO BE CLEARLY AND DISTINCTLY EXPRESSED, AND NOT BE FOUND IN THE JUDICIAL INTERPRETATION OF DOUBTFUL LANGUAGE CONTAINED IN A PENAL STATUTE.

So that, if it be argued that Congress may forbid the sale of one railroad to another, it is enough to reply that it has never done so; that the Sherman Act does not expressly, or by any just interpretation, do so.

We need not ask the Court to decide whether it would be competent for Congress to forbid the purchase or holding by one person of stock in the two parallel and competing railroad corporations; nor whether the amount of stock which might be thus held could, by statute, be limited to less than a majority. It is sufficient to say that Congress has never attempted any such thing.

The Sherman Act is a penal statute; every act which may be prevented by injunctiive order would, if committed and proven, subject the parties to criminal prosecution. The rule of strict construction must be therefore applied.

> "Statutes creating crimes will not be extended by judicial interpretation to cases not plainly and unmistakably within their terms. If this rule is lost sight of, the courts may hold an act to be a crime when the Legislature never so intended. If there is fair doubt whether the act charged in the indictment is embraced in the criminal prohibition, that doubt is to be resolved in favor of the accused." Per Dillon, J., in
>
> United States *v.* Whittier, 5 Dill., 219.

See also

United States *v.* Sheldon, 2 Wheat., 119; 4 L. ed, 199;
United States *v.* Hartwell, 6 Wall., 395; 18 L. ed., 832;
United States *v.* Shackford, 5 Mason, 445.
United States *v.* Clayton, 2 Dill., 219;
United States *v.* Garretson, 42 Fed. Rep., 22;
Dwarris, Stat. 641;
Hubbard *v.* Johnstone, 3 Taunt., 177.

The act is confined to contracts, combinations and conspiracies in restraint of trade or commerce.

The direct effect or object of the contract or conspiracy must be to restrain trade or commerce.

Acts which in themselves do not amount to a restraint of trade or commerce, such as the purchase and sale of railroads, factories, implements of interstate commerce, shares in transportation companies, etc., are lawful; they cannot be forbidden without interfering with the liberty of contract. Such things are not included in the language of the statute, and the Court will not insert them.

Had Congress intended to abridge the right to purchase and sell railroad property or steamships, or shares in transportation companies, or telegraph or cable companies, so as to prevent the indirect control of interstate or international commerce which may arise from the ordinary dealings of the business world, and to render such acts criminal, it is fair to insist that Congress was bound to use language plainly indicative of such intention.

VII.

ACQUIESCENCE BY THE GOVERNMENT FOR MORE THAN ELEVEN YEARS IN THE ACTUAL MERGER AND CONSOLIDATION OF MANY IMPORTANT PARALLEL AND COMPETING LINES OF RAILROADS AND STEAMSHIPS ENGAGED IN INTERSTATE AND

INTERNATIONAL COMMERCE, HAS GIVEN A PRACTICAL CONSTRUCTION TO THE ACT OF JULY 2, 1890, TO THE EFFECT THAT IT WAS NOT INTENDED TO FORBID, AND DOES NOT FORBID, THE NATURAL PROCESSES OF UNIFICATION WHICH ARE BROUGHT ABOUT UNDER MODERN METHODS OF LEASE, CONSOLIDATION, MERGER, COMMUNITY OF INTEREST, OR OWNERSHIP OP STOCK.

In Stuart *v.* Laird (1 Cranch, 299), the right of a justice of the Supreme Court to sit as a Circuit Judge was challenged, upon the ground that, not having been appointed as such, and not having been distinctly commissioned as such, the Act of Congress of 1789, under which the Circuit Court was originally instituted, was unconstitutional. The case arose in 1801, and was decided in the Supreme Court in 1803. To this objection the Court, in its opinion, answered:

> "It is sufficient to observe, that practice and acquiescence under it for a period of several years, commencing with the organization of the judicial system, affords an irresistible answer, and has indeed fixed the construction. It is a contemporary interpretation of the most forcible nature. This practica' exposition is too strong and obstinate to be shaken or controlled. Of course, the question is at rest, and ought not to be disturbed."

It will be observed that the period of acquiescence which the Court held to be sufficient to make a practical exposition which could not be shaken or controlled, was only twelve years, which is about the same period which has elapsed since the passage of the Sherman Act.

The argument of Mr. Lee in support of his point against the constitutionality of the Act of 1789, if the Court will be good enough to peruse it, will indicate that there were much more direct and substantial reasons for holding that the provisions of the Constitution applied to and

condemned the Act than exist here for holding that the statute of 1890 applied to the consolidation of railroad corporations.

The doctrine enunciated in Stuart *v.* Laird has been followed in numerous later cases. It is a just principle of jurisprudence, founded upon the very highest considerations of public equity.

It has frequently been invoked and enforced in order to prevent the disturbance and unsettlement of important affairs which have been transacted in reliance upon a general public and private belief that the law did not include them in its terms of condemnation.

But we venture the assertion that no case has ever arisen in which a disregard of that salutary rule of construction would result in such widespread and irremediable injury to vested interests as this. Not that any decree which this Court could make against these defendants would particularly or radically affect their property interests, but because the decision once made that the Sherman Act applies to such transactions as the purchase, lease, merger or consolidation of parallel lines of transportation, would render every such transaction for the last thirteen years unlawful, and require the Attorney-General, in the due discharge of his duty, to bring suit for dissolution and injunction. Unnumbered millions of dollars of capital stock and bonds issued upon railroad mergers and consolidations would be tainted with illegality, or affected in value by the withdrawal of the property against which they were issued. Purchases of stock in underlying roads long ago made and paid for would be unsettled, and financial chaos would result.

On this point we can accept the full extent of the limitation upon the application of the doctrine of contemporaneous construction stated by Mr. Justice Brown, in L. & N. R. Co. *v.* Kentucky (161 U. S., 690, 693):

> "While the doctrine of contemporaneous construction is doubtless of great value in determining the intentions of parties to an instrument ambiguous upon its face, yet to justify its application to a particular case, such contemporaneous construction must be shown to have been as broad as the exigencies of the case require."

VII.

THE ILLOGICAL CHARACTER OF THE OPINION OF THE CIRCUIT COURT IS MOST CLEARLY REVEALED WHEN IT COMES TO MAKE UP THE DEFINITIVE INJUNCTION DECREE.

The only power of the Court under the Statute is to "prevent and restrain" the carrying into effect of contracts, combinations and conspiracies such as the act makes unlawful.

If this holding company is, in legal conception, a combination which has as yet merely the power to restrain trade, but has not exercised that power, the logical decree would be one directing it to refrain from using its power to exercise any control over the two railway companies *for the purpose or with the effect of restraining trade or abating competition.*

But by the decree which the Court did make, the Securities Company is forbidden to exercise *any control whatever* over the two railroad companies.

It is further enjoined from voting on the stock which it owns; from receiving dividends thereon; from acquiring any further stock of the railroad companies or either of them.

If (as is the case) the only fact out of which, in the opinion of the Court, a violation of the law arises, is the ownership of a majority of the stock of both railway companies, and the *power* arising therefrom to control both roads, then it would seem, (1), that the only decree

permissible is one enjoining the Securities Company from so using its power as to restrain trade; or, (2), to require it to part with sufficient of the stock of either company to reduce its holdings below a majority, in which event the *power* of control would be gone.

It is submitted that even if the view of the Circuit Court that the facts shown create an unlawful combination in restraint of trade be conceded to be correct, the relief to which the Government is entitled is solely preventive, and cannot be specifically extended beyond enjoining the exercise of the power; and that if the Northern Securities shall part with enough stock of either road to reduce its holdings below a majority, it will have stripped itself of the power of control which is criticised, and will thenceforth be free from the imputation of unlawful restraint of trade.

It is submitted that the decision of the Circuit Court is erroneous and should be reversed; and that the decree founded upon that decision is not warranted by law, and should be set aside.

JOHN W. GRIGGS,
Of Counsel for
Northern Securities Company.

26223

IN THE SUPREME COURT OF THE UNITED STATES.

Northern Securities Company, Appellant,

vs.

The United States.

October Term, 1903.

No. 277.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

In re *Northern Securities Company's Appeal.*

BRIEF.

In this brief, it is not meant to discuss the case with any elaborate presentation of evidence or with numerous citations of authorities. This has been done in other briefs, and, without wearisome repetition and appropriation of the labor of colleagues, nothing more can be done, with advantage, for the cause of the appellants, than to consider the subject under general heads, assuming as sound, certain legal propositions which have been heretofore demonstrated.

The legal merits of the controversy, however, cannot be properly discussed, even in a general way, without restating some of the cardinal underlying facts: (1) because those found by the court below cannot be deduced from the testimony; and (2) because the substratum of the bill filed, of the arguments in the court below, in its support,

and of the decision by that court, was the assertion or assumption, of a conspiracy which never existed.

The incorrectness of the Circuit Court's findings, to which findings we will refer later, has been demonstrated, we think, by Mr. Grover's brief. If not, we can add nothing thereto.

In substance, the United States charged a conspiracy between certain individuals, named as defendants, viz., James J. Hill, William P. Clough, D. Willis James, John S. Kennedy, J. Pierpont Morgan, Robert Bacon, George F. Baker and Daniel Lamont, to restrain and monopolize commerce amongst several States of the United States and to prevent competition between two competing railway companies, the Great Northern and Northern Pacific, by forming a corporation, the Northern Securities Company, designed and intended for the accomplishment of their alleged illegal purpose by its acquisition of a controlling interest in the shares of both.

The bill charged that the Northern Securities Company was formed in pursuance of such conspiracy, and further, that in pursuance thereof, it acquired a majority of said shares. The appellants concede that the Northern Securities Company did, after its formation, acquire a majority of said shares. This concession carries with it an acknowledgment that such acquisition was because of its intent to acquire. The company is therefore chargeable with all the legal consequences of an intentional acquisition by it of said shares. We deny, however, that any individuals or corporations, conspired together to do anything, other than to form a corporation which, when formed, was intended to acquire shares of stock to them belonging, amounting to a majority of the shares of the Northern Pacific Railway Company and about twenty-seven per cent. of the shares of the Great Northern Railway Company. We contend that the subsequent acquisition of about fifty per cent. additional of Great Northern shares from third persons, who had not been consulted about said formation and over whose shares the parties stigmatized as conspirators had no con-

trol whatever, was the result, not of any conspiracy, but of an acceptance by such third persons of an invitation to sell, issued by the Northern Securities Company after its formation. The acquisition of these additional shares was after the consummation of the alleged conspiracy and after the alleged conspirators had parted with their shares in the two railway companies. This addition to the shareholding body of the Northern Securities Company diminished the voting power of each of those who had been instrumental in its incorporation.

It is true the authorized capital stock of the company was made sufficiently large to permit an acquisition by it, of all the shares of the stock of both railway companies; but this was in pursuance of no combination, conspiracy or contract, but of a policy which had always actuated the individual appellants, viz., to give to co-shareholders the benefit of every advantage obtained for their own shares. They meant to give others an opportunity to sell their shares to the appellant corporation; but they were indifferent as to whether they would, or would not, make avail of the opportunity.

A feature of the organization of the Northern Securities Company, peculiar, as compared with that of some other large corporations, was, its acquisition of shares of the Great Northern, not at an inflated price, but at one less than the then selling price in the market, and of shares of the Northern Pacific at cost, or less.

The argument of the case in the Circuit Court was practically upon bill and answer. No witnesses were called who contradicted any fact stated in the answer. Those called were principally the individuals alleged to have engaged in the so-called conspiracy. Their testimony was corroborative, in every particular, of the answer. From beginning to end, nothing appeared, which indicated, in the most remote degree, any desire, intent or expectation, on the part of any concerned, to restrain or monopolize trade or commerce.

We would concede that if a contract had been entered into to restrain trade or commerce, or in restraint thereof,

or even to monopolize the same, that the lack of intention to restrain, or to monopolize, would not excuse it, although it is doubtful whether a crime can be committed in the absence of any criminal intent.

Solely for the protection of the Northern Pacific Railway Company against a raid in the interest of a competitor, the so-called conspirators determined to put a majority of the shares of that company and a part, but not the controlling part, of those of the Great Northern Railway Company, into a corporation to be organized under the auspices of some of them. This was their intent. Their overt act was the formation of such company.

If the mere formation of the company violated the Sherman Act, by restraining or monopolizing trade or commerce, an absence of evil intent was of no consequence. If, however, such formation did not itself restrain, or monopolize, trade or commerce, but can only be held illegal if it resulted from an intent, through or by means thereof, thereafter to restrain or monopolize such trade or commerce, the intent must be established as a fact by the United States, upon whom rests the burden of proof. Only in such contingency, can intent be material. To the extent that any such intent was found by the court below, the finding rested upon no sustaining evidence. Whilst, if the Sherman Act was violated by the acquisition by the Northern Securities Company of the ownership of a controlling interest in the shares of the two railway companies, the absence of an intent to restrain trade or commerce is unimportant, such intent is important, if such acquisition did not, of itself, amount to a violation of the Act, but might be such, if it was part of a scheme to restrain or monopolize trade or commerce. An intent to restrain trade and commerce, however, cannot be deduced from an intent to form a corporation to acquire a controlling interest in the shares of two competing railway companies, if the ownership of such shares by such corporation, is not violative of the Act. In such event, the intent is to do what is legal, viz., merely to acquire such ownership. If the

ownership of a controlling interest in shares of competitive railway companies, is condemned by the Sherman Act, it is immaterial whether the acquisition is by a company formed for the purpose, or by one in actual existence—whether it resulted from a purchase by a company already in existence, or by one created by persons combining together, in order that by it the purchase might be made.

The Northern Pacific and the Great Northern Railways, though not parallel in any strict sense, run from Lake Superior and the Mississippi River to Puget Sound, through the same States. They are separated at most points by an intervening country, hundreds of miles in breadth. They come together at two or three points in said States. To a certain extent, they are competitive; but about seventy-five per centum of the business of each is non-competitive, because it originates, or is consigned, to a point or points on the line of one, not reached by the line of the other. About twenty-two per centum of the freight, nominally competitive, can be transported by other systems of railroad. No concert of action between the Northern Pacific and Great Northern, in the way of diminishing facilities or of raising rates, or the like, as to such freight, would be possible, because such action would give the transportation to competing lines. Much has been said, and written, about the destruction of competition between these two companies and the possible ill results therefrom; but in reality, nothing but the smallest minimum, of ill consequences, can possibly flow therefrom.

Both railway companies have competitors, in interstate, and international, transportation. On the north, is the Canadian Pacific Railroad, which dips down to St. Paul and extends to the Pacific Coast. On the South, is the Railroad of the Union Pacific, which holds a large, or controlling, interest in the shares of the Central and of the Southern Pacific, Railroad Companies. By reason of its geographical position, nearer to the cotton fields of the South, and to California, it is the natural carrier

of cotton to the Pacific Coast, and thence by steamers, to the Orient.

The Great Northern Railway Company, as now constituted, commenced business about 1893. The Northern Pacific Railway Company, reorganized in 1896, started, at that time, upon the career of prosperity it has since pursued.

Mr. Hill's desire, on the part of the first-named company, participated in by Mr. Morgan and others, on the part of the last named, was, so to reduce rates upon lumber and heavy natural products of the far West, as to make it possible to transport them to Eastern markets. Lumber, being very bulky, in proportion to its value, could not be transported, unless the cost thereof could be made permanently low. It was impossible to make the rates sufficiently low to get it to the Eastern markets, at a remunerative price, if the cars which transported it, must return empty. Such return would oblige lumber carried one mile, to pay the cost of two miles of transportation.

The necessary expenditures which must be incurred by lumbermen, in cutting timber, and in erecting mills and manufactories, would require some preliminary assurance of permanency of rates. The problem to be solved was the securing west-bound freights, for returning lumber cars.

The Burlington Railroad was connected with the Northern Pacific and with the Great Northern Railways. In no way was it a competitor with either. It reached the coal fields of Illinois. This coal was imperatively needed in some of the States through which ran the Northern Pacific and Great Northern. It reached Chicago, and other markets of steel products east of the Mississippi River. It also afforded a means by which wheat and other cereals, could be carried to markets east of said river. It reached the cotton fields of the South.

If cotton, coal, steel and other like products of the East, could be transported to markets on the Pacific Coast and of the Orient, the needed return freights for the lumber cars would be secured.

It was necessary to create a demand in the Orient for American cotton, flour and steel, which could only be delivered there, in competition with a cheap transportation, mainly by water, from Europe and India.

A necessary prerequisite to the creation of this new international commerce was an ability, on the part of those who were seeking to create it, to give assurance that the low rates which alone could induce its creation, would be permanent.

The supply of lumber from eastern sources was yearly decreasing. The time was fast approaching when the East must look to the West, for what could no longer be furnished to it from former sources. Permanent cheapness of transportation was the problem to be worked out. Those who sought to do so, had in view, of course, because human action is essentially selfish, the prosperity of their railroads which would transport. Their success, however, would establish a great interstate and international commerce, competitive with Europe and immensely beneficial to the nation.

All done, of which the Government has complained, was done with the intention of working out, with permanent results, this interstate and international, commerce problem.

Freight arrangements for connected transportation existed; but the Northern Pacific and Great Northern, which were seeking to create the commerce, were compelled to do what would enable them to assure those with whom they wished to deal, that the low rates with which they started would be, and could be, maintained. No such assurance could be given if the Burlington, whose railroad was an essential link in the connecting chain of transportation, might, in the future, be induced to make changes in its rates because of changes in its affiliations, or of the views and disposition, of its officials.

To promote a great public end, through a greatly increased commerce, at low rates, the Burlington Railroad shares were purchased by the two railway companies, at a price of upwards of $200,000,000, paid by their joint and sev-

eral bonds, upon which each, as between itself and the other, was responsible for a moiety.

By the acquisition of these shares, both railway companies were able to give such assurances of permanency of low rates and to do such other things, as were necessary in building up and enlarging this commerce. Their acquisition was without the slightest intention on the part of any connected with either of those companies, to alter the situation which then existed with regard to the ownership of the shares of the Great Northern and Northern Pacific.

Immediately upon the acquisition becoming known, those interested in the Union Pacific Railroad and its allied lines, appreciating the danger of a competition which would thus be made forever effective, and which involved the carrying northward, past its lines, by the Burlington Railroad, of the cotton of the South, to a connection with the two railways, made overtures for an allotment to them, of a portion of the shares. These overtures were declined. The refusal was followed by an enormous and startling movement in shares of the Northern Pacific, the United States making no complaint, which ended in an acquisition by the Oregon Short Line, acting undoubtedly at the instance, and for the benefit, of the Union Pacific Railroad Company, of a majority of the shares of the capital stock of the Northern Pacific, namely, 780,000, out of 1,550,000 of its shares, of the par value of $155,000,000. Unfortunately for those who purchased these shares, the capital stock of the Northern Pacific was of two kinds, common and preferred. Of its total issue, 800,000 shares were common and 750,000 were preferred. The latter, under provisions made at the time of reorganization, could be retired. Of the common shares, the Oregon Short Line had acquired but about 380,000.

Threatened with the probable injury to both railroad companies, burdened with the large indebtedness they had contracted in acquiring the Burlington shares, which would result from ownership, in the interest of the Union Pacific,

of a majority of the shares of the Northern Pacific, Messrs. Hill, Morgan and their friends, started to buy a sufficient number of the common shares to give them, upon the retirement of the preferred shares, a majority of the 800,000 stock. When the contest of buying ceased, they held about 420,000 common shares as against a holding by their antagonists of 380,000 of said shares.

The danger, however, was only temporarily checked. A sale by anyone of the Hill-Morgan party, holding a considerable number of the shares, would convert the minority holding of the Union Pacific into a majority holding. It was absolutely necessary, therefore, to provide forever against this risk, not for the purpose of restraining trade or commerce, but for the protection of the alliance formed by those who were endeavoring to promote it.

What was to be done? Permit the holdings of the shares to remain without safeguard, thus keeping the door open for the success of the enemy, whenever some owner should weaken in his allegiance, or should die? As some of the persons who held the Northern Pacific shares were very old, in the ordinary course of events, in a short time, changes of ownership must result.

All that followed was done for the purpose of preventing a similar raid to that which had so nearly succeeded; was done solely with the intent to secure the maintenance of the benefit to commerce, which had resulted, and which still more in the future, would result, from the acquisition of the Burlington shares. Ought a provision, intended to secure the permanency of increased transportation at low rates, be stricken down, as being in restraint of trade and commerce, when it was designed to prevent the acquisition by a rival competing line, of the majority of the shares of a railway company whose independence was necessary to the maintenance of an alliance without which such permanency was impossible? Should such a provision be held to be in violation of the letter, or of the spirit, of the Sherman Act?

It was conclusively shown by the testimony, that for years antecedently to the Burlington purchase, Mr.

Hill and some of his friends who had acted together from the outset, and who owned, in aggregate, about twenty-seven per centum of the Great Northern stock, had contemplated making some provision by which the policy they had acted upon, could be continued, despite the contingencies of death. The contemplated provision was a sale of their shares to a company, to be organized principally for that purpose.

It will not be pretended the Sherman Act is intended to interfere with the holding together of shares in any one Railroad Company, under a common ownership, for the purpose of promoting the interests of the holders and of the company itself. After the raid upon the Northern Pacific shares, these gentlemen, to protect its property and the joint interest in the Burlington, being then the owners of a much enlarged holding of Northern Pacific stock, determined to form a company which should become the owner of their own shares in both companies. They held about twenty-seven per centum of the shares of each. Their policy, having always been to put other holders of Great Northern shares upon the same footing they occupied, they determined, not because they cared to have them join, but solely because of this policy, to give to them the opportunity, after the company should be formed, if they should so desire, to sell to it their shares of the Great Northern.

After the raid, Mr. Morgan and his friends saw the necessity of protecting their holdings of Northern Pacific shares from a similar attempt, and they began to consider the forming of a company into which they could put their shares of said stock.

It was finally understood that a company should be formed which, after its formation, would purchase the shares of stock of both companies then held by Mr. Hill Pacific Railroad held by Mr. Morgan and his friends. and his friends, as well as the shares of the Northern If carried out, this plan would give to such company a majority of the Northern Pacific shares, but only about twenty-seven per centum of those of the Great Northern.

The only plan, and the only intent, was, that the company to be formed should hold a majority of the shares of the Northern Pacific and a minority of those of the Great Northern. There was no agreement by any of these parties that they would sell their own shares to the new company, though there was a general understanding to that effect. With this ownership, by such company to be formed, it would not be possible, thereafter, to turn the minority holding of the Oregon Short Line into a majority holding, by a purchase of less than a majority of the shares of such new company.

The subsequent announcement, to the other holders of shares of the Great Northern, who had taken no part in the formation of the company, and who had not been, in any way, consulted, and who had made no agreement of any sort or kind about their shares, was with no other intent than to give them an opportunity to deal with them as Messrs. Hill, Morgan and their friends had dealt with their own. The capital stock of the new company was fixed at $400,000,000, so that if all should see fit to avail themselves of the opportunity to buy, they would be able to do so. If they should not, the unissued capital of the company could be used in the furtherance of other valuable purposes. There was no inducement to come into the arrangement by an offer of a tempting price for the shares. The price at which the Northern Securities Company expressed its willingness to buy Northern Pacific shares, was $115 per share, or less than the price at which they had been bought. The price at which Great Northern shares would be purchased was fixed at $180 per share, several dollars less than the selling price in the market.

After the organization, in fact very shortly thereafter, a considerable number of the outside holders of shares of the Great Northern, who doubtless believed what Mr. Hill had done with his shares might well be done by them with their own, accepted the offer of the Northern Securities Company. In consequence of such acceptance,

it found itself possessed, at the time of filing the bill, of about nine-twelfths of the total issue of shares of the Great Northern.

As soon as those interested in the Union Pacific Railroad saw they had failed to secure a majority of the shares of the Northern Pacific, that they must wait for a future chance, before they would be able to acquire additional shares, and that such chance would not be likely to occur if a new company would acquire a majority of said shares, they sold to Mr. Morgan, for a satisfactory price, their shares, receiving payment, partly in cash and partly in stock of the new company. This sale, shortly after its organization, put the Northern Securities Company in possession of nearly all the shares of the Northern Pacific.

The acquisition of the majority of the shares of the Great Northern was an act concerning which no agreement was made by Messrs. Hill, Morgan and their friends, and concerning which it had been impossible for them to make any agreement.

Following the acquisition of the Burlington and the protection of its purchase by what had been done by the formation of the new company, there has been a development of trade and commerce which has fully confirmed the judgment of those who did what is condemned by the United States as a conspiracy, and which makes an accusation of any intent to restrain trade or commerce absurd.

The lumber business has been developed enormously. A large movement in cotton and steel products to the Orient has been created. Transportation rates have been lowered. Flour is being carried to China, two thousand miles by rail and fifty-seven hundred and fifty miles by water, at the rate of eighty cents per barrel, whilst the cost of carriage from the same point to New York, a distance of thirteen hundred and fifty miles, is fifty-five cents per barrel. The population of certain treeless States has been supplied with indispensable coal. All this has been done, not by destroying the trade of the Union Pa-

cific Railroad Company, which has increased, but by the creation, development and enlargement of a new interstate and international commerce, involving an increased competition with the Union Pacific for west-bound freight. The results are almost magical. The small percentage of really competitive freights, has not, in any way, been injuriously affected. The rates therefor have been lowered. Trade and commerce generally have been greatly extended and the public have secured the benefits, on a great scale, of competition between interstate and international competitors.

It is essential to production that there shall be a market for the product. The sawing of lumber, the digging of ores, the cultivation of grain and the raising of cattle will be of no avail, if they cannot be carried to those needing the same.

The alliance of the Burlington with the Northern Pacific and Great Northern was not limited to an obtaining for the latter, of traffic which otherwise would be carried over roads belonging to other companies. It was intended to increase trade, to create a new traffic that, otherwise, because of the inability to secure sufficiently low freight rates, would not exist.

This alliance, protected by the formation of the Northern Securities Company, produced the intended result. In the year ending 30th June, 1902, the increase of the freight traffic of the Northern Pacific over that of the previous year was 859,590,472 tons carried one mile—an increase of thirty-five per centum. The increase of the Great Northern's freight traffic in the same year, over that of the previous year, was 708,466,287 tons carried one mile—an increase of twenty-nine per centum. The increase of the freight traffic of the Burlington during the same period, over that of the preceding year, was 742,543,188 tons carried one mile—an increase of nineteen per centum.

In the year ending 30th June, 1903, the Northern Pacific's freight traffic increased over that of the year 1902 by 515,689,806 tons carried one mile—an increase

of fifteen per centum. The increase of the Great Northern's freight traffic in the same year, over that of the year 1902, was 416,617,694 tons carried one mile—an increase of thirteen per centum. In the same year, the increase of the Burlington's freight traffic over that of 1902, was 929,553,769 tons carried one mile—an increase of twenty per centum.

This increase was not simply the result of the general growth of the country, nor of a wresting from the Union Pacific and other companies, of a large portion of their traffic, although, to some extent, it did thus result. The major portion thereof, was the result of the alliance with the Burlington, which had been protected against disruption and dangerous interference, by the formation of the Northern Securities Company.

The fact of the creation of a new traffic, is shown by a comparison with the operations of the Union Pacific System during corresponding periods. By that system, a territory is served, similar to that served by the Northern Pacific and Great Northern, in connection with the Burlington. A great part of this territory thus served is common to all. The property is intelligently managed and equipped, and is in fine physical condition. Its connection with the large business of California is much more direct and is permanently assured, and it is thus given some advantage over its competitiors. It is an older system, more widely known than the others. In the year ending 30th June, 1902, the increase of its freight traffic over that of the previous year was 426,000,000 tons, carried one mile—an increase of fourteen per centum. In the year ending 30th June, 1903, its freight traffic was increased over that of 1902, by 275,675,352 tons, carried one mile—an increase of eight per centum. These rates of increase fairly represent general business conditions.

Necessarily, the greater increase of traffic over the other three railroads must have resulted from a new business, resulting from assured markets in Burlington's territory. One large item of increased traffic, assign-

able solely to the Burlington alliance, was the increase in transportation of lumber and other forest products. The figures for this increase on the Northern Pacific, illustrate the general increase. In the year ending 30th June, 1901, Northern Pacific handled 1,215,834 tons of lumber and 1,525,874 tons of other forest products. In the year ending 30th June, 1902, it handled 1,640,475 tons of lumber, and 2,054,219 tons of other forest products. In the year ending 30th June, 1903, it handled 2,013,510 tons of lumber and 3,076,877 tons of other forest products.

In the year ending 30th June, 1901, there were shipments of cotton-piece goods to Asia, via Great Northern, of 13,071 bales. The shipment of these goods over the Great Northern, in the year ending 30th June, 1902, amounted to 64,542 bales. The business of shipping raw cotton to Japan *via* the Great Northern, commenced a few years ago. Its beginning was made possible solely by cheap transportation, under the personal guarantee by Mr. Hill, of the suitableness of the American product, for the methods of spinning and weaving in Japan.

In the year ending 30th June, 1901, raw cotton shipped to Japan *via* Great Northern, amounted to 13,230,000 pounds. In the year ending 30th June, 1902, it had increased to 41,243,000 pounds.

The total exports of raw cotton to Japan by all routes—practically by Northern Pacific and Great Northern only—in the year ending 30th June, 1901, amounted to 35,879,665 pounds, and in the year ending 30th June, 1902, to 89,252,696 pounds. The trade, by reason of the assurance of permanency of low rates of transportation, has become so well established that in the face of the small crop and high prices of the year 1902-1903, the exports of cotton to Japan in the year ending 30th June, 1903, amounted to 76,413,291 pounds.

The assurance of permanent low rates *via* Burlington and Northern Pacific or Great Northern, led to the establishment of an export trade to Asia, of iron and steel. These products are being placed in Asia to the extent of

thousands of tons yearly, which, under the business conditions prevailing in this country, could not be sold, and, of course, would not be produced. The Government's statistics of trade to the Orient from Pacific Coast ports, show the benefit to trade which has resulted from the protected alliance with the Burlington. The "Monthly "Summary of Commerce and Finance," published by the Bureau of Statistics, for the month of September, 1903, gives the figures of the foreign trade through each port for the first nine months of each of the years 1901, 1902 and 1903. These figures show that while the foreign trade through the ports of San Francisco and those on the Columbia River, have remained practically stationary during the three years, the increase through the Puget Sound ports, where the Northern Pacific, and Great Northern's chief terminals are, during that period, has been about twenty-six per centum, or more than six million dollars per year.

The industrial progress and development of the United States, in connection with its immense natural resources, has brought the great industries of the country nearly to the point of over-production. New markets, in other countries, are necessary to meet this condition. Cheap transportation at permanent rates is necessary to the securing and holding of these new markets. The great problem of transportation is, therefore, the doing it better at cheaper rates, with a fair profit to the carriers. The proper solution of this problem, is equally important to carriers, producers and consumers.

Experience has shown that the greatest prosperity of any railroad results from carrying at low rates, the largest obtainable volume of traffic. To attract a business the rates must be low—regularly and permanently low—under a large and steady volume of traffic. The rate is determined by this volume. A low carrying cost and a low rate for carriage can only result from a reasonably steady, as well as large, volume of traffic. Such steadiness can result only from steadiness in the trade that occasions it, which latter is possible only when the arrangements for the trade are reasonably durable.

Such alliances as that of the Burlington with the Northern Pacific and Great Northern, are particularly valuable, because of the opportunity thereby afforded of securing a large number of markets in a great and rich territory, under a fairly permanent transportation policy. They are of enormous value to the people along the lines of the railroads, to the country generally, and to the world. It is all-important to a building up of trade in Chicago or St. Louis, or Kansas City, or Minneapolis, or St. Paul, or Duluth, or Omaha, or Denver, that those who are induced to enter into it can be assured of conditions of transportation, well known and understood, which can be reckoned upon permanently. To transact business large investments must be made, and the condition prerequisite to such investments, is reasonable assurance of continuance.

It is incumbent upon the United States, when it seeks to condemn an arrangement which has promoted the interest of the whole Nation, by pretending it was intended to restrain trade, to establish, very convincingly, the existence of the illegal intent it alleges to have existed.

If the acquisition of the majority of the shares of the two competing railway companies was a violation of the Sherman Act, such acquisition was the act, not of the alleged conspirators, who were indifferent to the acquisition of a majority of the Great Northern shares,and were powerless to compel it, but of the Northern Securities Company itself, in buying shares from persons other than the alleged conspirators, who sold, with no intent to do aught else than to exercise their right of conversion of their property upon receipt of a satisfactory pecuniary consideration.

The United States did not claim that the Northern Securities Company could not legally purchase the majority, or even all, of the shares of the Northern Pacific; but that it could not legally purchase, in addition, a controlling interest in the shares of the Great Northern. If this contention be correct, the remedy is, not to destroy the

value of all the property by it held, by decreeing it shall not vote the shares nor collect dividends thereon, but to order the sale of so many of the Great Northern, or of the Northern Pacific, shares, as will deprive it of a controlling interest in one or the other.

The question of law to be determined, is solely whether or not, the acquisition by a corporation, of a controlling interest in the shares of two competitive railway companies, is a violation of the Sherman Act. If such ownership does violate said Act, and if the Act, in prescribing such ownership, is constitutional, it is immaterial whether the corporation owning was formed for the purpose of making the acquisition, or, being already in existence, made the same. If it is not illegal for an existing corporation to acquire such controlling interest, it cannot be illegal for persons holding a sufficient number of shares, to enter into an agreement that they will form a company for the purpose of acquiring it.

An agreement to do what is legal, cannot be held to be an illegal conspiracy, combination or contract.

The questions presented to this court are: (1) does the Sherman Act make it a misdemeanor for a person or corporation, to acquire a controlling interest in the shares of competitive railway companies, and (2) if it does, is it constitutional?

Before stating certain propositions which will be discussed in detail, it may not be amiss to make some preliminary observations.

By the Sherman Act, trade and commerce are protected against unlawful restraint and monopolies, by punishment, criminally, of certain acts therein described and proscribed. The Circuit Courts of the United States are invested with jurisdiction, by proceedings in equity, "to pre-"vent and restrain" such acts.

The acts which can be prevented and restrained by such proceedings in equity are those, and those alone, made criminal by the first and second sections of the Sherman Act. The statute is therefore a penal one, defining a criminal offense, for which it provides a punishment. It is an indispensable prerequisite to a conviction for a crim-

inal misdemeanor, especially if there be no criminal intent, and such did not exist in the present case, that the offense condemned, shall be clearly defined. In this connection we give some citations supplied by a friend:—

In U. S. *vs.* Wiltberger, 5 Wheat., 76, Chief Justice Marshall said:—

> "The rule that penal laws are to be construed "strictly, is perhaps not much less old than con- "struction itself."

Judge Dillon, in *U. S.* vs. *Whittier*, 5 Dill., 35, said:—

> "Statutes creating crimes will not be extended "by judicial interpretation to cases not plainly and "unmistakably within their terms. If this rule is "lost sight of, the courts may hold an act to be a "crime when the legislature never so intended. "If there is a fair doubt whether the act charged "in the indictment is embraced in the criminal "prohibition, that doubt is to be resolved in favor "of the accused. (U. S. *vs.* Morris, 14 Pet., 464; "U. S. *vs.* Wiltberger, 5 Wheat., 76; U. S. *vs.* Shel- "don, 2 Wheat., 119; U. S. *vs.* Clayton, 2 Dillon, "219.)"
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> "'Where the statutory terms are of such uncertain "'meaning, or so confused, that the courts cannot "'discern with reasonable certainty what is intended, "'they will pronounce the enactment void.' Bishop "on Statutory Crimes, Section 41."

In Andrews *vs.* U. S., 2 Story, 213, Mr. Justice Story said:—

> "Penal statutes are to be construed strictly. "They are never extended by implication."

In U. S. *vs.* Hartwell, 6 Wall., 385, 396, Mr. Justice Swayne said:—

> "The words must not be narrowed to the ex- "clusion of what the legislature intended to em- "brace; but that intention must be *gathered from* "*the words*, and they must be such as to leave no "room for a reasonable doubt upon the subject."

In Swearingen *vs.* U. S., 161 U. S., 446, 451, it is said:—

"As the statute is highly penal, it should not be "held to embrace language unless it is fairly within "its letter and spirit."

In France *vs.* U. S., 164 U. S., 676, 682, it is said:—

"Although the objection is a narrow one, yet "the statute being highly penal, rendering its "violator liable to fine and imprisonment, we are "compelled to construe it strictly. * * * If it "be urged that the act of these plaintiffs in error "is within the reason of the statute, the answer "must be that it is so far outside of its language "that to include it within the statute would be to "legislate and not to construe legislation."

In Schooner Paulina's Cargo *vs.* U. S., 7 Cr., 61, it is said:—

"It is the province of the legislature to declare "*in explicit terms*, how far the citizen shall be "restrained in the exercise of that power over "property which ownership gives; and it is the "province of the court to apply the rule to the case "thus explicitly described; not to some other case "which judges may conjecture to be equally "dangerous."

In U. S. *vs.* Reese, 92 U. S., 219, it is said:—

"Laws which prohibit the doing of things, and "provide a punishment for their violation, should "have no double meaning.

"If the legislature undertakes to define by "statute a new offense and provide for its punish-"ment, it should express its will in language that "need not deceive the common mind. Every man "should be able to know with certainty when he "is committing a crime.

"It would certainly be dangerous if the legis-"lature could set a net large enough to catch all "possible offenders and leave it to the courts to "step inside and say who could be rightfully

"detained and who should be set at large. This "would, to some extent, substitute the judicial "for the legislative department of the Govern- "ment."

In U. S. *vs.* Comerford, 25 Fed. R., 902, it is said:—

"We have been taught to believe that it was "the greatest injustice towards the common people "of old Rome when the laws they were commanded "to obey, under Caligula, were written in small "characters, and hung upon high pillars, thus more "effectually to ensnare the people. How much "advantage may we justly claim over the old "Roman, if our criminal laws are so obscurely writ- "ten that one cannot tell when he is violating "them? If the rule contended for here is to be "applied to the defendant, he will be put upon "trial for an act which he could not by perusing "the law have ascertained was an offense."

In U. S. *vs.* Chase, 135 U. S., 255, 261, it is said:—

"Another argument on which indictments of "this character have been sustained by some of "the Circuit Courts is, that a reasonable construc- "tion must be given the statute, and, it being evi- "dent that Congress intended to exclude anything "of an obscene character from the mails, it is im- "material whether the thing prohibited is inside "or outside of an envelope, and therefore unreason- "able to hold that Congress intended not to allow "a decent writing in an obscene envelope, but at "the same time to allow obscene writing in a proper "envelope. We recognize the value of the rule "of construing statutes with reference to the evil "they were designed to suppress as an important "aid in ascertaining the meaning of language in "them which is ambiguous and equally susceptible "of conflicting constructions. But this court has "repeatedly held that this rule does not apply to "instances which are not embraced in the lan- "guage employed in the statute, or implied from

"a fair interpretation of its context, even though "they may involve the same mischief which the "statute was designed to suppress. U. S. *vs.* Shel- "don, 2 Wheat., 119; U. S. *vs.* Wiltberger, 5 Wheat., "76, 95; U. S. *vs.* Morris, 14 Pet., 464, 475; U. S. "*vs.* Hartwell, 6 Wall., 385; U. S. *vs.* Reese, 92 "U. S., 214."

In U. S. *vs.* Wiltberger, *supra*, Chief Justice Marshall said:—

"The rule that penal laws are to be construed "strictly, is perhaps not much less old than con- "struction itself. It is founded on the tenderness "of the law for the rights of individuals; and on "the plain principle that the power of punishment "is vested in the legislative, not in the judical de- "partment. It is the legislature, not the court, "which is to define a crime, and ordain its punish- "ment. * * *

"To determine that a case is within the inten- "tion of a statute, its language must authorize us "to say so. It would be dangerous, indeed, to "carry the principle, that a case which is within "the reason and mischief of a statute, is within "its provisions, so far as to punish a crime not enu- "merated in the statute, because it is of equal atro- "city, or of kindred character, with those which "are enumerated. * * *

"We can conceive no reason why other crimes "which are not comprehended in this act, should "not be punished. But Congress has not made "them punishable, and this court cannot enlarge "the statute."

In U. S. *vs.* Goldenberg, 108 U. S., 102, Mr. Justice Brewer said:—

"The primary and general rule of statutory con- "struction is that the intent of the lawmaker is to "be found in the language that he has used. He "is presumed to know the meaning of words and "the rules of grammar. The courts have no func- "tion of legislation, and simply seek to ascertain

"the will of the legislator. It is true there are "cases in which the letter of the statute is not "deemed controlling, but the cases are few and exceptional, and only arise when there are cogent "reasons for believing that the letter does not fully "and accurately disclose the intent. No mere "omission, no mere failure to provide for contingencies, which it may seem wise to have specifically "provided for, justify any judicial addition to the "language of the statute."

In Sarlls *vs.* U. S., 152 U. S., 570, 575, it was said:—

"Nor can courts, in construing penal statutes, "safely disregard the popular signification of the "terms employed, in order to bring acts, otherwise "lawful, within the effect of such statutes, because "of a supposed public policy or purpose."

If this court is embarrassed as to the true meaning of the Act, it will not legislate, but will content itself with a discharge of its duty of construction. If the work of the legislature is incomplete, a crime cannot be fastened upon one who has done, innocently, something not clearly defined as criminal. It was the duty of Congress to put its intent in unequivocal language, and if its intent was to itself unknown, and was expressed in such language as, naturally would be used because thereof—language vague and indefinite—there can be no conviction.

An act not made criminal, cannot be condemned, because it may seem equally evil, perhaps more, evil, than the one made criminal.

That Congress had no clearly-defined understanding of the nature of the misdemeanor at which it struck, is evidenced by what was said in the final debate in the House of Representatives, after the passage of the bill by the Senate, and after its consideration by the Judiciary Committee of the House. Mr. Culberson, of that committee, who had charge of it, said:—

"Now, just what contracts, what combinations in "the forms of costs, or what conspiracies will be in

"restraint of the trade or commerce mentioned "in the bill, will not be known until the courts have "construed and interpreted this provision. * * * "I wish to be understood, Mr. Speaker, as having "stated in the outset that I do not know, nor can "any man know, just what contracts will be em- "braced by this section (section 1) of the bill until "the courts determine."

During the course of the same debate, Mr. Cannon said:—

"Gentlemen say they do not know how the courts "will construe the Act. It is for us to enact the "law and for the courts to construe and enforce it. "If we do our duty, it is reasonable to believe that "the co-ordinate branch of the Government will do "its duty."

The fact that controlling interests in shares of non-competitive, as well as of competitive, railroads, were held by a single person or corporation, and that such holdings, from time to time, were being constantly acquired, was one which could not have been unknown to Congress. If ownership by one person, or corporation, of a controlling interest in competitive railroads, was intended to be made criminal, the fact could, and would, have been expressed in language unmistakable. It cannot be successfully contended that such ownership at the time, 1890, of the passage of the Sherman Act was understood to constitute a contract, combination in the form of trust or otherwise, or conspiracy, "in restraint of trade or commerce"; or as constituting a monopolization, or attempt at monopolization, or as a combination or conspiracy to monopolize, "any part of the trade or commerce among the "several States." Had the question, at that time, been put to any jurist or legislator, whether such ownership constituted a contract, combination, conspiracy or monopolization, of that character, the answer, unquestionably, would have been in the negative. It would be legislation, not adjudication, to put upon words which

imported no such meaning, an interpretation which would strike down, as criminal, such ownership.

The bill which was filed in the Circuit Court of the United States was apparently drafted with no thought, on the part of the representatives of the United States, that because of such ownership alone, there was a right to enjoin its continuance, or to render it valueless by depriving the owners of the voting power and of dividends. Concerning Messrs. Hill, Morgan and others (Record, vol. I., page 7*a*), it was charged thus:—

> "Hill, Morgan and others owning or controlling "a majority of the stock of that corporation, acting "for themselves as such stockholders and on behalf "of the said railway companies in which they owned "or held a controlling interest, on and prior to the "thirteenth day of November, 1901, contriving and in- "tending unlawfully to restrain the trade or commerce "among the several States and between said States "and foreign countries carried on by the Northern "Pacific and Great Northern systems, and con- "triving and intending unlawfully to monopolize "or attempt to monopolize such trade or commerce, "and contriving and intending unlawfully to re- "strain and prevent competition among said rail- "way systems in respect to such interstate and for- "eign trade or commerce, and contriving and in- "tending unlawfully to deprive the public of the "facilities and advantages in the carrying on of "such interstate and foreign trade or commerce "theretofore enjoyed through the independent com- "petition of said railway systems, entered into an "unlawful combination or conspiracy to effect a vir- "tual consolidation of the Northern Pacific and "Great Northern systems, and to place restraint "upon all competitive interstate and foreign trade "or commerce carried on by them, and to monop- "olize or attempt to monopolize the same, and to "suppress the competition theretofore existing be- "tween said railway systems in said interstate and "foreign trade or commerce, through the instru- "mentality and by the means following, to wit: A "holding corporation, to be called the Northern

"Securities Company, was to be formed under the laws "of New Jersey, with a capital stock of $400,000,- "000, to which, in exchange for its own capital stock "upon a certain basis and at a certain rate, was to "be turned over and transferred the capital stock, "or a controlling interest in the capital stock, of "each of the defendant railway companies, with "power in the holding corporation to vote such "stock and in all respects to act as the owner thereof, "and to do whatever it might deem necessary to aid "in any manner such railway companies or enhance "the value of their stocks. In this manner, the in- "dividual stockholders of these two independent "and competing railway companies were to be elimi- "nated and a single common stockholder, the North- "ern Securities Company, was to be substituted; "the interest of the individual stockholders in the "property and franchises of the two railway com- "panies was to terminate, being thus converted into "an interest in the property and franchises of the "Northern Securities Company. The individual "stockholders of the Northern Pacific Railway Com- "pany were no longer to hold an interest in the prop- "erty or draw their dividends from the earnings "of the Northern Pacific system, and the individual "stockholders of the Great Northern Railway Com- "pany were no longer to hold an interest in the prop- "erty or draw their dividends from the earnings "of the Great Northern system, but having ceased "to be stockholders in the railway companies and "having become stockholders in the holding corpo- "ration, both were to draw their dividends from "the earnings of both systems, collected and distri- "buted by the holding corporation. In this man- "ner, by making the stockholders of each system "jointly interested in both systems, and by practi- "cally pooling the earnings of both systems for the "benefit of the former stockholders of each, and by "vesting the selection of the directors and officers "of each system in a common body, to wit, the hold- "ing corporation, with not only the power but the "duty to pursue a policy which would promote the "interests, not of one system at the expense of the

"other, but of both at the expense of the public, "all inducement for competition between the two "systems was to be removed, a virtual consolida- "tion effected, and a monopoly of the interstate "and foreign commerce formerly carried on by the "two systems as independent competitors estab- "lished."

We have endeavored to show that there was no intent, unlawfully or otherwise, to restrain, or to monopolize, trade and commerce among the several States; and that there was no contrivance, unlawfully, or otherwise, to restrain competition in respect of interstate and foreign trade, or to deprive the public of facilities and advantages resulting from competition. We have further endeavored to show there was no plan, combination, or agreement, to turn over "a controlling interest in the capital stock of "each of the defendant railway companies" to a holding corporation. It is hardly necessary to endeavor to show there was no "pooling the earnings" of both systems. Each railway company collected and distributed, amongst its creditors, and stockholders, its freight and other receipts.

The relief prayed for was, an injunction, restraining the Northern Securities Company from acting as the owner of any of the shares of the capital stock of either the Northern Pacific or of the Great Northern, and restraining the Northern Pacific and the Great Northern, respectively, from permitting such vote to be cast. A decree was asked to the effect that each stockholder of the Railway Company who had exchanged his stock for that of the Northern Securities Company, should be enjoined from voting, or acting as the owner of, any of the stock of the Northern Securities Company thus exchanged. A mandatory injunction was asked for, requiring each stockholder of the Northern Securities Company to surrender his stock therein, and to accept in its place the stock of the defendant Railway Company which had been exchanged therefor.

It was obviously impossible to decree that there should

be a cancellation of any transaction of exchange, if any exchange had been made, and a redelivery of the shares of stock purchased by the Northern Securities Company, in the probably numerous instances in which its shares had been sold by the recipient.

The court below decreed (1) that the defendants had entered into a combination or conspiracy in restraint of trade; (2) that all the shares of stock of the two railway companies had been acquired, and were held, in virtue of such combination or conspiracy; (3) that the Northern Securities Company should be enjoined from acquiring further stock of either of said railway companies; (4) that it should be enjoined from voting any shares of stock at any meeting of stockholders of either railway company; (5) that the respective railway companies should be enjoined from permitting the stock to be voted; and (6) that they should be enjoined from paying any dividends to the Northern Securities Company.

In the court below it was argued, by the very able counsel for the United States, that "under this Act it "is only necessary to show that the defendants have ac- "quired the POWER to monopolize or restrain trade." He pressed the point in these words:—

> "I want to make this point as clear and as decided "as I can, because in my judgment this is one of "the controlling positions in the case. If your "Honors will allow me to say so, I don't have the "slightest doubt as to its correctness. And that "point is this: it is *a question of the possession of the "power*, and not a question of the *exercise of the "power to monopolize*, and no *overt* act in the exercise "of the power that the monopoly gives need be "shown. In fact in nearly all these cases there "was no overt act at all. Let me state it again, "so your Honors will get my thought: to create a "monopoly or an attempt to monopolize or a con- "spiring to monopolize, it is not necessary to show "that the person or corporation that monopolized "or attempted to monopolize or combined to "monopolize ever exercised the *power* that was gained.

"The offense which the law forbids *is the obtaining* "*of the power.* * * * And I press it again "now that it is a question of *the possession of the* "*power*, and if you prove that the things that the "man has done or the corporation has done give him "or it *the possession of the power* as applied to inter- "state railways to increase freight rates, to stifle "or cripple competition, you have then proven a "violation of the anti-trust law."

Triumphantly, with interpolated italics, he quoted these words, uttered by this court in Addyston Pipe & Steel Company *vs.* U. S., 237:—

"Again all the authorities agree that in order "to vitiate a contract or combination, *it is not* "*essential that its result* should be a complete monop- "oly; it is sufficient if it *really tends to that end* and "to deprive the public of the advantages which flow "from free competition."

This quotation, however, was from what was said by this court with reference to a contract or combination actually in restraint of trade, one which, by its provisions, directly restrained it. Under such circumstances, this court necessarily said, such restraint having been made a misdemeanor, that it was not essential its result should be a complete monopoly or that it did more than tend to that end. It said nothing, however, to the effect that the posession of a power to restrain trade, resulting from a combination, or contract, to restrain it, was criminally reprehensible if not exercised.

The court below, in these words, declined to consider the question of the intent:—

"Relative to the third contention, which has been "pressed with great zeal and ability, this may be "said: It may be that such a virtual consolidation "of parallel and competing lines of railroad as has "been effected, taking a broad view of the situa- "tion, is beneficial to the public rather than harm- "ful. It may be that the motives which inspired

"the combination by which this end was accom-
"plished were wholly laudable and unselfish; that the
"combination was formed by the individual defend-
"ants to protect great interests which had been
"committed to their charge; or it may be that the
"combination was the initial and a necessary step
"in the accomplishment of great designs which if
"carried out as they were conceived would prove to
"be of inestimable value to the communities which
"these roads serve and to the country at large.

"We shall neither affirm nor deny either of these
"propositions because they present issues which we
"are not called upon to determine, and some of them
"involve questions which are not within the prov-
"ince of any court to decide, involving as they do,
"questions of public policy which Congress must
"determine. It is our duty to ascertain whether
"the proof discloses a combination in direct restraint
"of interstate commerce—that is to say, a combina-
"tion whereby the power has been acquired to sup-
"press competition between two or more competing
"and parallel lines of railroad engaged in interstate
"commerce. If it does disclose such a combina-
"tion, and we have little hesitation in answering
"this question in the affirmative, then the anti-trust
"act, as it has been heretofore interpreted by the
"court of last resort, has been violated and the Gov-
"ernment is entitled to a decree."

It will be observed that the Circuit Court adopted the theory of the learned counsel for the United States, and held that it was not necessary to prove there had been a combination in restraint of interstate commerce; but simply that there had been one "whereby the power has "been acquired to suppress competition." It did not think it necessary, as a prerequisite to a condemnation of the combination, that it should be found to be one in restraint of trade; but determined that a combination, no matter whether it was, or was not, in restraint of trade, which conferred a *power* to restrain it, came within the ban of the Act. In further elaboration of this thought it said:—

"It is pertinent, therefore, to inquire in what "way the existing combination that has been formed "does affect interstate commerce. It affects it, we "think, by giving to a single corporate entity, or "more accurately, to a few men acting in concert "and in its name and under cover of its charter, "the power to control *all the means of transpor-* "*tation* that are owned by two competing and "parallel railroads engaged in interstate commerce."

The present brief is filed on behalf of the Northern Securities Company, which holds property—shares of stock—created under the laws of one of the States, for which it has paid full value, which cannot be returned to the vendors, because they have probably parted with the consideration they received. It acquired its property with no intention to do anything illegal. The crime with which it is charged is, that it continued to purchase shares of the Great Northern, after it had taken from the alleged conspirators the twenty-seven per centum of the stock of that company, over which, alone, they had control. The punishment inflicted is a practical forfeiture of its right to *all* the shares, by denying to it the voting power thereof and all right to the dividends thereon.

Unless there was a conspiracy by Messrs. Hill, Morgan and their friends, to do something violative of the Sherman Act, the only act violative of the same which could have been done, must have been done by the Northern Securities Company.

We have endeavored to show that all the so-called conspirators did, was to arrange for, or to acquiesce in, the formation of a company which would acquire, though they did not bind themselves to sell, after its formation, their own shares, which constituted a majority of the Northern Pacific stock, and about twenty-seven per centum of that of the Great Northern. We have further endeavored to show that they desired and expected, by such formation, to create and extend, not to restrain, trade, their purpose being to insure such creation and extension by protecting the ownership of such shares against raids by those having hostile interests and intents.

Even though they had intended that the company to be formed should acquire a controlling interest in the stock of both railways, they would not, by their action, have violated the Sherman Act, unless a holding by a corporation, of such interest, is in violation thereof. If one corporation may hold a controlling interest in two competing railway companies, it cannot be illegal to form a corporation intended to hold such interest. An agreement to do what is lawful, cannot be construed into a criminal conspiracy.

The theory of the United States was, that certain persons conspired to restrain trade, and that in furtherance of the conspiracy, they formed a corporation to acquire shares which, if thus acquired, would enable it thereafter to violate the Sherman Act by restraining trade. The allegations of the bill, however, that there was an intention to restrain, or in any way injuriously to affect, trade, were not sustained by a *scintilla* of evidence. The burden of proof of such intention was upon those who alleged it, inasmuch as the overt act, the formation of the company and the acquisition of the shares, even of a controlling interest in the shares, of both railways, was not one which, of itself, affected trade. The formation of the company so far as it can be said to affect trade, was for the purpose of its protection, with an intent to enlarge it. If, therefore, the acquisition by the company, when formed, of the shares, was legal, unless resulting from an illegal intent, the theory of the Government, under the testimony, failed. An acquisition of the majority of the shares of competitive railway companies does not, of itself, restrain trade. An agreement to acquire such ownership, therefore, is not, of itself, an agreement in restraint of trade. We may concede that, in consequence of such acquisition, power is vested in the owners to restrain it, without conceding that if the power be not exercised, there will be such restraint. Whatever criminality may attach to the ownership, will attach, not because of the ownership, but because of the subsequent doing of a criminal act. It is within the power of nearly all persons to commit a crime;

but they are punished, not because they may, but when they do, commit it.

Unless the ownership of the majority of shares of two competing railway companies is a contract, combination, in the form of trust or otherwise, or a conspiracy, in restraint of interstate or international trade or commerce, or is a monopolization or attempt at monopolization, or a combination or conspiracy with other persons, to monopolize, some part of such trade and commerce, the Northern Securities Company has done no wrong. In our denial that it has violated the Sherman Act, we will argue seven propositions.

I. THE PURCHASE BY A PERSON OR CORPORATION, OF A MAJORITY OF THE SHARES OF TWO COMPETING RAILWAY COMPANIES, IS NOT "A CONTRACT, COMBINATION IN "THE FORM OF A TRUST OR OTHERWISE, OR CONSPIRACY "IN RESTRAINT OF TRADE OR COMMERCE AMONG THE SEV-"ERAL STATES."

II. THE HOLDING BY A PERSON OR CORPORATION, AS OWNER, OF A MAJORITY OF THE SHARES OF TWO COMPETING RAILWAY COMPANIES, IS NOT "A CONTRACT, "COMBINATION IN THE FORM OF A TRUST OR OTHERWISE, "OR CONSPIRACY IN RESTRAINT OF TRADE OR COMMERCE "AMONG THE SEVERAL STATES."

III. A CORPORATION, THOUGH INCORPORATED FOR THE PURPOSE OF HOLDING, AND ACTUALLY HOLDING, A MAJORITY OF THE SHARES OF TWO COMPETING RAILWAY COMPANIES, IS NOT "A COMBINATION OR CONSPIRACY IN "RESTRAINT OF TRADE OR COMMERCE AMONG THE SEV-"ERAL STATES."

IV. A PERSON OR CORPORATION, BY PURCHASING A MAJORITY OF THE SHARES OF TWO COMPETING RAILWAY CORPORATIONS, DOES NOT MONOPOLIZE OR ATTEMPT TO MONOPOLIZE "ANY PART OF THE TRADE OR COMMERCE "AMONG THE SEVERAL STATES."

V. A PERSON OR CORPORATION BY HOLDING, AS OWNER, A MAJORITY OF THE SHARES OF TWO COMPETING RAILWAY COMPANIES, DOES NOT MONOPOLIZE, OR ATTEMPT TO MONOPOLIZE, "ANY PART OF THE TRADE OR COMMERCE "AMONG THE SEVERAL STATES."

VI. THE POWER OF CONGRESS TO REGULATE COMMERCE, DOES NOT CONFER UPON IT A RIGHT TO PRESCRIBE THE PERSONS WHO MAY ENGAGE THEREIN, OR TO CONTROL THE OWNERSHIP OF SHARES OF STOCKS OF CORPORATIONS WHO ENGAGE THEREIN.

VII. THE RELIEF DECREED, WAS IMPROPER, UNDER ANY ASPECT OF THE CASE.

I. The purchase by a person or corporation, of a majority of the shares of two competing railway companies, is not "a contract, combination in the "form of a trust or otherwise, or conspiracy, in re-"straint of trade or commerce among the several "States."

The Sherman Act, by its first section, prohibits and punishes three things, (1) a contract in restraint of trade; (2) a combination in the form of trust or otherwise in restraint of trade; and (3) a conspiracy in restraint of trade.

It will hardly be contended that the purchase by a person or corporation, of a controlling interest in shares, is "a contract in restraint of trade or commerce," even though the vendor intends to vest in the vendee such controlling interest, and the vendee intends to acquire the same. In the present case, as we have endeavored to show, there was no such intent on the part of the vendor, and there was, therefore, no mutuality of intention to vest a controlling interest.

A purchase, such as we have stated, is a contract in no way connected with trade or commerce. Neither the vendor nor the vendee is engaged therein. The transfer of shares does not enable the vendee to do so. The pro-

hibition of the Act is not against a contract of purchase and sale of shares; but against one in restraint of trade and commerce. The contract prohibited must be one which itself, as in the case of the Trans-Missouri and Addyston contracts, restrains trade and commerce. In the former case, there was a contract, by different corporations engaged in transportation, not to carry, except at mutually agreed upon rates, and not to do other things in the way of transportation, excepting in accordance with mutual arrangement. Each Company restricted itself in the exercise of its duty to carry. The contract condemned by this court was not one which depended for its illegality, upon something thereafter to be done. The criminality resulted from the agreement itself. In the Addyston case, the contract condemned, was one by which the parties thereto agreed to restrict their interstate trade.

The Sherman Act prohibits, not a contract *tending* to restrain trade, but one in restraint thereof, *i. e.*, one by which trade is restrained.

In the present case, the United States claims, as a result of the contract of purchase of a controlling interest in the shares of two competing railway companies, that there will be a tendency, on the part of the owner, thereafter, toward such action as will bring about a restraint of trade. The contract, itself, however, so far as it involves the purchase and sale of shares, is not one in restraint of trade. There is no agreement to do anything which restrains it.

The contract is made with no reference to trade or commerce, or the restraint thereof. The vendor desires to sell what the vendee desires to purchase. With the consummation of the sale, the contract is at an end. If the object of the vendee, in purchasing the shares, is the acquisition of a power to restrain competition, it is not accomplished by any contract "in restraint of trade." In the present case, as we have endeavored to show, the purchase was with an entirely different object.

We submit, therefore, that in purchasing the shares, the Northern Securities Company entered into no "con-"tract in restraint of trade."

Such purchase can, with even less propriety, be spoken of as "a combination in the form of trust or otherwise in "restraint of trade."

The sale by the former owners of the shares was not a "combination." Even if it be contended that they combined to sell, which contention cannot be made as to a controlling interest in the Great Northern shares, such combination was not one in restraint of trade; but was simply for a purpose not illegal, viz., to sell. A vendor and a vendee who agree upon a sale and purchase of shares may, in one sense, be said to combine for the purpose; but the purpose for which they combine is to make a transaction which ends with the delivery of, and payment for, the shares, and involves in it nothing in the way of restraint of trade or commerce.

The purchase by the corporation of such shares cannot be held to be "a conspiracy in restraint of trade." It is not a "conspiracy" in any sense, much less one to restrain trade. If the transaction of purchase and sale of such controlling interest in such shares can possibly be spoken of as "a conspiracy," it can be said to be nothing more than "a conspiracy" to do an act which certainly is not illegal unless there be something more in it than a transfer of title. In the present case, whatever "con-"spiracy" there was, consisted in one by persons, not owning the controlling interest in both companies, to sell. There was nothing which, under any aspect of the case, can be spoken of as "a conspiracy," on the part of the owners of Great Northern shares, who, after the sale by the so-called conspirators, transferred their shares, over which the conspirators never had control, to the Northern Securities Company. These owners meant to do nothing more than to sell, for a price accepted by them as an equivalent.

There can be no difference in the effect upon trade and commerce, of an acquisition of such controlling interest in shares by a person, or by a corporation, by a corporation already in existence, or by one specially brought into existence for the purpose of buying. If it is a misdemeanor, by such acquisition, to obtain the power to sup-

press competition, the competition will be equally suppressed whether the holding be by a single person, or by a partnership, or by a trustee, or by a corporation theretofore engaged in business, or by a corporation coming into existence thereafter. It is to the last degree improbable, therefore, that the acquisition of ownership was within the meaning of Congress when it enacted the first section of the Act. It is made a misdemeanor punishable in the way provided, in the case of "every *person* who shall make "any such contract or engage in any such combination or "conspiracy."

If a *person* purchases a controlling interest in shares of competitive railway companies he cannot, by the wildest stretch of imagination, be spoken of, in making such purchase, as one who contracts, combines or conspires "in re- "straint of trade or commerce." In the case of a single person, making the acquisition, there is no combination to purchase. In like manner, when a corporation purchases, there is no such combination. If the real theory of a corporation be disregarded, and if it be treated as an association of persons who, being combined as an association, actually make the purchase, yet there is no combination amongst them to do anything more than to make a contract to acquire title. In the act of purchase, neither a corporation, nor a person, can be spoken of as a "combina- "tion in the form of trust or otherwise, in restraint of "trade."

A single person, in acquiring the title, makes no contract with any one except the vendor, and of course cannot, in making the acquisition, be a conspirator.

By the eighth section, it is provided that the word "person" or "persons," wherever used in the Act, shall be deemed to include "corporations and associations." Whatever, therefore, may be done under this section by a person, may also be done by a corporation.

Whilst conceding the contention of the United States, that if the thing done is prohibited as a misdemeanor by the Act, goodness of motive cannot condone, we contend that where what is done is simply a purchase of shares of

stock, an act not of itself a restraint of trade, if it be sought to vitiate the transaction because done with an intent thereby to restrain trade, the burden of proof is upon those making such effort. Wherever this court has dealt with the subject, it has said with emphasis, that the restraint of trade which is illegal, whether made by "con-"tract, combination or conspiracy," is one which directly restrains trade, not one which does so indirectly, or may bring about a state of affairs under which a restriction of trade may result.

In the Sugar Refining case, it was conceded by this court, as a result of the acts complained of by the Government, that the volume of interstate trade and commerce might be diminished; but inasmuch as what was actually done did not directly restrain trade, it was held the Act had no application.

The meaning of the words, "contracts in restraint of "trade," was thoroughly understood in jurisprudence, and in business, when the Sherman Act was passed. A contract of purchase of shares of stock of trading or transportation companies, whether by a single individual or by a combination, had never been held by any court, or supposed by any person, to be "a contract or combina-"tion in restraint of trade." It was not the intention of Congress, as this court has said, to create any new offense. Whilst in the Trans-Missouri case, this court held that the Act punished all contracts "in restraint of trade," whether reasonable, or unreasonable, it manifested no intention to enlarge the meaning of the words. At common law, and it was the common law "in restraint of "trade," which was within the contemplation of Congress, an ownership of all the property, or of all the shares, of a transportation company, or of competing transportation companies, was never alluded to as "a contract in restraint "of trade."

As was said by Mr. Justice Peckham in United States *vs.* Freight Association, 166 U. S., 328:—

> "Contracts in restraint of trade have been known "and spoken of for hundreds of years both in

"England and in this country, and the term includes "all kinds of those contracts which in fact restrain "or may restrain trade."

A purchase of shares of stock, or of other personal property, even with an ulterior purpose, much less a purchase without ulterior purpose, has never been alluded to by jurists, as a restraint of trade.

If there was an illegal conspiracy, as the result of which the company acquired the shares, then the conspirators must be punished; but the corporation which bought and paid therefor, in which persons are interested as shareholders, who took no part in the conspiracy, cannot be deprived of its title.

It is argued by the United States that the purchase of the shares was with a motive to destroy competition, and that by reason of the purchase a power thus to destroy was acquired.

The motive as established by the testimony was not one to destroy competition. The acquisition of power, however, is not punished by the Act. The actual contracting, or combining, to do something which restrains trade and commerce, alone was prohibited.

II. The holding by a person or corporation, as owner, of a majority of the shares of two competing railway companies, is not "a contract, combi- "nation in the form of a trust or otherwise, or con- "spiracy, in restraint of trade or commerce among "the several States."

If the purchase by a corporation, of the controlling interest in the shares of two competitive railway companies is not a contract, combination or conspiracy in restraint of trade, the holding of such shares cannot be decided to be such contract, combination or conspiracy. Concerning the holding by a person, of such controlling interest, it cannot be said that it is a contract, combination or conspiracy. A person may build two parallel lines which would be competitive if owned by different persons; or he may acquire

the ownership of the shares of competitive lines. Is his holding under such, or under any, circumstances, a contract, or a combination, or a conspiracy? In holding, he contracts with nobody; combines with nobody; conspires with nobody. As we have endeavored to show, persons and corporations are dealt alike with by the Act. Such is the express direction of its eighth section.

In arriving, therefore, at the meaning of Congress, we must deal with the subject in such way as to arrive at one which will be equally applicable in the case of a single person or of a corporation, there being no discrimination by the Act as to what may be done by either, and there being no difference in the result, whether the acquisition be by one or by the other.

If it be the holding of the controlling interest in the shares of two competing railway companies, which is prohibited by the first section, then an ownership acquired antecedently to the passage of the Act is prohibited equally with one acquired subsequently, inasmuch as the Section does not deal with something done after the passage of the Act, but with all contracts, combinations or conspiracies in restraint of trade no matter when formed. The continuing to hold, after the passage of the Act, by a corporation which acquired its shares prior thereto, if the holding be a contract, combination, or conspiracy, violates the Act equally, and is equally within its words, with a holding by a corporation of shares acquired by it thereafter. The imagination, however, can hardly conceive of an intent by Congress such as would make criminal a continued exercise by a corporation of its right over property originally acquired in accordance with law.

III. A corporation, though incorporated for the purpose of holding, and actually holding, a majority of the shares of two competing railway companies, is not "a combination or conspiracy in re- "straint of trade or commerce among the several "States."

We have endeavored to show that there is no prohibition of a holding by a person, of the majority of the shares of

stock of competing railway companies. If this be so, how can the association together under any form, by persons who mean to do through the association nothing more than can be done by an individual, be treated as a misdemeanor? If the holding of such majority of shares is illegal, the association for the purpose of holding will also be illegal. The converse of the proposition is equally true. There may be an association of persons for the purpose of restraining trade; but the formation of a corporation to hold shares, if a holding in one control is not illegal, cannot be held as such.

The utmost which can be claimed by the Government is, that the Northern Securities is an association of individuals, jointly interested in its corporate property, having for their purpose the destruction of all motive for continued competition amongst the railroad companies.

We have endeavored to show that neither the destruction of competition, nor the restraint of trade, was contemplated by the persons who were instrumental in bringing about the incorporation. It cannot, therefore, be said, with truth, that the purpose of the association was to do something different from what is established by the uncontradicted testimony.

We have sought to present, as clearly as possible, the fact that the restraint of trade which is forbidden, is a direct one, not an indirect resultant of a contract, or combination, for some other purpose.

The necessary result of the acquisition of the majority of the shares, was the right to cast a majority vote at meetings of stockholders. This was the direct purpose of the agreement to incorporate and of the incorporation itself. If, as the result of this, the desire to compete was lessened, such lessening of desire was not a restraint of trade. The person who owns a property is not obliged to enter into competition with others. His declination so to do cannot be held an offense against any law. It did not follow, inevitably, that there would be any less desire by the two railway companies to compete after

the majority of their shares had been acquired by the corporation. They might find it important to reduce rates, to give increased facilities, and to do everything which would be suggested by the most ardent desire to compete, in order to acquire for each respectively, a great interstate and international transportation, in the conduct of which they were in competition with, say, the Canadian Pacific and the Union Pacific Railroad Companies. They might desire to protect an alliance which, with greater economy, would enable commerce to be done cheaper and better.

If the incorporation and acquisition of shares by the corporation did not necessarily restrain trade, because it did not directly deal therewith, could such incorporation and acquisition be held illegal because one of the ordinary results of the acquisition of property—a right to vote—would affect, in consequence of which trade might be enlarged, or might be diminished. An intent to restrain trade could not be deduced from an association or incorporation which, because of something thereafter occurring, might, indirectly, affect trade injuriously or beneficially.

In the Sugar Refining case, the result of the ownership, of the shares of practically all the manufactories which refined sugar, an article of commerce usually transported on a large scale, might well have been to diminish the desire to compete, to raise prices, and, as a consequence, to diminish the demand and amount of interstate trade and commerce in sugar. This court, however, held that it was only with the restraint of interstate trade and commerce that the Sherman Act dealt; and that it inflicted no penalty for the doing of any act not directly restraining such trade and commerce, whatever might be the indirect effect.

If the legality or illegality of an act depends, either upon its being done with or without an intent to restrain trade, or upon a subsequent restraining of trade because of a desire engendered by such act, a misdemeanor will not be committed in absence of proof of the existence of the intent, or of the subsequent wrongful act.

A "restraint of trade" may result from an agreement to restrain, or from an actual restraint. In the case of the Northern Securities Company there was neither agreement to restrain, intent to restrain, nor actual restraint.

Two persons, or corporations, owning competing properties, engaged in interstate trade or commerce, will not be permitted to agree not to compete inasmuch as such agreement is a contract in restraint of trade; but, if the managers of each find it not advisable to compete because of self interest, and, because of such self interest, do not compete, they are not within the prohibition of the Sherman Act.

If therefore the properties of both be acquired by a third corporation, there can be no illegality in such acquisition because, thereafter, self interest, not coupled with any agrement, may bring about non-competition.

In the Addyston case, if one person, or corporation, had purchased all the properties belonging to the different parties to the illegal agreement, such purchase would not have been illegal; nor would the subsequent management of the business under one ownership have been a violation of the Act.

We have endeavored to show that there is no prohibition, by the first section, of the acquisition of the controlling interests in shares of companies engaged in competition. In case of such acquisition by one person, or by a partnership, a desire to compete would disappear as completely as in the case of a similar acquisition by a corporation. Take the case of several persons or corporations engaged in interstate trade, in articles manufactured by themselves. An agreement regulating prices and agreeing not to compete in such manufacture and sale, would be, as was settled by the Addyston case, illegal. An acquisition of all the properties would not be illegal. In case of an original construction of every manufactory by one person, his ownership of them would not be held illegal. If they could be built, why could they not be bought, by a single person? There is no prohibition of ownership on a large, not even on the most immense, scale.

It may be said, and it has been said, that a corporation might be formed, if the argument of the appellants is sound, large enough to include a holding of a controlling interest in all the shares, of all the competing railway companies of the country. The statement of this possibility is supposed to carry with it a demonstration of the unsoundness of the position assumed by the appellants.

In the Pearsall case, 161 U. S., 646, this court, speaking through Mr. Justice Brown, said:—

> "Doubtless these stockholders could lawfully acquire by individual purchases a majority, or even the whole of the stock of the re-organized company, and thus possibly obtain its ultimate control; but the companies would still remain separate corporations with no interest, as such, in common. This, though possibly, would not be altogether feasible, and would require considerable time for its accomplishment."

It was not thought by this court that the indirect control of corporations, which would result from the ownership of a majority of shares, was illegal. If not illegal in the case of an individual, it cannot be such in the case of several individuals acting together; nor in the case of a corporation.

With the States which bring the corporations into existence, must rest the remedy, by restricting the acquisition by one owner, of competing railways, or by one or more owners, of a majority of the shares of competing railways. If the United States should incorporate companies to build interstate railways, it would be competent for it to restrict their magnitude, or their right of acquisition. It has no such power, however, over corporations not by it created.

This court, through Mr. Justice Peckham, in United States *vs.* Joint Traffic Association, 171 U. S., 567, speaking of the application of the Sherman Act, said that it did not apply to the "formation of a corporation "to carry on any particular line of business by those

"already engaged therein; a contract of partnership or "of employment between two persons previously engaged "in the same line of business." He added:—

> "The formation of corporations for business or "manufacturing purposes has never, to our knowl- "edge, been regarded in the nature of a contract in "restraint of trade or commerce. The same may "be said of the contract of partnership."

If a corporation has a power, conferred upon it by the State which incorporates it, to acquire competitive properties, or the shares of competing companies, such acquisition is prohibited by nothing in the Sherman Act. The formation of a corporation for such purpose, is not within its prohibitions.

In what we have been saying under this head, we have dealt with the corporation as though it were an association, or combination, of individuals. Such, however, is not the true theory of corporate existence. The corporation is a legal entity. The property which it owns belongs not to the individuals, but to the corporation itself. The management is not by the individuals, but by the corporation, which acts, in most cases, through a board of directors.

IV. A person or corporation, by purchasing a majority of the shares of two competing railway companies, does not monopolize, or attempt to monopolize, "any part of the trade or commerce "among the several States."

In seeking for the true meaning of the second section of the Sherman Act, it is more easy to determine what is not a monopolization, or attempt at monopolization, than to determine what is such.

What is a monopoly, or a combination, or a conspiracy, to monopolize, can, to a certain extent, be ascertained by reference to text books and to decisions. Few jurists,

however, have ever attempted to define, with accuracy, the meaning. The idea of monopoly, however, involves something more than a mere acquisition of the whole, or of the major part, of a commodity, or of shares of stock. It involves the idea of exclusion of other supply, as well as of an inclusion of what is actually acquired.

To-day the whole, or the major part, of the whole, of a certain commodity may be acquired; but, in a day or two, there may be an unlimited addition to the supply. The acquisition of the existing supply, under such circumstances, could hardly be spoken of as a monopoly. If one company acquires all the existing railroads, but it is open to others to build additional ones, the acquisition does not amount to a monopoly. The party who monopolizes must acquire the present supply and contract for, or in some other way secure, by restraint, exclusion or otherwise, a limitation upon the future.

At any particular period of time there may be but two persons, or corporations, engaged in carriage by water between two different ports. The acquisition by one, of the ships and property of the other, will give no monopoly of such transportation because, to an indefinite extent, other ships may be put into the same trade.

At no time has the acquisition of all, of any particular commodity, been spoken of as a monopoly, even if such article be one consumed, as food. "Engrossing" is the name given by the text writers to such an acquisition. In the Senate of the United States, whose Judiciary Committee redrew and reported, the Act which was finally passed, Senators Hoar and Edmunds, speaking on behalf of that committee, explained its meaning.

Senator Kenna, having asked whether the word "monopolize" would apply to the case of one who, by skill and energy, had practically secured the whole trade in shorthorn cattle in this country, Senator Edmunds said:—

> "It is not intended by the committee, and the "bill does not do it. Anybody who knows the "meaning of the word 'monopoly' as the courts "apply it, would not apply it to such person at all, "and I am sure my friend must understand that."

The inquiry was followed up by Senator Hoar, who stated that the same question had been put by him in the committee. He said:—

> "But I was answered, and I think all the other "members of the committee agreed in the answer, "that 'monopoly' is a technical term known in the "common law. * * * I became satisfied that "they were right, and that the word 'monopoly' "has a clear and legal signification."

Senator Kenna then asked whether a "monopoly" as defined by Senator Hoar, was prohibited at common law, and having been answered by Senator Hoar that it was, put this question: "Then why should this bill proceed to "denounce this very monopoly?" Senator Hoar replied: "Because there is no common law of the United States."

In the course of the same debate, the same Senator said:—

> "We have affirmed the old doctrine of the com- "mon law in regard to all interstate and interna- "tional commercial transactions, and have clothed "the United States courts with authority to enforce "that doctrine by injunction. We have put in also "a grave penalty."

Senator Edmunds further said:—

> "We * * * thought that if we were really "in earnest in wishing to strike at these evils broadly "in the first instance as a new line of legislation, we "would frame a bill that should be clearly within "our constitutional power; that we should make its "definition out of terms that were well known to the "law already, and would leave it to the courts in the "first instance to say how far they could carry it "from its definitions as applicable to each particular "case as it might arise."

In speaking of the bill as it stood before it had been redrawn by the Judiciary Committee, Senator Sherman said:—

"It does not announce a new principle of law, but "applies old and well-recognized principles of the "common law to the complicated jurisdiction of "our State and Federal Government. Similar con- "tracts in any State in the Union are now by com- "mon or statute law null and void."

He further said:—

"It is said that this bill will interfere with lawful "trade and with the customary business of life. I "deny it. It aims only at unlawful combination."

And again:—

"It does not interfere with any lawful business "in the United States, whether conducted by a cor- "poration or a partnership or an individual; it deals "only with unlawful combinations, unlawful by the "code of any civilized nation of ancient or modern "times."

The acquisition of the whole or of any part, of any article of merchandise, or of shares of stock, in itself, is not a monopoly. Were it otherwise, all competition for trade and commerce would be illegal, because the underlying motive is a determination, by a presentation of temptations to buyers, or shippers, to monopolize the whole, or a part, of the same. Each competitor seeks to acquire for himself, the business which is being done by his rivals. If the definition of a monopoly, insisted upon by the United States, is correct, his success will make him punishable for a misdemeanor. Each railroad or transportation company, engaged in a competitive business, seeks, by offering superior facilities, by lower rates, and the like, to obtain for itself the whole of the commerce. By means of new discoveries and inventions applied to transportation or manufacturing, their possessor secures, if the United States is correct in its interpretation of the Act, what is a monopoly, and is prohibited. A monopoly, as understood by the Government, does not require the

elimination of competition. It exists wherever the whole, or any considerable part, of the trade or commerce, is done by one person or corporation. If all transportation in one locality is done by one railroad company, it possesses a monopoly. If all the shares of its stock are owned by one person, he monopolizes such shares. An acquisition of the majority of the shares of two competitive companies effects a monopoly to no greater extent than does the acquisition of the majority of the shares of one company which possesses all the means of transportation between certain points.

One of the best, if not the best, of the definitions of monopoly, is that given by the late Justice Jackson, *In re* Green, 52 Fed. Rep., 104. He said:—

> "It is not very clear what Congress meant by the "second section of the Act of July 2, 1890, in declaring "it a misdemeanor to monopolize, or 'attempt to mo-"'nopolize,' any part of the trade or commerce among "the States or with foreign nations. It is very certain "that Congress could not, and did not, by this enact-"ment, attempt to prescribe limits to the acquisition, "either by the private citizen or State corporation, "of property which might become the subject of in-"terstate commerce, or declare that, when the ac-"cumulation or control of property by legitimate "means and lawful methods reached such magnitude "or proportions as enabled the owner or owners to "control the traffic therein, or any part thereof, "among the States, a criminal offense was commit-"ted by such owner or owners. All persons, in-"dividually or in corporate organizations, carry-"ing on business avocations and enterprises involv-"ing the purchase, sale, or exchange of articles, or "the production and manufacture of commodities, "which form the subjects of commerce, will, in a "popular sense, monopolize both State and inter-"state traffic in such articles or commodities just in "proportion as the owner's business is increased, "enlarged, and developed. But the magnitude of a "party's business, production, or manufacture, with "the incidental and indirect powers thereby ac-

"quired, and with the purpose of regulating prices "and controlling interstate traffic in the articles or "commodities forming the subject of such business, "production, or manufacture, is not the monopoly, or "attempt to monopolize, which the statute condemns. "A 'monopoly', in the prohibited sense, involves the "element of an exclusive privilege or grant which "restrained others from the exercise of a right or lib-"erty which they had before the monopoly was se-"cured. In commercial law, it is the abuse of free "commerce, by which one or more individuals have "procured the advantage of selling alone or exclu-"sively all of a particular kind of merchandise "or commodity to the detriment of the public. "* * * It will be noticed that, in all the fore-"going definitions of 'monopoly,' there is embraced "two leading elements, viz., an exclusive right or "privilege, on the one side, and a restriction or re-"straint on the other, which will operate to prevent "the exercise of a right or liberty open to the public "before the monopoly was secured. This being, "as we think, the general meaning of the term, as "employed in the second section of the statute, an "'attempt to monopolize' any part of the trade or "commerce among the States must be an attempt "to secure or require an exclusive right in such trade "or commerce by means which prevent or restrain "others from engaging therein. It was certainly "not a 'monopoly,' in the legal sense of the term, "for the accused or the Distilling and Cattle Feeding "Company to own seventy distilleries, and the pro-"ducts thereof, whether such products amounted "to the whole or a large part of what was produced "in the country. Their ownership and control of "such products, as subjects of trade and commerce, "is not what the statute condemns, but the mo-"nopoly or attempt to monopolize the interstate "trade or commerce therein. In this acquisition "and operation of the seventy distilleries, which "enabled the accused or said Distilling and Cattle "Feeding Company to manufacture and control "the sale of seventy-five per cent. of the distillery "products of the country, it does not appear, nor

"is it alleged, that the persons from whom said dis-
"tilleries were acquired were placed under any re-
"straint, by contract or otherwise, which prevented
"them from continuing or re-engaging in such bus-
"iness. All other persons who chose to engage
"therein were at liberty to do so. The effort to
"control the production and manufacture of distil-
"lery products, by the enlargement and extension
"of business, was not an attempt to monopolize trade
"and commerce in such products within the mean-
"ing of the statute, and may therefore be left out
"of further consideration."

In Charles River Bridge *vs.* Warren Bridge, 11 Peters, 606, Mr. Justice Story, in his dissenting opinion, says:—

"There is great virtue in particular phrases; and
"when it is once suggested that a grant is of the
"nature or tendency of a monopoly, the mind almost
"instantaneously prepares itself to reject every
"construction which does not pare it down to the
"narrowest limits. It is an honest prejudice, which
"grew up in former times from the gross abuses of
"the royal prerogatives; to which, in America, there
"are no analogous authorities. But, what is a mo-
"nopoly, as understood in law? It is an exclusive
"right granted to a few, of something which was
"before of common right. Thus, a privilege granted
"by the king for the sole buying, selling, making,
"working, or using a thing, whereby the subject,
"in general, is restrained from that liberty of manu-
"facturing or trading, which before he had, is a
"monopoly; 4 Black. Comm., 159; Bac. Abridg.
"Prerogative, F. 4.

"My lord Coke, in his Pleas of the Crown; 3 Inst.,
"181; has given this very definition of a monopoly;
"and that definition was approved by Holt and
"Treby, (afterwards chief justices) of king's bench,
"*arguendo*, as counsel, in the great case of the East
"India Company *vs.* Sandys; 10 Howell, State
"Trials, 386. His words are, that a monopoly is
"'an institution by the king, by his grant, com-
"'mission, or otherwise, to any persons or corpora-

"'tions, of or for the sole buying, selling, making, "'working or using of everything, whereby any "'persons or corporations are sought to be re- "'strained of any freedom or liberty they had "'before, or hindered in their lawful trade.' So, "that it is not the case of a monopoly, if the sub- "jects had not the common right or liberty before "to do the act, or possess and enjoy the privilege or "franchise granted, as a common right; 10 Howell, "State Trials, 425. And it deserves an especial "remark, that this doctrine was an admitted con- "cession, pervading the entire arguments of the "counsel who opposed, as well as of those who "maintained the grant of the exclusive trade in the "case of the East India Company *vs.* Sandys, (10 "How. St. Tr. 386,) a case which constitutes, in a "great measure, the basis of this branch of the law."

In 20 American & English Encyclopedia of Law, 846, it is said:—

"A monopoly, in its strict sense, is an exclusive "right, granted by the State to a few, of something "which was before of common right. The term as "now understood is not confirmed to the above "limits, but embraces any combination the tendency "of which is to prevent competition in its broad and "general sense and to control prices to the detri- "ment of the public."

The monopoply consists, not so much in getting possession of the whole thing, but in destroying the right or ability of others to produce the same thing. Even though there be two competitive railroads, the acquisition by one owner, of both railroads, does not destroy competition. It is open to the United States to charter another corporation, and it is open to other individuals and to other corporations, to build additional railroads.

In Bouvier's Dictionary (Rawle's Edition, vol. II., page 435), monopoly is thus defined:—

"An institution or allowance by a grant from the "sovereign power of a State, by commission, letters

"patent, or otherwise, to any person or corporation, "by which the exclusive right of buying, selling, mak- "ing, working, or using anything is given. Bacon Abr. "Co.; 3rd Inst. 181. Whereby any person or persons, "bodies politic or corporate, are sought to be re- "strained of any freedom or liberty they had before, "or hindered in their lawful trade; 111 U. S., 754; "11 So. Rep. (La.) 239; 53 Fed. Rep. 452. Mo- "nopolies were, by stat. 21 Jac. I., c. 3, declared "illegal and void, subject to certain specified ex- "ceptions, such as patents in favor of the authors "of new inventions; 4 Bla. Com. 159; 2 Steph. "Com. 25. See *passim* For. Cas. and Op. 421; "Curtis, Robinson, Merwin, Walker; Patents."

Blackstone's Commentaries, Book IV., 159, thus defines monopoly:—

"Monopolies are much the same offence in other "branches of trade that engrossing is in provisions: "being a license or privilege allowed by the king for "the sole buying and selling, making, working, or "using of anything whatsoever; whereby the sub- "ject in general is restrained from that liberty of "manufacturing or trading which he had before."

In the Century Dictionary, monopoly is thus defined:—

"Specifically, in Eng. constitutional hist., and "hence sometimes in Amer. law, such an exclusive "privilege when granted by the crown or state to an "individual, association, or corporation, for the sake "of the pecuniary advantage of its exclusiveness. A "privilege not granted by the state, but secured by "buying up the article, is termed by the English "law *engrossing*. The legal objection to a monopoly, "in this sense of the word, is that it can be secured "only by forbidding all other citizens except the "favored grantee to exercise a common-law right. "Exclusive privileges granted by the state to a "limited number of persons for the sake of en- "abling the state the better to regulate the traffic "for the protection of the rest of the community,

"as in case of banking franchises, liquor traffic, etc., "are not deemed monopolies, although the same "privileges would be, if conferred on a single or a "very few grantees, for the sake of the pecuniary "benefit to them, so the exclusive privileges con- "ferred on inventors and authors, by the patent "and copyright laws, for the sake of the encourage- "ment of the arts and literature, and extending "only to articles originally devised under that en- "couragement, are not deemed monopolies. Both "these classes of grants have, however, been con- "demned by some as partaking of the character "of monopolies.

"In polit. econ., and as used in a general sense in "law, such an exclusive privilege to carry on a "traffic, or deal in or control a given class of articles, "as will enable the holder to raise prices materially, "above what they would be if the traffic or dealing "were free to citizens generally. In this sense, "that exclusive control of a particular kind of "product which results from the legitimate owner- "ship of the only land from which it can be obtained, "as in the case of some mineral waters, or earths, or "ores, is sometimes spoken of as a *natural monopoly*, "in contrast to the *artificial monopolies* created by "state grant.

"*Virtual monopoly*, a term in constitutional law "and the history of legislation (the appropriate "applications of which have been much contested) "used to characterize a business which, though not "declared by law to be a monopoly or exclusive fran- "chise protected as such, as by a patent or an ex- "clusive charter, is yet so related to the great "channels and currents of commerce that the allow- "ing of it to enjoy the same protection as other "private property and business secures to it in- "directly exclusive advantages substantially equiva- "lent to a legal monopoly. Thus the great grain- "elevators of modern commerce, although erected "as private property on private lands, if by their "situation they have exclusive advantages for the "transfer of grain from vessels at the wharf to the "railroad terminus of a trunk-line, are said to con-

"stitute a *virtual monopoly*, because, if not sub-
"jected to a legislative power to restrict their
"charges such as other property and business are
"not subjected to, they might be conducted in a
"manner *oppressive* to commerce."

Even if we should concede that a purchase of the majority of the shares of stock of two competing railway companies is a monopoly of those shares, such purchase does not amount to a monopoly of the trade or commerce conducted by the companies themselves, inasmuch as it does not affect the autonomy of either company. Even if the purchase may lessen, or perchance destroy, the motive to compete, it does not in any way monopolize the trade or commerce itself. This continues to be conducted, as before, by the companies themselves, through their respective organizations. As was said by this court, speaking through Mr. Justice Brown, in the Pearsall case:—

"The companies would still remain separate cor-
"porations with no interests, as such, in common."

It seems almost absurd to speak of an acquisition of the bulk of the shares of one competing railroad company, and of three-fourths of the shares of another competing railroad company, as a monopolization of their trade or commerce. Even if an ownership of the properties of the two railroad companies by one corporation could be spoken of as such monopolization, it would be impossible so to speak of such ownership of shares, where a minority of shareholders retain a right to demand, not only that the corporation shall transact its own business, but that it shall transact it in accordance with its corporate duties, and in recognition of the rights of all the shareholders.

It may be conceded that a common owner of a majority of the shares of competing companies will have no prepossession in favor of ruinous competition and will be likely to elect, as directors, persons who, to such extent

as will be legal and proper, will have no prejudice in favor of ruinous competition. The power of such common owner, however, ends with the election of the directors. Such election is not made a misdemeanor. The management of the company will be controlled by the directors thus elected, who will be bound to perform their duty to the public and to the corporation itself—to the minority, as well as to the majority, shareholders.

The directors may, and probably will, find, in the case of each corporation, that its interests will best be furthered by low rates, by improved facilities and by the doing of whatever will be calculated to extend its business.

In the case of the Northern Pacific, and of the Great Northern, the laws of the States by which, respectively, they were created, require that the board of directors of each, shall be composed of persons not acting as directors of any competing company. Not only is the organization preserved, but each company must act independently, through employees, chosen by the directors, properly to conduct the business of transportation, and who, presumably, will thus conduct the same.

The law imposes duties upon every railroad company and upon its managers which, if properly performed, will render impossible any restraint of trade or monopolization thereof.

The necessary result of the election by the same person or corporation, of two different boards of directors for the two companies, will not be any restraint of trade. If such restraint shall result from the subsequent action of the boards, the Sherman Act will be violated, and those who engage therein will be punished. It will be impossible to do anything in restraint of trade, by way of monopolization, without some concert of action between the different boards. Such concert of action, if it exists, will be a fact which can be proven.

The board of directors, chosen by the same electorate, will possess the power to do illegal acts; but they would possess a similar power if chosen by different electorates.

The law does not punish as criminal the possession of power, but the illegal use thereof. The possession of a razor, and with it the power to kill, would be insufficient to support an indictment for murder.

The railway corporations whose shares are held by the Northern Securities Company, are not, and, under the laws of Minnesota and of Wisconsin, cannot, be managed by the stockholders. It is not likely that the persons chosen to fill such important positions, nor that those selected to fill the executive offices, will be other than men of ability and of high character. Why shall it be presumed, as against them, that they will violate the law?

In many of our States the judges, and in all of them the Chief Executives, are elected by the people, by reason of nominations by one, or other, of the great parties. There is no presumption, because elected by a party, with whom naturally they will be in sympathy, that they will not decide, or administer, the laws, in accordance with their obligation. The judge always, and the Chief Executive usually, forgets, after his election, the origin of his power, and recognizes his duty to the whole community.

We concede that a "monopoly," as now understood, involves something more than what was understood by Lord Coke; but in modern, as well as in ancient, times, the underlying idea, as we have endeavored to show, contains the element of a restraint—of *exclusion*. This is no longer, ordinarily, the result of a Government grant; but of contracts between parties having the power to exclude others from carrying on a trade or manufacture, which they exercise.

The purchase by one person, of the property of his rival, with the intention thereby to destroy his competition, is not illegal, although by the purchase he will acquire the power to prevent the same. Such was the decision of this court in Oregon Coal Company *vs.* Winsor, 20 Wall., 64.

Non-competition is not punished by the Sherman Act. An agreement not to compete is by it punished, because it is a contract to restrain trade.

The State has the sole power, in the first instance, unless the United States shall construct its own highways, to determine what highways, turnpike, railroad and others, shall be constructed. It may find it essential to its development, that a railroad shall be constructed between certain points and may find it unable to secure such construction, saving by a grant of an exclusive privilege. If, under such grant, a railroad is constructed by a company formed for that purpose, which, thereafter, becomes part of a system of connecting railroads over which interstate commerce is transported, will those owning or controlling the railroad, or its shares, be indictable under the second section?

It is the monopolization of the *trade or commerce* which is prohibited. The purchase of the shares does nothing more than confer a power to elect the managers of the corporation. Thereafter, as before, each corporation must conduct its own trade or commerce. Neither can monopolize the trade of the other. The owner of the shares cannot monopolize it because he can, in no way, conduct it.

How, in view of the fact that it is universally considered by nearly all jurists and text-book writers, that the joinder in one ownership, of competing manufactories, does not monopolize trade, can it be successfully argued that such acquisition of ownership of the shares of competing railways, or even of the properties themselves, can be held to be a monopoly?

In the Joint Traffic Association case, 171 U. S., 505, Mr. Justice Peckham said (page 567):—

> "We are not aware that it has ever been claimed "that a lease or purchase by a farmer, manufacturer "or merchant of an additional farm, manufactory "or shop, or the withdrawal from business of any "farmer, merchant or manufacturer, restrained com- "merce or trade within any legal definition of that "term."

At the time of the formation of the Northern Securities Company, the Great Northern and the Northern Pacific,

each possessed a so-called monopoly of the greater portion of the business done by it, because there was no other railroad accessible to shippers, by which it could be done. Would it, by giving such low rates, and by affording such facilities as would make it financially impossible for a competitor, with profit, to enter its territory, expose itself to the malediction of the second section?

How can it possibly be said that a corporation, not engaged in the business of transportation—an investment company—monopolizes interstate trade or commerce, because it holds the majority of the shares of two competing railway companies which do, and which must, continue to do business, each for itself. The most that can be said by way of objection to the acquisition is, that it diminishes the motive to compete; but this diminution of motive to compete does not involve any diminution of the total amount of commerce, or the giving to one, any portion of the trade or commerce theretofore transacted by the other. Each one, of two separate organizations, despite the alleged monopolization of shares, must conduct without change, the business for which it was incorporated.

A., B. and C. may each own one-sixth of the shares of two competing railways, with no possible right on the part of the United States to object. Each acting separately, may give to D. a voting proxy. Will they thereby monopolize commerce?

V. A person or corporation, by holding, as owner, the majority of the shares of two competing railway companies, does not monopolize, or attempt to monopolize, "any part of the trade or commerce "among the several States."

It is unnecessary, under this head, to make comment, additional to that made under the preceding proposition.

The holding of the shares enables the Northern Securities Company to elect the directors of the two railway companies; but each company of itself, must conduct its

trade and commerce which can be monopolized by neither. Such holding of shares cannot bring about, even indirectly, a monopolization of trade or commerce, because nothing would be gained by the owner by transferring the trade of one to the other.

VI. The power of Congress to regulate commerce does not confer upon it a right to prescribe the persons who may engage therein, or to regulate, or to control, the ownership of shares of stock of corporations who engage therein.

The Northern Pacific and the Great Northern, were incorporated, respectively, by the States of Minnesota and of Wisconsin. The issuance by each of those companies, of its shares of stock, was under the laws of one, or the other, of those States. The transfers of said shares, and all matters connected with the ownership thereof, are matters regulated exclusively, and must continue to be regulated exclusively, by the State.

It is not within the power of Congress, under its right to regulate commerce, to prescribe who shall own, or the restrictions upon, sales of stock in the corporations of the different States, even though those corporations may carry on the business of transportation—a business which may be regulated by Congress. This court so asserted, in unmistakable language, in United States *vs.* Knight, 156 U. S., 1, when, speaking through its Chief Justice, it said:—

> "Congress did not attempt thereby" (the Sherman Act) "to assert the power to deal with monop-
> "oly directly as such or to limit and restrict the
> "rights of corporations created by the States, or
> "the citizens of the States, in the acquisition, con-
> "trol or disposition of property, or to regulate or
> "prescribe the price or prices for which such property,
> "or the products thereof, shall be sold; or to make
> "criminal the acts of persons in the acquisition and
> "control of property which the States, or their
> "residents, or the nation, sanctioned or permitted."

This was said in connection with a denial of the claim of the United States, that the acquisition by a New Jersey company, of the shares of certain Pennsylvania corporations, in connection with the acquisition of the shares of other corporations, such corporations controlling the business of sugar refining in the United States, was in violation of the Sherman Act.

In the Knight case, the companies whose shares of stock were acquired by the American Sugar Refining Company, were incorporated under the State laws "for the purpose "of *importing*, manufacturing, refining and dealing in sugar "and molasses." The companies whose shares were owned by the American Sugar Refining Company, manufactured about ninety-eight per centum of all the refined sugar manufactured in the United States. It was found, in that case, that "the object in purchasing the Philadel- "phia refineries was to obtain a greater influence or more "perfect control over the business of refining and selling "sugar in this country."

In Louisville and Nashville R. R. Co. *vs.* Kentucky, 161 U. S., 693, it was said:—

> "It is true, as was observed in Pearsall *vs.* The "Great Northern, that the stockholders of the L. "& N. Co. may individually become the purchasers "of the Chesapeake Company at a judicial sale, "and may organize a new corporation, but it would "still be a corporation separate and distinct from "that of the L. & N. R. R. Co. The inhibition of "the Constitution is not against the sale to in- "dividuals, though they may chance to be stock- "holders in a competing line, but against the ac- "quisition by a railway, in any form, of a parallel "or competing line."

Under the power to regulate commerce, the United States may demand that the highways thereof, shall be kept open; that they shall be used under restrictions and regulations by it prescribed; that no contract shall be made restraining transportation over the same; that no combinations restraining such commerce, shall be entered

into; that no contracts shall be made, monopolizing such highways or their use; and that the instrumentalities, necessary in the conduct of the business, shall be supervised and used, under prescribed regulation and regulations. All this may be done, under its power over commerce. In addition to this, it may call into existence, by creating corporations of its own, organizations which will conduct commerce. It may cause to be constructed through the States such highways as may be deemed necessary for carrying on such commerce. As against the construction of such railroads, no exclusive privileges granted by any State to its corporations, would prevail. The States, however, may also call into existence, or may refuse to call into existence, corporations to conduct the business of transportation through their respective territories. They may refuse to permit the construction of railroads by their citizens. They may give to corporations of their creation, privileges which, as against other corporations they may or might create, will be exclusive. They may permit, or may refuse to permit, the consolidation of parallel and competing lines. They may permit railroad companies which, under their authority, have constructed railroads, to abandon the same. They may vacate their own highways, though, whilst such railroads or other highways exist, the Government may insist upon their use by way of facilitating intercourse between the States. Congress has no power to interfere with a State in any of these matters. It was contended, in Kentucky *vs.* Louisville and Nashville R. R., that the consolidation of parallel or competing railroads used in interstate commerce, was a matter of commerce, and that being such, the jurisdiction of Congress was exclusive. This court held, however, that such consolidation was a matter for State determination and regulation.

The States which create railroad corporations, may prescribe the manner of issuance of their shares; and the method of transfer of title thereto. These matters are exclusively within the State jurisdiction.

In the use and operation of railroads engaged in inter-

state commerce, the corporations owning the same must submit to the Federal jurisdiction to the fullest extent. This submission, however, does not involve any right on the part of the United States, to forbid "A." to sell to "B.," the shares to him belonging, even though, as a result, an ownership of a majority, or of the controlling interest, will be transferred.

A. may own the controlling interest in one competing railroad, whilst B., his father, may own the controlling interest in another. By the intestate law of the State of residence of both, B.'s shares, upon his decease intestate, might vest in A. Would A., thus acquiring the controlling interest in both railroads, be liable to punishment as a criminal?

The owners of all interstate railroads, however, in their *use* of the same, must do whatever Congress shall determine to be necessary, in the conduct of their interstate transportation.

It is not within the power of the Federal Government, to destroy the title to property created by the State. Whilst the former may regulate the use of the power which results from ownership, it cannot regulate, or deal with, the ownership itself. One of the incidents of ownership is the right of disposition. The title to the shares is derived under exercise by the State of its power, and is subject alone to its regulation.

The Federal Government could not prevent a railroad corporation, owning a railroad solely within the limits of a State, if permitted by the State so to do, from disconnecting its railroad with roads outside of the State and from conducting thereafter, within the limits of the State, a purely local business. The remedy for such action would be the creation of railroads by the United States, or by its corporations. It is not within the power of the Federal Government to compel a railroad, separated from railroads outside of the State, to connect therewith, and to do an interstate commerce, nor to insist that railroad corporations will compete. All it can do is to punish them if they restrain interstate commerce by *agreeing* not

to compete, or otherwise. Over the motives of a corporation which acquires railroad shares and, with them, a disinclination to compete, it has no control. It must take the results which will follow from any change of ownership, authorized by the State creating the railroad corporation. The overt act of restraint, alone, is, by it, punishable.

Congress has unrestricted power to prevent restraint, or monopolization, of interstate commerce, if monopolization is understood, not as the United States claims, but as the authorities define it. The Sherman Act, properly understood and interpreted, is constitutional. Why should its provisions be so interpreted as to make it violative of State rights?

In Grenada County Supervisors *vs.* Brogden, 112 U. S., 261, it was held by this court that that construction of a statute should be adopted which, without doing violence to the fair meaning of the words used, brings it into harmony with the Constitution.

In Hawaii *vs.* Mankichi, 190 U. S., 197, it was held that in interpreting a statute the intention of the law-making power will prevail even against the letter of the statute; a thing may be within the letter of the statute and not within its meaning, and within its meaning, though not within its letter.

A State, within its borders, may have three competing railway companies, two of which are unable, standing alone, successfully to maintain a competition. Why may it not permit them to consolidate? How will any right vested in the United States be affected by such consolidation?

The United States insists that an owner of shares, created by the law of a State, may not make a sale of the same in that, or in any other State; that such sale is a crime. It rests its insistence upon a statute of the United States which does not profess to deal with such sales, but prescribes a penalty for the doing of something entirely different—a well-defined common-law misdemeanor. We think we may say, without contradiction, that no case can be found, certainly no Federal case, which holds that the ownership of property is an illegal restraint of trade.

In Railroad Company *vs.* Maryland, 21 Wallace, 456, a stipulation in the charter of a railroad company, that the company should pay to the State a bonus, or a portion of its earnings, was held not repugnant to the Constitution of the United States. Such a stipulation was held to be different, in principle, from the imposition of a tax on the movement or transportation of goods, or persons, from one State to another, the latter being an interference with, and a regulation of commerce between, the States, and beyond the power of the State to impose. Mr. Justice Bradley said:—

"This unlimited right of the State to charge, or "to authorize others to charge, toll, freight, or fare "for transportation on its roads, canals, and rail- "roads, arises from the simple fact that they are "its own works, or constructed under its authority. "It gives them being. It has a right to exact com- "pensation for their use. It has a discretion as "to the amount of that compensation. That dis- "cretion is a legislative—a sovereign—discretion, "and in its very nature is unrestricted and uncon- "trolled. The security of the public against any "abuse of this discretion resides in the responsibility "to the public of those who, for the time being, "are officially invested with it. In this respect it "is like all other legislative power when not con- "trolled by specific constitutional provisions, and "the courts cannot presume that it will be exercised "detrimentally.

* * * * * * *

"It is often difficult to draw the line between "the power of the State and the prohibitions of "the Constitution. Whilst it is commonly said "that the State has absolute control over the cor- "porations of its own creation, and may impose "upon them such conditions as it pleases; and like "control over its own territory, highways, and "bridges, and may impose such exactions for their "use as it sees fit; on the other hand, it is conceded "that it cannot regulate or impede interstate com-

"merce, nor discriminate between its own citizens "and those of other States prejudicially to the lat- "ter. The problem is to reconcile the two propo- "sitions; and as the latter arises from the provi- "sions of the Constitution of the United States, "and is, therefore, paramount, the question is prac- "tically reduced to this: What amounts to a regu- "lation of commerce between the States, or to a "discrimination against the citizens of other States? "This is often difficult to determine. In view, how- "ever, of the very plenary powers which a State "has always been conceded to have over its own terri- "tory, its highways, its franchises, and its corpo- "rations, we cannot regard the stipulation in ques- "tion as amounting to either of these unconstitu- "tional acts. It is not within the category of such "acts. It may, incidentally, affect transportation, "it is true; but so does every burden or tax imposed "on corporations or persons engaged in that busi- "ness. Such burdens, however, are imposed *diverso* "*intuitu*, and in the exercise of an undoubted power.

In Ashley *vs.* Ryan, 153 U. S., 436, a State was permitted, in allowing consolidation between corporations of different States, to charge upon the new consolidated company a percentage on its entire authorized stock as a fee, inasmuch as, without the franchises conferred by the State, it could not exist, and such charge was not an interference with interstate commerce. Mr. Justice White said:—

"The question here is not the power of the State "of Ohio to lay a charge on interstate commerce, or "to prevent a foreign corporation from engaging "in interstate commerce or to prevent a foreign "corporation from engaging in interstate commerce "within its confines, but simply the right of the "State to determine upon what conditions its laws "as to the consolidation of corporations may be "availed of.

"Considering, as we do, that the payment of the "charge was a condition imposed by the State of "Ohio upon the taking of corporate being or the "exercise of corporate franchises, the right to which

"depended solely on the will of that State, and hence "that liability for the charge was entirely optional, "we conclude that the exaction constituted no tax "upon interstate commerce, or the right to carry "on the same, or the instruments thereof, and that "its enforcement involved no attempt on the part "of the State to extend its taxing power beyond its "territorial limits."

VII. The relief decreed was improper under any aspect of the case.

The decree of the court below permitted the continued ownership of the shares; but, with a refinement of cruelty, denied the exercise by the corporation which owned the same, of any of the rights of ownership.

The act which was condemned, was the acquisition of the controlling interest in the shares of two competing railroad companies. If this ownership violated the Act, the violation could have been prevented, by a decree compelling the sale of so many of the shares of the Great Northern, or of the Northern Pacific, as would reduce the ownership to a holding of less than a controlling interest therein.

If there was a conspiracy to buy, it was consummated by the purchase. The conspirators were indictable. It was too late to make avail of the equity jurisprudence to restrain what had been accomplished.

In United States *vs.* Knight, 156 U. S., 1, 17, it was said:—

"The subject matter of the sale was shares of "manufacturing stock, and the relief sought was "the surrender of property which had already "passed and the suppression of the alleged monopoly "in manufacture by the restoration of the *status quo* "before the transfers; yet the act of Congress only "authorized the Circuit Courts to proceed by way "of preventing and restraining violations of the Act "in respect of contracts, combinations, or con- "spiracies in restraint of interstate or international "trade or commerce."

JOHN G. JOHNSON.

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Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 277.

NORTHERN SECURITIES COMPANY ET AL,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellees.

Oral Argument of George B. Young, for the Appellants, in reply to the Attorney-General, December 15, 1903.

MAY IT PLEASE THE COURT:

The defendants here are charged with a "combination or conspiracy in restraint of commerce"—and I shall use the word "commerce" as limited to interstate or foreign commerce or both, those only being the subject of the Anti-trust Act.

The defendants are not here saying: "We have restrained commerce, or combined or conspired to restrain it, but we have kept ourselves outside of the law, and what are you going to do about it?"

On the contrary, they say that whatever combination is shown by the record, whatever combination they have entered into, was for the sole purpose of freeing commerce from restraint, of developing, enlarging and protecting a great interstate and oriental commerce, and this is what they have done. They have neither combined to restrain commerce, nor have they restrained it.

This has been clearly pointed out by Mr. Johnson, and needs no restatement.

Nor do the defendants seek to limit in any way the power of Congress over commerce or the scope of the Anti-trust law.

The scope of that law has been fixed by four decisions of this Court. Whatever differences of opinion may have existed among individuals on the questions at issue in those cases, such differences can no longer exist. The decisions are conclusive, and so far from questioning, we rely upon them.

The Anti-trust Law embraces *every* contract, combination or conspiracy in restraint of commerce. But our contention is that the questions in this case have to do, not with commerce, but with property. That the combination of the defendants was a combination to sell shares of stock to the Securities Company, and that neither such sale, nor the combination to make it, was a matter of interstate or foreign commerce.

Before pursuing the argument on this point, and discussing the Attorney-General's positions on the law of the case, I desire to refer briefly to one or two matters of fact. The petition charges a combination or conspiracy to do two things : (1) to organize the Nor-

thern Securities Company, (2) to transfer to it the shares of the two railway companies held by the conspirators.

The evidence shows that they held less than thirty-five millions—less than thirty per cent.—of Great Northern shares. They held less than forty-two millions—less than thirty per cent.—of the shares of the Northern Pacific.

They desired the acquisition by the Securities Company of a majority of Northern Pacific shares, and looked forward t such acquisition. They were indifferent to the acquisition by the Securities Company of any shares of the Great Northern Company beyond the thirty-five millions or less held by themselves, and the greater part of which they expected (though they did not so agree) would be transferred to it.

Such combination, being at the most a combination to transfer to or procure for the Securities Company a majority of shares of one railway company only, could not be, nor does the Government claim it to be, a combination in restraint of commerce.

The decree finds, and the Attorney-General asserts (what the petition does not allege) that the conspirators agreed with each other to procure the other shareholders of the Great Northern to transfer their shares to the Securities Company, and that, of the ninety-five millions obtained by that company, the sixty millions or more obtained from such other shareholders were obtained by means of such procurement. Also, that the Securities Company, on its creation, became a party to the conspiracy.

Each and every of these statements is not only without evidence, but is directly contrary to the evidence, as is fully shown in my brief and that of Mr. Grover.

But assuming that the Defendants did combine or conspire to transfer their own shares to the Securities Company, and help it to get enough more to give it a majority of the stock of each railway company, we insist that such combination was not in restraint of commerce.

The Anti-trust Act does not define the term "in restraint of trade or commerce." For their meaning we must look to the common law. In this law, as said by Mr. Justice PECKHAM in the Freight Association Case, they had been known for hundreds of years. "Contracts in restraint of trade" are a familiar subject in the common law, and in that law the term "restraint of trade" is not (or, at least, was not, prior to the Anti-trust Act) applied to any other restraints or obstructions of trade than the restraints imposed by a contract upon the trade of one or more of the parties to it.

Contracts, combinations or conspiracies to hinder or restrain or obstruct or otherwise injure the trade of others were not at common law distinguished from other conspiracies to injure others by the fact that such conspiracies were directed at their trade rather than at their persons, their property or their reputations. So far as I am aware they were never known or designated as conspiracies, etc., "in restraint of trade." And no contract, conspiracy or combination could be in *direct* restraint of any trade except the trade of the parties to it.

The gist of the decision below is that the combination here was a conspiracy in restraint of commerce, because its aim was to suppress competition between the two railway companies. But the suppression of

competition does not necessarily restrain trade or commerce, and a combination that results in removing competition is not necessarily one in restraint of trade or commerce.

In each of the three cases in this Court where the combination was held to be within the Anti-trust law, the combination was effected by an agreement which, in its terms, restrained the trade or commerce of the parties to it by restraining their freedom of carrying it on in essential particulars.

In the two railway traffic cases—the Freight Association Case and the Joint Traffic Case—each party to the contract surrendered for a greater or less time its right to make its own rates in its own commerce. And so, upon the execution of the contract, commerce was restrained by it—it was in restraint of commerce—whether it was ever carried out or not.

It was in the restraining of the freedom of each company to make its own rates, independently of the others, that the restraint lay, not in the committing of the rate-making power to a board or a commission.

It is true that the contracts, being between competing railways, would result in a suppression or diminution of competition; and much is said in argument and opinion in those cases as to the effect on competition.

But it is not the effect on competition that causes or is essential to the restraint of trade. It is itself, where it occurs, a consequence rather than a cause or an element of the restraint.

Contracts between railway companies by which they surrender or restrict their independent rate-making power—place shackles on their liberty of conducting their own business in their own way—are just as much

in restraint of trade when the companies' lines are not, as when they are competitive. And the suggestion of such a contract between non-competing lines is not wholly fanciful. The system south of Boston connects, but does not compete, with that north of it. But if either should make a considerable reduction in rates, the patrons of the other would soon be taking steps to secure a like reduction for themselves. Hence it might well be for the interest of both companies to make such a contract to secure each from the consequences of a reduction by the other.

And so a suppression of competition which does not result from a contract restricting one or more of the parties to it in their freedom of trade has never been considered a restraint of trade; and so a contract involving or resulting in such suppression, but not restricting the liberty of trade of any of the contracting parties, has never been considered a contract in restraint of trade.

In the City of New York there are probably twenty-five or fifty or perhaps one hundred wholesale houses, in the same line of business, competing with each other in interstate trade. If one of these wishes to retire, can it not sell out its business to one of its competitors without buyer and seller being alike guilty of a prison offense? Yet such sale undoubtedly suppresses competition. And so would a partnership or corporation formed by two or more of these competitors. So would a partnership or corporation formed by others not already in the trade, to buy out the business of two or more of the competitors.

And so with carriers. Two competing stage lines, on a route ten miles long between a town in New

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Hampshire and a town in Vermont are very different from two trans-continental railways; but the Anti-trust Act makes no distinction between them, just as the mercantile law applies the same rules to a note for ten dollars and a note for a million.

Now it never was heard that one stage-owner might not buy out the other; or that the two might not form a partnership or corporation to carry on the business of both; or that a third person, or a partnership or corporation formed for the purpose, might not buy and carry on the business of both.

And so it is said in the Freight Association Case, and repeated in the Joint Traffic Case, that such purchases, and formation of partnerships and corporations to unite competitive businesses in one ownership and management, are not within the Anti-trust Act.

And this must be because they are not in direct restraint of trade at all, for the same cases hold that *every* contract which is in direct restraint of trade, however slight and however reasonable such restraint may be, is illegal and criminal.

In the Addyston Pipe Case, the defendants entered into a contract by which each restricted his freedom of trade in respect of the territory in which he might sell the goods made by him, and the prices he might charge, and in other particulars. Such a contract was clearly in restraint of trade at common law, whether made between competitors or non-competitors.

There remains the E. C. Knight Case, the first one decided under the Anti-trust Act. The full scope and effect of the decision in this case cannot be fully appreciated without careful consideration of the facts. The American Sugar Company bought the shares of four

refining companies in Philadelphia, which, with its previous possessions, gave it control of 98 per cent. of the sugar refineries of the country. The business of the American Company and of each of the companies whose stock it bought was the purchase and importation of raw sugar, the refining of it, and the selling of the product in the various states.

Though the companies were thus incorporated to deal in sugar, and were actually doing so, yet the purchase of their shares was held not to restrain interstate commerce—and this, though the result of such purchases should be (as it well might) the suppression of competition, or even (as charged by the Government) the creation of a monopoly.

Now, taking these four cases together, it is plain that if, instead of a purchase of the shares of the sugar-refining companies, the Knight case had been one of an agreement between the companies (each carrying on its business), restricting the liberty of any of them to buy its raw sugar and sell its refined sugar where it would, at what price it would, and in what quantities it would, such agreement would have been clearly a contract in restraint of trade at common law, and within the Anti-trust Act.

On the other hand, if one or more of the parties in the Addyston Pipe Case had sold out to the others, or if all of them had formed a partnership or corporation to carry on the business, none of these contracts would have been in restraint of trade at common law, or under the Anti-trust Act.

And so if the railway companies in the two traffic cases, instead of making a contract in restraint of their individual liberty in carrying on their commerce, had, all but one of them, sold their roads to that one, or

had all sold to some other company, or had all consolidated so as to form a new single corporation, these agreements for sale or for consolidation would not have been contracts or combinations in restraint of commerce.

In such case the parties to such agreements would not be contracting in restraint of their liberty—making a contract in restraint of commerce. They would be *exercising* their liberty—a liberty incident to ownership—of selling their property, to persons exercising their liberty to buy.

In these cases any suppression or diminution of competition consequent on the sale or consolidation is not the effect of any contract or combination restraining the liberty of the parties to it to carry on business in their own way, whether by competing or otherwise. The parties make no such contract or combination. It is the immediate result of the ownership by one person, partnership or corporation of two or more properties or businesses theretofore competing (or at liberty to compete) with each other.

The power of such single owner to suppress or diminish such competition as theretofore existed, and any suppression or diminution that may occur, is an incident of his ownership, just as the right of the former owners to sell is an incident of their ownership,—an incident, in each case, inseparable from absolute ownership.

And this right, being an incident of ownership, is the same, however the ownership may be acquired, whether by purchase, gift, inheritance or otherwise.

So in this case there is no contract by which any one binds himself not to compete. The defendants have entered into no contract, conspiracy or combina-

tion not to compete among themselves, or to prevent the railways from competing, or to restrain the commerce of any of them. If the mere ownership of the shares by the Securities Company does or will suppress competition, this can only be because of some control, belonging as an inseparable incident to such ownership, over the property and commerce of the railway companies—just as the suppression of competition in the instances cited is the result of a control over business and property incident to ownership of them.

The decisions of this Court, therefore, are in accord with the common law that purchases and sales of their property or business among competitors, and purchases by individuals, partnerships or corporations of the competing businesses of other persons, are not in restraint of trade or commerce.

And even if the words "restraint of trade," etc., in the act were given a broader meaning than at common law, so that a "conspiracy in restraint of trade or commerce" should include a conspiracy to do acts which will not restrain the commerce of the parties to it, but will merely hinder, obstruct, or restrict the commerce of others, still the fact would remain, that the only restriction or obstruction of commerce that is or can be claimed in this case proceeds not from the alleged combination or conspiracy, but wholly from the union of ownership of a majority of the shares of the railway companies in a single person, viz., the Securities Company, and hence is not a restraint of commerce, nor is the "conspiracy" in restraint of commerce, within the act and the decisions of this Court.

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The Defendants have not been guilty of monopolizing, or attempting or conspiring to monopolize any part of the interstate or foreign commerce of the country, nor are they threatening to do any of these things.

The Anti-trust Act does not define "monopoly" or "monopolize." The common-law meaning of these terms is well known. In popular use the word "monopolize" often means to possess the whole of a property or business. And in this popular sense, the word is often used in judicial opinions. In several opinions of this Court it is said that a railway monopolizes the traffic, or most of it, along its lines. A like remark is made by Mr. Justice BROWN in the Pearsall case, and he gives the same meaning to the word when he says in the same opinion that the two defendant railway companies, if consolidated, would monopolize the commerce of Northern Minnesota, etc.

But the word cannot, in the Anti-trust Act, be given this meaning, a meaning which would make all railway operations criminal.

The Counsel for the Government has defined "to monopolize" as to concentrate in the hands of one or a few a business or employment theretofore in the hands of several so as to control competition. But under this definition, all the purchases in the instances I have given, of a wholesale business or a stage line, whether made by one competitor of another, or by a partnership or corporation, would be criminal. Yet this Court has expressly declared them to be lawful.

Before the days of railways there was a great competitive interstate commerce by wagon and stage coach between Boston and Albany, Boston and New York, over the Cumberland road, etc. Far-seeing men, the

Hills and Morgans of that day, planned and contrived to acquire for themselves the greater part of this commerce by means of building and operating railways. They did so, and thereby, in case of each railroad, concentrated in the hands of one company the competitive commerce theretofore carried on by many persons and corporations.

Had there been an Anti-trust Act in those days, would they have been criminals in so doing, because "monopolizing" such traffic?

It is no answer to say that they were authorized by state charters. No state has power to legalize a monopoly of interstate commerce. The power of Congress to regulate it in such a particular is exclusive. The obtaining of state charters would be an aggravation of their offense, adding unconstitutional state legislation to their own crime in monopolizing, and thus obstructing, commerce.

It is not easy to frame a definition of the term "monopolize" as used in the Act. That of Mr. Justice JACKSON, quoted in my brief, is the best I have found. He says, in substance, that to monopolize is to acquire an exclusive right to any part of the trade or commerce among the states by means which prevent or restrain others from engaging in it.

This accords with the common-law idea of a monopoly in making the essential thing, not the possession of all of a particular trade or commerce, but the exclusion of others. An inventor or author gets by his copyright or patent no greater right than he would have without it to print and sell his book, or to make, use or sell his patented article or process. The value of his patent or copyright—the essence of his mon-

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opoly—is his right to exclude every one else from doing what he may do.

Just how any one may acquire a monopoly, in the absence of a law granting it; how he may acquire an exclusive right to carry on commerce by other means, is not very clear.

But, for this case, it is enough that there is absolutely nothing to show any attempt or conspiracy to exclude any one from engaging in or carrying on commerce anywhere in the country.

Moreover, to monopolize commerce, one must be engaged in it. The Securities Company, against which the charge is made, is not, has never been, engaged in commerce. It is a mere shareholder in two railway companies, but that does not make it a railway operator or a railway company. A man who buys bank stock does not become a banker, and a purchase of shares in a base-ball club doesn't make him a base-ball player. The record shows no case of monopoly or of attempt or conspiracy to monopolize.

This is a case of purchase of shares in two railway companies, each chartered by a state.

Did Congress intend to interfere with the power of the states to regulate stockholding in such corporations?

I do not propose to discuss at any length the question of the power of Congress to regulate purchases and sales of property, or the incidents of ownership of property. That has already been done in the arguments here and in the briefs. But I

think it will be generally conceded that there can hardly be a better guide to the construction of the commerce clause of the Constitution or the meaning of Congress in passing the Anti-trust law, than the unbroken practice of the states from the foundation of the Government down to the passage of the act, a practice continued for generations, a practice by which the railway systems of the country have been built up.

During all this period the states have claimed and exercised the power, never doubted or questioned by any one, to authorize or to forbid their transportation or other companies doing interstate business to consolidate with competing companies, or to purchase or lease the lines of competing companies, or to purchase and hold their stock. On the faith of such legislation, hundreds of millions of dollars had been invested by hundreds of thousands of investors before the Anti-trust Act was passed. A detailed history of growth of some of the principal railway systems by means of such consolidations and purchases of the lines and shares of competing companies will be found in the record, and is summarized in my brief.

All this was known to Congress when it passed the act. Is there any reason to suppose that Congress did not recognize—what everybody else believed at that time—that such legislation was in the power of the states? Any reason to believe that it supposed that such purchases, leases and stockholding were matters of interstate commerce, and the state legislation a usurpation of powers belonging to itself alone?—for if these are matters of interstate commerce, and hence within the power of Congress, its power over them is exclusive.

If Congress did believe that such power belonged not to itself but to the states (whether that belief was correct or not), it certainly did not intend by the Anti-trust Act to exercise a power which it did not think belonged to it.

And if Congress did not share the universal opinion that these matters were for the states to regulate, is it conceivable that Congress meant to declare all such legislation unconstitutional, all such consolidations and purchases unlawful when made, and criminal if continued? all the stock and bonds issued on such consolidations and purchases worthless because issued to effect illegal combinations in restraint of commerce? and meant to express such sweeping condemnation by the general words "every contract, combination or conspiracy in restraint of trade or commerce among the several states or with foreign nations is hereby declared to be illegal," and is made criminal?

The Attorney-General has gone back to the Pearsall case, brought in 1895, and has said that the contract in that suit was a scheme of Messrs. Hill and Morgan to put the Great Northern Company in control of the Northern Pacific Company, and that this purpose continued down to the formation of the Securities Company. But nothing in the report of that case justifies any such statement. Mr. Morgan had nothing to do with it. True, he conducted the reorganization, finally made, of the Northern Pacific Company. But this reorganization was made after the decision in the Pearsall case, and was very different from that involved in that case, as appears by comparing the report of the

Pearsall case with the plan of reorganization afterwards made, which is set out in the record. Thus, in the earlier plan, the total stock was to be 100 millions, in the later, 155 millions, etc.

No, the scheme defeated in the Pearsall case did not originate with "Oriental dreamers," but with hard-headed bankers of Germany. The Deutsche Bank held or represented all or nearly all the bonds of the old Northern Pacific Railroad Company. They had seen that company, with its priority over the Great Northern, and its land grant as large as Minnesota, wrecked by mismanagement, while the Great Northern, with no land grant and no subsidies of any sort, had never failed to pay a dividend. And they paid to the president of that rival line the great compliment of asking him to undertake the management of that which was to be their own, and this in connection with the management of his own company. And they offered him a great stock interest in the new company if he would assume this labor and responsibility. Mr. Hill declined, for the same reason that the promoters of the Securities Company gave all Great Northern shareholders an opportunity to come into it; he would not make any arrangement in which all the Great Northern stockholders were not to share. According, the offer was modified, so that 50 millions of the stock of the new Northern Pacific Company should be issued for the benefit of *all* the Great Northern shareholders, and, as thus modified, was the basis of the contract considered in the Pearsall case.

I have thus far assumed that the Securities Company purchased and absolutely owns all the shares it

has acquired. And this is what the record shows beyond dispute. The evidence will be found on pages 87 *et seq.* of Mr. Grover's brief, and on pages 82, 83, 90–95, of my brief, and in the passages in the record there referred to.

And the same references show that the shareholders, in selling to the Securities Company, acted individually on their own judgment without solicitation.

The contention that the Securities Company is in any sense a "trust," or any other than absolute owner of the shares held by it, has no support in the evidence and is in direct conflict with it.

The statement that the certificates of the Securities Company are in form or substance trust certificates, or are in substance or form any different from ordinary stock certificates of ownership of a specified number of shares of the capital stock of the company, is also without a scintilla of evidence to support it, and is not true in fact.

[NOTE. The Attorney General attempts to bear out his charge that this is the case of a trust by the following partial quotation from Mr. Morgan's testimony in the Power Case (I., 355):

"Q. Why put the stocks of both of these companies into one holding Company?

"A. In the first place this holding company was simply a question of custodian, because it had no other alliance."

To this should be added the rest of Mr. Morgan's testimony on this point (I., 361):

"Q. In referring to the Northern Securities Company by way of illustration you have used the example United States Trust Company once or twice. Are you to be understood that the Northern Securities Company held the several certificates in the nature of a trustee or as owner?

"A. As owner; but what I meant is this, while the Northern Securities Company as such issued stock for this, a trust company would have issued a receipt.

We have issued stock, consequently we could control it. I say, if I had put them in a company with $2,000,000 of stock it could have been easily controlled, but in the Northern Securities Company, which is the only company I know of up to this time where the stock itself is represented, you cannot control that stock without buying a majority of $400,000,000 or more of stock."

And the petition itself alleges (Par. VI., pp. 7*a*, 8*a*) that the parties combined to make the Securities Company "owner" of the railway shares, and also (Par. VIII., p. 10*a*) that the Securities Company is now holding "as owner and proprietor," a majority and more of such shares, and charges (Par. X., pp. 11*a*, 12*a*) that, unless enjoined, the Securities Company "will receive and acquire and hereafter hold and control as owner and proprietor all of the capital stock of the defendant railway companies, issuing in lieu thereof its own capital stock," etc.

And the Circuit Court finds in its decision that the defendants conspired to exchange their railway stock for Securities stock, "to the end that the New Jersey company might become the sole owner of the whole, or, at least, a major portion of the stock of both railroad companies" (II., 1704). It describes the acquisitions of the Securities Company as "purchasers" (II., 1705), and its relation to the shares held by it as that of "owner" (II., 1705), and its power to suppress competition as the result of its "ownership" (II., 1705, 1707).

And that Court distinguishes this combination from a "trust" (II., 1706).

This claim that the Securities Company is a "trust" is as novel as it is baseless.]

The claim that the Securities Company issued its stock for the railway shares at inflated prices for the latter, besides being wholly immaterial, is contradicted by the record. Great Northern shares cannot be bought to-day—even in this time of depression—at the price ($180) at which they were taken by the Securities

Company; and if the Attorney-General can get Northern Pacific at $115, I advise him to buy all he can lay his hands on. He can sell them at once at a great advance. In point of fact, the Securities Company paid for the railway shares acquired by it 70 million dollars less than they would have cost it had it sold its own shares at par and bought the railway shares at the market prices—prices much in excess of $180 and $115. There was no "optimism converted into stock." And in spite of this and other lawsuits, the market price of Securities Company's stock has fallen less during the past eighteen months than that of the New York Central or the Pennsylvania or any other of the great investment stocks. And the organization of the Securities Company differed widely from every trust formation in the fact that there were no commissions paid to anybody to dispose of its stock or underwrite its sale. Its expense account was almost nominal.

The Circuit Court and the Attorney-General alike treat the Northern Securities Company as if it were the sole shareholder in the two railway companies, and as if all, or at least a majority of its shares, were held by its promoters, the original conspirators.

But besides the "conspirators," owning about 33 million of Great Northern stock, and who transferred 30 millions to the Securities Company, there were some 1,800 other shareholders, holding 90 millions of its stock. Of these last, 1,200, holding 65 millions of stock, have transferred their shares to the Northern Securities Company, and there still remain 600 share-

holders with 25 millions of stock who have not "conspired," and still hold their shares.

And the promoting conspirators, so far from being or controlling the Securities Company, do not own to exceed one-third of its shares. The rest of the stock is owned by 1,300 persons, who never "conspired" or "combined."

It is those 1,300 persons who have the stock control of the Securities Company, so far as any section of the shareholders has it; and these 1,300 (and not the eleven conspirators) who exercise whatever control the shareholders of the Securities Company have exercised or can exercise over either railway company.

The outcome of the conspiracy of Messrs. Hill and Morgan to acquire control of the two railway companies is that they are left without control of either—without even the majority of common stock of the Northern Pacific Company which they once held.

It seems idle to say that men who must have known that such would be the result of their scheme, were conspiring to obtain control of both railways in order to restrain commerce.

The unquestioned power of Congress under the commerce clause of the Constitution is amply sufficient to prevent and correct any restraint, monopoly or other evils in the carrying on of the interstate and foreign commerce of the two railways—and this without invading the exclusive power of the states to regulate the stockholding and stock transfers in their own corporations. And the states have the power—and the

exclusive power—to prevent and correct any restraint or monopoly, or other evils in the domestic commerce of the two railways. And the states, when creating any corporation, have the absolute, as well as the exclusive, power to forbid the holding of stock therein by a company like the Securities Company, or by any corporation whatever.

There is no excuse whatever for turning the Anti-trust Act into an instrument for invading the Constitutional rights of the states over the property within their borders, and over the corporations of their own creation.

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Supreme Court of the United States.

OCTOBER TERM, 1902.

THE NORTHERN SECURITIES COMPANY, The Northern Pacific Railway Company, The Great Northern Railway Company, James J. Hill, et al., appellants,
v.
THE UNITED STATES.
No. 696.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

MOTION TO ADVANCE.

This is a bill in equity filed in the circuit court of the United States for the district of Minnesota to restrain a violation of the act of July 2, 1890 (26 Stats., 647), entitled "An act to protect trade and commerce against unlawful restraints and monopolies."

In the year 1901 the Northern Pacific Railway Company and the Great Northern Railway Company operated two parallel and competing transcontinental lines of railway extending across the northern tier of States west of the Great Lakes, from the Great Lakes

and the Mississippi River to the Pacific Ocean, each system connecting at its eastern terminals, not only with lines of railway, but with lake and river steamers to other States and to foreign countries, and at its western terminals with seagoing vessels to other States, Territories, and possessions of the United States, and to foreign countries, and were then engaged in active competition with one another in freight and passenger traffic among the several States and with foreign countries.

Early in that year these two railway companies, acting for the purpose of promoting their joint interests, and, as the Government claims, in contemplation of the ultimate placing of the Northern Pacific and Great Northern systems under a common source of control, united in the purchase of the total capital stock of the Chicago, Burlington and Quincy Railway Company, issuing for that purpose about $200,000,000 of their joint bonds, at the rate of $200 in bonds for each $100 in stock of the Burlington road. The Burlington system was about 8,000 miles in length, covering the vast region between Chicago and St. Paul on the east and Kansas City, Denver, Cheyenne, and Billings on the west, and was gradually pushing its rails northwesterly into the territory occupied by the purchasers and westwardly toward the Pacific Ocean. It connected with the Great Northern and Northern Pacific systems at St. Paul and with the Northern Pacific system at Billings, Mont., and was in part parallel and competing with the Union Pacific system.

Shortly after the purchase of the Burlington system, the controlling stockholders of the Northern Pacific and Great Northern companies organized, under the laws of New Jersey, the Northern Securities Company, with a capital stock of $400,000,000, for the purpose of exchanging its stock for the stock of the two railway companies, at the rate of exchange of $115 of the capital stock of the Northern Securities Company for each share of the capital stock of the Northern Pacific, and $180 of the capital stock of the Northern Securities Company for each share of the capital stock of the Great Northern. The subscribed capital of the Northern Securities was but $30,000, and its authorized capital of $400,000,000 was just sufficient, when all issued, to represent and cover the exchange value of the entire stock of the two railway companies at the rate agreed upon, which was about $122,000,000 in excess of the combined capital stock of the two railroad companies taken at par.

This suit was brought against the Northern Securities Company, the two railway companies, and their controlling stockholders, for the purpose of dissolving the merger resulting from the creation of a holding corporation and the turning over to it of the stock of the railway companies.

It is the contention of the Government that, by the creation of the holding corporation and its taking over the stock of the competing railway companies, the individual stockholders of the formerly competing railway companies were to be eliminated and a

single common stockholder, the holding company, was to be substituted; the interest of the individual stockholders in the property and franchises of the two railway companies was to terminate, being thus converted into an interest in the property and franchises of the Northern Securities Company. The individual stockholders of the Northern Pacific Company were no longer to hold an interest in the property or draw their dividends from the earnings of the Northern Pacific system, and the individual stockholders of the Great Northern were no longer to hold an interest in the property or draw their dividends from the earnings of the Great Northern system, but having ceased to be stockholders in the railway companies and having become stockholders in the holding corporation, both were to draw their dividends from the earnings of both systems, collected and distributed by the holding corporation. In this manner, by making the stockholders of each system jointly interested in both systems, and by practically pooling the earnings of both systems for the benefit of the former stockholders of each, and by vesting the selection of the directors and officers of each system in a common body, to wit, the holding corporation, with not only the power but the duty to pursue a policy which would promote the interests, not of one system at the expense of the other, but of both at the expense of the public, all inducement for competition between the two systems was to be removed, a virtual consolidation effected, and a monop-

oly of the interstate and foreign commerce formerly carried on by the two systems as independent competitors established.

It is further contended that the Northern Securities Company was not organized in good faith to purchase and pay for the stocks of the Great Northern and the Northern Pacific railway companies. It was organized solely to incorporate the pooling of the stocks of said companies. It is a mere depositary, custodian, holder, and trustee of the stocks of the Great Northern and the Northern Pacific railway companies, and its shares of stock are virtually but beneficial certificates issued against such railroad stocks to designate the interest of the holders in the pool.

The interesting question in this case is whether a holding corporation created to take over the stock of companies competing in interstate commerce, and thus pool their earnings, consolidate their control, and remove all inducement for effective competition between them, escapes the prohibition of the law.

The Attorney-General having certified that the case was one of "general public importance," it was heard before a circuit court composed of the four circuit judges of the eighth circuit, pursuant to the provisions of the act of Congress of February 11, 1903 (33 Stats., 823), entitled "An act to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July second, eighteen hundred and ninety, entitled 'An act to protect trade and commerce

against unlawful restraints and monopolies,' 'An act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, or any other acts having a like purpose that may be hereafter enacted."

As the case is one of recognized general public importance, the Attorney-General respectfully moves the court to advance it upon the docket for hearing on an early day during the next term convenient to the court.

Opposing counsel concur in this motion.

P. C. KNOX,
Attorney-General.
HENRY M. HOYT,
Solicitor-General.

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In the Supreme Court of the United States.

OCTOBER TERM, 1903.

NORTHERN SECURITIES COMPANY, GREAT Northern Railway Company, Northern Pacific Railway Company, James J. Hill, William P. Clough, D. Willis James, John S. Kennedy, J. Pierpont Morgan, Robert Bacon, George F. Baker, and Daniel S. Lamont, appellants, *v.* THE UNITED STATES OF AMERICA, appellee.	No. 277.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

BRIEF FOR THE UNITED STATES.

The bill in this case was filed by the United States to restrain the violation of the provisions of an act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies" (26 Stat. L., 209), commonly known as the Anti-trust Act. The case was heard before a circuit court composed of the four circuit judges of the eighth circuit, in accordance with an act of Congress

approved February 11, 1903 (32 Stat. L., 823), which provides that such cases shall be heard before not less than three of the circuit judges (if there be that many) of the circuit where the suit is brought, and that appeals therein shall lie only to the Supreme Court. The circuit court rendered a decree against the defendants, who thereupon took this appeal.

STATEMENT OF THE CASE.

The facts of this case naturally group themselves under three heads: First, those which are descriptive of the parties; second, those which show the competitive nature of the relation between the defendant railways, the Great Northern and Northern Pacific; and, third, those which show what the Government charges to be a combination of the defendant railways and a consequent monopoly of a part of interstate transportation.

I.

THE PARTIES.

This suit was brought in the name of the United States, under direction of the Attorney-General, in pursuance of section 4 of the Anti-trust Act.

The defendant, the Northern Securities Company (hereinafter called the Securities Company) is a corporation organized under the general incorporation laws of the State of New Jersey. The following are its objects and essential features, as

set forth in the certificate of incorporation (record, p. 17 a):

> Third. The objects for which the corporation is formed are:
>
> (1) To acquire, by purchase, subscription, or otherwise, and to hold as investment any bonds or other securities or evidences of indebtedness, or any shares of capital stock created or issued by any other corporation or corporations, association or associations, of the State of New Jersey, or of any other State, Territory, or country.
>
> (2) To purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bonds or other securities or evidences of indebtedness created or issued by any other corporation or corporations, associa tion or associations, of the State of New Jersey, or of any other State, Territory, or country, and while owner thereof to exer cise all rights, powers, and privileges of ownership.
>
> (3) To purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of shares of the capital stock of any other corporation or corporations, association or associations, of the State of New Jersey, or of any other State, Territory, or country, and while owner of such stock to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon.
>
> (4) To aid in any manner any corporation or association of which any bonds or other securities or evidences of indebtedness or

stock are held by the corporation, and to do any acts or things designed to protect, preserve, improve, or enhance the value of any such bonds or other securities or evidences of indebtedness or stock.

* * * * *

Fourth. The total authorized capital stock of the corporation is four hundred million dollars ($400,000,000), divided into four million (4,000,000) shares of the par value of one hundred dollars ($100) each. The amount of the capital stock with which the corporation will commence business is thirty thousand dollars.

* * * * *

Sixth. The duration of the corporation shall be perpetual.

* * * * *

Seventh. The board of directors, by the affirmative vote of a majority of the whole board, may appoint from the directors an executive committee, of which a majority shall constitute a quorum; and to such extent as shall be provided in the by-laws such committee shall have and may exercise all or any of the powers of board of directors, including power to cause the seal of the corporation to be affixed to all papers that may require it.

The defendants, the Great Northern and Northern Pacific Railway Companies, are common carriers engaged in freight and passenger traffic among the several States and with foreign nations.

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The Great Northern Railway Company was chartered by the State of Minnesota, and its system extends from Superior, Wis., and Duluth and St. Paul, Minn., through Spokane, Wash., to Everett and Seattle in the same State, and thence to Portland, Oreg., with a branch line to Helena, Mont., crossing in its course from east to west the States of Minnesota, North Dakota, Montana, Idaho, and Washington.

The Northern Pacific Railway Company was chartered by the State of Wisconsin, and its system extends from Ashland, Wis., and Duluth and St. Paul, Minn., through Helena, Mont., and Spokane, Wash., to Seattle and Tacoma, in the same State, and thence to Portland, Oreg., crossing in its course from east to west the States of Minnesota, North Dakota, Montana, Idaho, and Washington. Prior to the year 1893 the Northern Pacific System was controlled and operated by the Northern Pacific *Railroad Company*, a corporation organized under certain acts and resolutions of Congress. During that year, the company having become insolvent, its property was placed in charge of receivers. Later, in 1896, the system was reorganized under the aforesaid charter granted by the State of Wisconsin to the Northern Pacific *Railway Company*. Pursuant to the plan of reorganization, the franchise granted by Congress to the Northern Pacific Railroad Company, as well as its tangible property, was sold under foreclosure pro-

ceedings to the new Wisconsin company, which thereby succeeded to the old company and became the beneficiary of enormous land grants made to it by Congress. The present Northern Pacific Railway Company operates its line, therefore, under a Federal franchise, and in taking over that franchise it not only became invested with the rights and privileges incident to it, but it became charged with the duties, obligations, and conditions which Congress attached to the granting of it. In this connection the language used by this court in referring to a similar franchise granted to the Union Pacific Railroad Company is instructive:

> In this view it must be held that by this reservation of authority to alter, amend, or repeal the acts in question whenever it chose so to do, Congress * * * intended to keep within its control the entire subject of railroad and telegraphic communication between the Missouri River and the Pacific Ocean through the agency of corporations created by it or that had accepted the bounty of the Government. (*United States* v. *Union Pacific R. Co.*, 160 U. S., 36, 37.)

Furthermore, the Northern Pacific Railroad Company, to which the defendant, the Northern Pacific Railway Company, succeeded, was not only chartered and subsidized by Congress, but it was the object of that body's constant concern and solicitude, as may be seen from the following acts and resolutions, in addition to the act of July 2,

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1864, granting the charter franchise and a large subsidy of public lands, to wit:

Resolution of May 7, 1866, extending time for the completion of the road;

Act of June 25, 1868, relative to filing reports;

Joint resolution of July 1, 1868, extending time for the completion of the road;

Joint resolution of March 1, 1869, granting consent of Congress to the issuing of bonds;

Joint resolution of April 10, 1869, granting right of way from Portland, Oreg., to Washington Territory;

Resolution of May 31, 1870, authorizing the company to issue bonds in aid of the completion of its road;

Act of September 29, 1890, forfeiting certain lands granted the company;

Act of February 26, 1895, providing for the classification of mineral lands in Mon tana and Idaho;

Act of July 1, 1898, granting lands in lieu of those taken by settlers.

The defendants, James J. Hill, William P. Clough, D. Willis James, and John S. Kennedy, were, prior to November 13, 1901, large and influential holders of the stock of the defendant, the Great Northern Railway Company, and they were also shareholders in the Northern Pacific Railway Company.

The defendants, J. Pierpont Morgan and Robert Bacon (members of the firm of J. P. Morgan

& Co., bankers, of New York City), George F. Baker, and Daniel S. Lamont, were, prior to November 13, 1901, large and influential holders of the stock of the defendant, the Northern Pacific Railway Company, and some of them, at least, were shareholders in the Great Northern, and the defendant Morgan, or his firm, is the fiscal agent or financial manager of the defendant, the Northern Pacific Railway Company.

II.

THE LINES OF RAILWAY OPERATED BY THE DEFENDANTS, THE GREAT NORTHERN RAILWAY COMPANY AND THE NORTHERN PACIFIC RAILWAY COMPANY, ARE PARALLEL AND COMPETING.

Inspection of the maps in evidence will show that the two roads are practically parallel for almost their entire length. That they are competing may be presumed from the facts that each system runs east and west through the States of Minnesota, North Dakota, Montana, Idaho, and Washington; that each touches at Duluth, West Superior, and St. Paul, and numerous other points in the State of Minnesota, at Fargo and other points in North Dakota, at Helena and other points in Montana, at Sandy Point and other points in Idaho, and at Spokane and Seattle and other points in Washington; and that each connects with steamers on Lake Superior running to Buffalo and other Eastern cities, and at Seattle with lines of steamships engaged in trade with the

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Orient. The court below found as a conclusion of fact that, "These roads *are*, and in public estimation have ever been regarded as, parallel and competing lines." (Pp. 2 and 3 of the opinion.)

The testimony in the case, furthermore, establishes unequivocally that the Great Northern and Northern Pacific railways are competing lines. Charles S. Mellen, president of the Northern Pacific Railway Company, testified as follows (record, pp. 152, 153):

> Q. Are those lines of the Northern Pacific and the lines of the Great Northern, for a large part of the territory through which they run and to many of the points which they reach, parallel and competing lines?
>
> A. They are.
>
> Q. And with reference to the State of Minnesota, Mr. Mellen, are not the Northern Pacific and Great Northern lines almost generally parallel and competing lines?
>
> Mr. KELLOGG. Do you mean all of the lines?
>
> Mr. LANCASTER. Practically all of them.
>
> A. Many of the lines are parallel and competing.
>
> Q. As to a very large percentage of the wheat shipments from the West to Duluth and West Superior and to Minneapolis and St. Paul, are not the Northern Pacific and the Great Northern parallel and competing lines?
>
> A. In the transportation of wheat?
>
> Q. Yes.

A. Yes; they are.

Q. But as definite as you can make it would be to say that to a very large proportion of it those lines are competing lines for that traffic?

A. There is very active competition for a large portion of the traffic, if that is what you mean.

Q. More than half of it?

A. I wouldn't care to state a percentage.

Q. It is true, Mr. Mellen, as to a very large percentage of the wheat traffic in North Dakota and Manitoba and in Minnesota?

A. I would state that as to North Dakota and Minnesota. I would not state it as to Manitoba, for I don't think there is any competition.

Q. So far as North Dakota and Minnesota are concerned, the Northern Pacific and Great Northern are, and always have been, as far as you know, competing lines?

A. Yes.

Q. And how is it, Mr. Mellon, as to general traffic from the western coast eastward, and from the east westward?

A. There is active competition between the two lines for the business.

Q. And always has been?

A. Always has been, so far as I know.

And Mr. Hill, even, concedes that in regard to approximately 10 per cent of their interstate traffic the roads are competitors. (See his cross-examination, Record, pp. 714, 715.) Mr. Morgan, too,

testified that the two roads were in active competition with each other. (Record, p. 322.) Counsel for defendants also admitted as much in their briefs filed in the circuit court. (Mr. Young's brief, p. 7; Mr. Griggs's brief, p. 44.)

In the face of this clear testimony and the admissions of counsel, it seems a waste of time to refer to Colonel Clough's lame attempt to show that the Great Northern and Northern Pacific are competitors in respect of less than 3 per cent of their interstate traffic. His theory seems to be that in respect of traffic in excess of that amount, the Great Northern and Northern Pacific are not competitors themselves, because there are still other roads competing for the same traffic. But even if the two roads did compete with each other for only 3 per cent of their interstate business, this would still be sufficient to stamp them with the character of competing interstate carriers, since 3 per cent of such traffic would amount to something like $800,000 in round numbers.

In point of fact, however, the question whether or not these two roads are competitors for traffic is not an open one, since this Court judicially determined in the case of *Pearsall* v. *Great Northern Railway* (161 U. S., 646) that they *are* parallel and competing lines. The question in that case was whether the acquisition by the Great Northern of a majority of the stock of the Northern Pacific was a consolidation of "*parallel and competing*" lines of

railway in violation of the constitution of Minnesota prohibiting such consolidations. This court held that it was.

III.

WHAT THE GOVERNMENT ALLEGES AS CONSTITUTING A COMBINATION IN RESTRAINT OF INTERSTATE COMMERCE AND A MONOPOLY OF A PART THEREOF.

The gist of the Government's charge as contained in the petition is:

> * * * The defendant, James J. Hill, and his associate stockholders of the defendant, the Great Northern Railway Company, owning or controlling a majority of the stock of that corporation, and the defendant J. Pierpont Morgan, and his associate stockholders of the defendant, the Northern Pacific Railway Company, owning or controlling a majority of the stock of that corporation, acting for themselves as such stockholders and on behalf of the said railway companies in which they owned or held a controlling interest, on and prior to the 13th day of November, 1901, contriving and intending unlawfully to restrain the trade or commerce among the several States and between said States and foreign countries carried on by the Northern Pacific and Great Northern systems, and contriving and intending unlawfully to monopolize or attempt to monopolize such trade or commerce, and contriving and intending unlawfully to restrain and prevent competition among said railway systems in respect to such

interstate and foreign trade or commerce, and contriving and intending unlawfully to deprive the public of the facilities and advantages in the carrying on of such interstate and foreign trade or commerce theretofore enjoyed through the independent competition of said railway systems, entered into an unlawful combination or conspiracy to effect a virtual consolidation of the Northern Pacific and Great Northern systems, and to place restraint upon all competitive interstate and foreign trade or commerce carried on by them, and to monopolize or attempt to monopolize the same, and to suppress the competition theretofore existing between said railway systems in said interstate and foreign trade or commerce, through the instrumentality and by the means following, to wit: A holding corporation, to be called the Northern Securities Company, was to be formed under the laws of New Jersey, with a capital stock of $400,000,000, to which, in exchange for its own capital stock upon a certain basis and at a certain rate, was to be turned over and transferred the capital stock, or a controlling interest in the capital stock, of each of the defendant railway companies, with power in the holding corporation to vote such stock and in all respects to act as the owner thereof, and to do whatever it might deem necessary to aid in any manner such railway companies or enhance the value of their stocks. In this manner, the individual stockholders of these two independent and

competing railway companies were to be elimated and a single common stockholder, the Northern Securities Company, was to to be substituted; the interest of the individual stockholders in the property and franchises of the two railway companies was to terminate, being thus converted into an interest in the property and franchises of the Northern Securities Company. The individual stockholders of the Northern Pacific Railway Company were no longer to hold an interest in the property or draw their dividends from the earnings of the Northern Pacific system, and the individual stockholders of the Great Northern Railway Company were no longer to hold an interest in the property or draw their dividends from the earnings of the Great Northern system, but having ceased to be stockholders in the railway companies and having become stockholders in the holding corporation, both were to draw their dividends from the earnings of both systems collected and distributed by the holding corporation. In this manner, by making the stockholders of each system jointly interested in both systems and by practically pooling the earnings of both systems for the benefit of the former stockholders of each, and by vesting the selection of the directors and officers of each sytem in a common body, to wit, the holding corporation, with not only the power but the duty to pursue a policy which would promote the interests, not of one system at the expense

> of the other, but of both at the expense of the public, all inducement for competition between the two systems was to be removed, a virtual consolidation effected, and a monopoly of the interstate and foreign commerce formerly carried on by the two systems as independent competitors established. (Record, pp. 7a and 8a.)

It requires but a glance at the history of the Great Northern and Northern Pacific during the past few years to see that it has been the ever-present aim of those who dominate the policies of those two roads to bring about a "community of interest," or some closer form of union between them, to the end that the motive from which competition springs might be extinguished. And, without going into the detail of this history, we purpose to comment on several leading facts thereof which throw much light on this last attempt at combination or union.

It is conceded that James J. Hill and J. Pierpont Morgan, have been for years the ruling spirits, respectively, of the Great Northern and Northern Pacific. Mr. Hill and the men he calls his associates, chief among whom are the defendants, William P. Clough, John S. Kennedy, and D. Willis James, have admittedly directed the policy of the Great Northern for a number of years past. They claim to have done this, however, not through the ownership of a majority of the stock—although they acknowledge that their holdings are extensive—but by reason of the implicit confidence

which the great body of shareholders reposed in Mr. Hill, whose policies "had always been distinguished for their ability and remarkable success," (using the words of counsel). Mr. Morgan and a few associates, principal among whom are the defendants, Bacon, Baker, and Lamont, have perhaps in still greater degree controlled the destinies of the Northern Pacific. The reorganization of that system was planned and executed by the firm of J. P. Morgan & Co., of which Mr. Morgan is the head and front, and the latter was empowered to name and did name the members of the voting trust, which managed the property until January 1, 1901. Moreover, Mr. Morgan, or his firm and associates, always held or controlled very large amounts of Northern Pacific stock.

Now, on at least three different occasions before the present, Mr. Hill and Mr. Morgan and their associates acted together in concert or combination in transactions affecting the Great Northern and Northern Pacific.

First. When the Northern Pacific was being reorganized in 1896, Mr. Morgan, who had charge of that undertaking, arranged with Mr. Hill and his associates, who controlled the Great Northern, to transfer half the capital stock of the reorganized company to the shareholders of the Great Northern, in consideration for which the Great Northern Company was to guarantee the bonds of the new Northern Pacific Company. This was

clearly an attempt by the Hill and Morgan interests to combine or consolidate the Great Northern and Northern Pacific by an indirect process, designed to evade the law of Minnesota against the consolidation of parallel and competing lines of railway. The attempt was frustrated, however, by this court, which cast aside the technical defenses interposed and held that the proposed arrangement would accomplish a virtual consolidation of the two roads, and that therefore it was a violation of the law of Minnesota. (*Pearsall* v. *Great Northern Railway*, 161 U. S., 646.) That this arrangement was practically the joint work of Mr. Morgan and Mr. Hill is admitted by the former in his testimony (Record, p. 347). And it is further borne out by the fact that after the arrangement was thwarted by this court Mr. Hill and his associates at once acquired from Mr. Morgan $26,000,000 of the stock of the reorganized Northern Pacific Company.

Second. The purchase of the Burlington. In the spring of 1901 the Great Northern and Northern Pacific united in the purchase of substantially all the capital stock of the Chicago, Burlington and Quincy Railroad Company, commonly known as the Burlington system, at $200 a share, and in payment therefor issued their joint 4 per cent bonds to the amount of $222,400,000. In this transaction, again, the Great Northern was represented by Mr. Hill and the Northern Pacific by

Mr. Morgan. It should be stated at this point that the Union Pacific, fearing that much of its traffic would be diverted to its northern rivals if they got exclusive control of the Burlington, applied to be admitted to an interest in the purchase, but its request was promptly denied. By thus becoming the joint owners of the extensive Burlington system, comprising about 8,000 miles of road and connecting the vast region between Chicago and St. Paul in the east and Kansas City, Denver, Cheyenne, and Billings in the west, the Great Northern and Northern Pacific were, of course, drawn still nearer together. Their relations, in fact, became of the most intimate character, and it is easy to see that, more than ever thereafter, Mr. Hill and Mr. Morgan would be moved to put the "community of interest" already existing between the two roads on a more permanent, stable, and enduring basis.

Third. In the events leading up to the great stock-market panic of the 9th of May, 1901 (when Northern Pacific common stock, which shortly before had been selling at par, went up to $1,000 a share), and in the events succeeding that panic and leading up to the organization of the Securities Company, Mr. Morgan and Mr. Hill and their associates, respectively, stood shoulder to shoulder.

After the refusal to admit the Union Pacific to an interest in the purchase of the Chicago, Burlington and Quincy Railroad, the controlling spirits of the Union Pacific system proceeded in the open

market and otherwise to secure by purchase a controlling interest in the Northern Pacific Railway Company. They succeeded in acquiring considerably more than half of the Northern Pacific preferred and somewhat less than half of the Northern Pacific common stock. In all they acquired more than $78,000,000 of the total capital stock, which consisted of $75,000,000 preferred and $80,000,000 common, each class of stock having a par value of $100, and each share of stock being entitled to one vote at corporate meetings.

Not until about May 1, 1901, did Mr. Morgan and Mr. Hill and their associates learn that the Union Pacific interests were attempting to obtain the control of the Northern Pacific Company through the purchase of its stock. As soon as they did learn of the attempt they reached an understanding to oppose it in concert. Thus Mr. Hill testified (record, pp. 46–49):

> Q. Later on, in the spring of 1901, you did learn that large holdings of Northern Pacific stock were held by what is known as the Union Pacific interests, did you not?
>
> A. Yes; they told me that they had bought a substantial control.
>
> Q. About what time, Mr. Hill, did you learn of the large holdings of the Union Pacific or the Oregon Short Line?
>
> A. Early in May, is my best recollection.
>
> * * * * *
>
> Q. On or about the 1st of May, 1901, can you give us approximately the amount of

stock which you and your associates held of the preferred stock of the Northern Pacific?

A. I couldn't give the amount of preferred, because I never charged my mind with the amount of preferred. It was stock that could be redeemed, and in a matter of the control of the railroad it wasn't considered as essential to the control as the common stock was.

* * * * *

Q. And subsequent to that time, May 7, and before May 9, did J. Pierpont Morgan & Co., or *did you and your associates, acquire further Northern Pacific common?*

A. *The members of the firm asked me if myself and friends would hold the stock and not sell out. I told them we would, and they went into the market and bought some fifteen or sixteen millions.* I think they bought it. My recollection is on Saturday and Monday prior to the 9th of May. On the 9th of May there was a good-sized panic in New York, and I think they bought it on Saturday and Monday prior to that time—bought it in London and New York.

* * * * *

Q. Mr. Hill, shortly before—say between the 5th of May and the morning of the 9th of May—had you learned that what we may call the Union Pacific interests had acquired about seventy-eight millions of the common and preferred stock of the Northern Pacific?

A. I understood on authority that I thought should know, that they had acquired something over sixty; somewhere in the neighborhood of sixty or sixty-five millions.

Q. How was that divided?

A. I don't know.

Q. Did you subsequently learn that Mr. Harriman, representing the Union Pacific interests, had acquired about seventy-eight millions—not confining you to those dates, did you subsequently learn that—seventy-eight millions of the common and preferred?

A. I understand Kuhn, Loeb & Co. had acquired it.

Q. Did Kuhn, Loeb & Co. represent Mr. Harriman?

A. That I don't know.

Q. Did you understand that Kuhn, Loeb & Co. represented the Union Pacific interests?

A. I understood afterwards that they represented the Oregon Short Line.

Q. Well, as a matter of fact, the Oregon Short Line is owned and controlled by the Union Pacific?

A. I think so.

Q. And was at that time, Mr. Hill?

A. I think so, and so understood.

After the additional purchases of common stock made by Morgan & Co., as Mr. Hill testifies, on the Saturday and Monday prior to May 9, 1901, the combined holdings of Morgan, Hill, and their respective associates in Northern Pacific constituted a clear majority of the common shares; but the Union Pacific still held a majority of the total capital stock of the Northern Pacific, common and preferred combined.

It would seem, therefore, at first sight that the Union Pacific or Harriman interests had succeeded in wresting control of the Northern Pacific from Messrs. Morgan, Hill, and their associates. But Mr. Morgan controlled the then existing board of directors of the Northern Pacific Railway Company and that board had the power, under the charter of the company, to retire all the preferred stock on any first of January prior to 1917. So when the Union Pacific interests set up the claim that they were in control of the Northern Pacific, Mr. Morgan immediately answered: It is true you have a majority of all the shares, common and preferred taken together, but I will have the board of directors which I appointed retire the preferred shares, and you will then be in the minority, while my associates and myself, who hold a majority of the common shares, will control the road.

Whether or not Mr. Morgan could have carried out this plan if it had been opposed in the courts is a question not free from doubt; but at any rate there was a truce in the contest at this point, and two or three days after May 9, 1901, the day of the panic, the contestants met in the office of Mr. Harriman, amicably to adjust, if possible, their respective interests and those which they represented or controlled. It has been difficult to uncover what took place at this very significant conference, as the participants were evasive and

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reluctant to testify concerning it. Mr. Hill's testimony on the subject is as follows (Record, p. 50 et seq.):

> Q. Was there a conference or meeting between you and J. Pierpont Morgan & Co. and Kuhn, Loeb & Co., or anybody representing them?
>
> A. There might have been more than one meeting. Possibly there were several meetings. There was a very strained financial condition; people were failing and the trouble was very great. Something had occured that had never happened in New York before—an attempt to buy a control of one hundred and fifty-five millions of stock on the market, and the high price caused people to sell stock they did not own. The bankers and financial men of every description were deeply interested, not only in New York, but in London, and in financial centers on the Continent, and the result was, I think, may be two or three meetings. I know certainly there was one between the bankers at that time. The Union Pacific people claimed that they had control by the ownership of a majority of the stock of the Northern Pacific Railroad; that wasn't conceded by Messrs. Bacon and I think Mr. Steele—Mr. Robert Bacon and Mr. Steele—because they knew they held, as long as myself and friends held our stock, a majority of the common stock which would control the property. They made an agreement that as far as the election of the directors was concerned they would leave it to

Mr. Morgan to name the directors, and that was done.

Q. That is getting a little ahead, Mr. Hill.

A. Well, that is the meeting; maybe I have answered a little more.

Q. A little more, but that is all right.

A. It is a part of the whole truth.

Q. Now, Mr. Hill, the common and preferred stock was both voting stock, was it not, in the Northern Pacific?

A. Yes, sir.

Q. And since the preferred stock was outstanding it participated equally with the common stock in all stockholders' meetings?

A. Yes, sir.

Q. At the time of these conferences, or conference, that you speak of, did Mr. Harriman attend those meetings—one or more?

A. The one that I have particularly in mind—I have an impression there was more than one, possibly more than two—but the one I have particularly in mind occurred in Mr. Harriman's office.

* * * * *

Q. And at that meeting the agreement was reached that Mr. Morgan should name the board of directors of the Northern Pacific Railway Company?

A. Yes, sir.

Q. That is, the board to be elected at the next annual meeting?

A. Yes; it was expected, and I think notice had been given, that the board would be classified, and whether Mr. Morgan was to name the whole or a part I do not recall. I know that Mr. Morgan was to name the

board of directors, and I know that on his return from Europe he did.

Q. Was that agreement put in writing at that meeting?

A. I don't remember. I have a faint recollection of a typewritten memorandum—maybe it was shown to me somewhere else—just a memorandum of what was proposed.

Q. Well, did you for yourself, or acting for your associates in any way, execute or sign any agreement?

A. I don't recall any signed agreement. When you asked me if it was in writing I remembered something of seeing a proposition, maybe it was a telegram to be transmitted to Mr. Morgan; maybe that is what was in my mind.

Q. So far as your present recollection goes, Mr. Hill, do you wish to be understood as saying that you do not recollect whether there was any executed agreement; that is, any agreement that was signed by the respective parties?

A. I don't recall any.

Q. But you do recall some written proposition—that is, some typewritten agreement—that was drawn up; but whether it was executed or not you do not remember; was that it?

A. No; that is a little more than my recollection. My recollection is that either coming from some of the parties for consideration by the others or to be transmitted to Mr. Morgan, or a short statement covering

what was proposed. Now, whether that was a cable made for transmission or whether it was a memorandum that was in the office I could not say. Now, it might be both, and I could not say which.

Q. Mr. Hill, have you any present knowledge of having in your possession or under your control any memorandum or agreement that was reached that day?

A. No; I haven't.

Q. Do you recall having signed any memorandum of agreement?

A. I don't recall.

Q. Or any memorandum executed or unexecuted since that time?

A. I don't recall more than I have testified to. I have a recollection of seeing a memorandum. Whether it was a cable or whether it was a memorandum used locally, or both, I could not testify.

Q. But at that meeting, if there was any memorandum drawn up, nothing was said with reference to the respective holdings of either common or preferred by the Harriman or the Hill factions, so to speak?

A. My recollection is that there was no discussion as to the amount of stock held. I think Mr. Schiff said, "We control or own a majority of the Northern Pacific;" and I think Mr. Bacon said, "Mr. Schiff, we do not concede that, and before you are through you will find you don't."

* * * * *

Q. Before leaving this matter I will ask you to give me the names, as near as you

can recall them, and the full names of the parties present at that conference, which you say occurred two or three days after May 9.

A. The meeting might have been within two days, and my recollection is that Mr. Schiff and Mr. Harriman, Mr. Robert Bacon and Mr. Steele were present at Mr. Harriman's office when I was called in.

Q. Who represented Kuhn, Loeb & Co. at that meeting?

A. Mr. Schiff, a member of the firm—a senior member of the house, I think.

Q. Mr. Hill, Mr. Robert Bacon, and Mr. Steele were partners of J. Pierpont Morgan & Co.?

A. Yes, sir.

Q. Mr. Harriman you understood to represent the Union Pacific and Oregon Short Line?

A. Well, he might have represented himself. It is difficult for me to give any more than my understanding. He represented the Union Pacific interests, or those that were concerned in buying the control of the Northern Pacific. He represented the opposition to our plans.

Q. Then you know, Mr. Hill, of your own knowledge, that the board of directors which was elected at the annual meeting in October, 1901, was nominated or named by Mr. Morgan under that agreement?

A. I know that it was left at that meeting for him to nominate the directors of the Northern Pacific.

Q. You mean the conference shortly after May 9?

A. Yes; that meeting at Mr. Harriman's office.

Q. And do you know that that arrangement or agreement with reference to Mr. Morgan's naming the directors of the Northern Pacific was carried out in fact?

A. I do; I have the understanding that it was carried out. There was no other board elected.

Q. Was there at that conference, Mr. Hill, any agreement among the parties to it as to the Union Pacific being represented on the board of the Northern Pacific?

A. There was not.

Q. No understanding with reference to that?

A. None whatever. I remember some discussion—not as to the question of Union Pacific, but as to the suggestion of some names. Mr. Bacon said he would not consider it at all on any other basis than that Mr. Morgan shall nominate the board, and if you are willing that he shall nominate the board we will agree to it.

Q. When you say there was some sug gestion made with reference to directors, do you mean to say that Mr. Harriman or Mr. Schiff insisted?

A. I think that they named, or gave some names, or suggested some names, and they were refused.

Q. And the final agreement then was that Mr. J. Pierpont Morgan should have

the right and power to absolutely name the board of directors of the Northern Pacific?

A. That was the understanding or the conclusion arrived at. It hardly took the form of a final agreement.

Q. Well, you broke up with that understanding, didn't you?

A. Yes, that is right; and I think it was practically carried out on that line, and the disturbance on the street adjusted itself very quickly.

At the conclusion of the conference, a paper setting forth as much of what took place as it was thought expedient to disclose was sent to a publication called the "Wall Street Summary," and was printed in its issue of June 1, 1901. It reads as follows:

> It is officially announced that an understanding has been reached between the Northern Pacific and Union Pacific interests under which the composition of the Northern Pacific board will be left in the hands of J. Pierpont Morgan. Certain names have already been suggested, not now to be made public, which will especially be recognized as representatives of the *common interests*. It is asserted that *complete and permanent harmony will result under the plan adopted between all interests involved.*

That this understanding or agreement contemplated something more far-reaching than a mere "community of interest," something more permanent and stable, something in the nature of a holding corporation (such as the Securities Com-

pany), is clearly shown by Mr. Morgan's own testimony. In answer to a question he said (Record, p. 347):

> I will not take the responsibility of going through anything of this kind again [meaning the struggle for control of the Northern Pacific and the resulting panic].

Continuing, he says, evidently referring to the vulnerable points of the "community of interest" scheme:

> If a man has got 10,000 shares of stock, and acts with you, and he is your friend, to-morrow somebody comes on and offers him 100 per cent profit, and he will sell his stock, and you will find yourself left in a box. The consequences are too serious. I said "*It can't go on that way.*"

Pursuant to the agreement reached by the conferees, Mr. Morgan named a new board of directors for the Northern Pacific Railway Company, composed of representatives of the Union Pacific, Northern Pacific, and Great Northern Railway interests, which board was unanimously elected, the Union Pacific holdings in the Northern Pacific being voted for them. That board then voted to retire the preferred stock, the means for which were to be raised by issuing bonds of the Northern Pacific Company, convertible at the will of the owner into common stock of that company, but subscriptions to such bonds were to be limited to owners of the then existing common stock of the Northern Pacific Company.

This brings the narrative down to a time shortly before the organization of the Securities Company. At the date of the organization of that company, the retirement of the preferred stock of the Northern Pacific Company having been ordered by its board of directors on the same date, to wit, November 13, 1901, Mr. Morgan and his associates and Mr. Hill and his associates, who held a majority of the Northern Pacific common stock, were in control of that railway (Mr. Morgan, indeed, testifies that he and his associates had a majority without Mr. Hill, record, p. 348), and on the same date Mr. Hill and his associates were in practical control of the Great Northern, but it does not appear that they held a majority of its stock, though they admit holding a very large amount—$35,000,000 or more. At the time in question, therefore, Mr. Morgan and Mr. Hill and their associates controlled both the Great Northern and Northern Pacific Railway companies.

In the light of the facts which have thus been brought out concerning the first attempt to amalgamate the Great Northern and Northern Pacific, which was defeated by the decision of this court in the Pearsall case (*supra*), and of those in connection with the purchase of the Burlington system and the consequent struggle for the control of the Northern Pacific, it will not be difficult to show, from the testimony given by the defendants themselves, that (1) the incorporation of the Securities Company and (2) its acquisition of a large major-

ity of the stock of the Great Northern and Northern Pacific companies were the designed results of a plan or understanding between Mr. Hill and Mr. Morgan and their associates, respectively, who are parties to this bill.

(1) That the Securities Company was discussed and planned by Mr. Hill and Mr. Morgan and their associates is freely admitted by the defendants. (Mr. Hill's testimony, record, p. 88; and Mr. Morgan's testimony, record, pp. 347 and 348.) The company was formally organized November 13, 1901, under the laws of the State of New Jersey, after diligent search had been made for an old charter of the Territory of Minnesota, which would be, as Colonel Clough expressed it in his testimony, "beyond the power of legislative amendment" (a clear admission that no stone was to be left unturned in the effort to place the Securities Company and the objects it was intended to accomplish as far as possible beyond the reach of the law). The capital stock of the company was fixed at $400,000,000, of which but $30,000 was to be paid in cash. Its capital stock was thus just sufficient to take over, at the exchange valuation agreed upon, the entire capital stock of the Great Northern and Northern Pacific. The formation of a holding company of the character of the Securities Company had long been in the minds of Mr. Hill and his associates in the Great Northern, while Mr. Morgan had considered it for a considerable length of time. It was not

the impulse of a moment; it was a well-matured scheme. Mr. Morgan's testimony discloses that very clearly (Record, pp. 344, 346 to 349, 351, 354 to 356):

> Q. By whom was the matter [i. e., the organization of a holding company] first brought to your attention?
>
> A. I think it was rather in my own mind, as far as the Northern Pacific was concerned.
>
> Q. Well, as far as the Great Northern was concerned, when was that first suggested?
>
> A. *I had heard it discussed for a year or two.*
>
> Q. *Had you talked with Mr. Hill generally about it?*
>
> A. *I think I had.* That is, not in any detail, with the exception of being to a certain extent a stockholder in the Great Northern. I talked to him on that subject.
>
> Q. And that was a separate holding company for the Great Northern?
>
> A. Yes, sir.
>
> Q. And then you had that in your own mind to have a holding company for the Northern Pacific?
>
> A. That came up after I came back. When we found ourselves in this position, with the danger, having escaped as I thought at that time from what I thought was a great danger, that is to say, our property being absorbed by a competing line without our knowledge or consent, it occurred to

me something ought to be done to prevent that; because, while we chose to defend the property, I did not want it to go on indefinitely, and I thought the best plan was to go to some trust company. My idea was first to go to some trust company to take the Northern Pacific stock and hold it.

Q. That is, to hold control?

A. Hold control of the stock. Just surrender it to them and take their receipt.

* * * * *

Q. So you and Mr. Hill discussed that question during the summer?

A. What?

Q. The question of the formation of a holding company?

A. No, no. Mr. Hill and I—*I think it was two years ago* Mr. Hill first talked to me about the Great Northern road, when I took stock, and that sort of thing—the little stock I had, 1,000 or 2,000, 5,000 shares—but it had nothing to do with the Northern Pacific road in any way, shape, or manner. Mr. Hill, I have no doubt, thought at one time he could buy up the Northern Pacific road and do something. I told him then if he could not we could work in harmony; but the law was against him, and he found that out afterwards and abandoned it, and that was settled years ago when the Supreme Court decided that case.

Q. In the Pearsall case?

A. Yes; that dismissed any question in my mind of that kind. Everything, so far as the Northern Pacific road is concerned,

and a holding company, all occurred to my mind subsequent to the 9th of May. My idea was, I can't live forever, and J. P. Morgan & Co. may be dissolved. *I wanted this effected, so that the policy we have incorporated and created shall be continued on that property if the stockholders chose to put the stock there.*

* * * * *

Q. What was the result of your talk with Mr. Hill?

A. *The result of it was that we decided that the Northern Pacific—so far as I was concerned as a stockholder in the Northern Pacific, I would put my stock in, provided that he would take everybody else's into this thing that he had proposed to arrange for the Great Northern.*

Q. That is the Northern Securities Company?

A. Yes.

Q. That is, provided he would go in himself?

A. Yes; of course. Well, I didn't care whether he went in or not. We had a majority without him. I wanted a majority of the Northern Pacific stock in that Securities Company. I didn't care who went in, provided there was enough there to protect the Northern Pacific.

* * * * *

Q. When was it first decided between you and Mr. Hill to put both stocks of these companies into one holding company?

A. Mr. Hill did not decide the Northern Pacific. I told him I thought if he was willing we would take it; and that was probably some time either just before or just after I returned from California.

Q. Then you agreed to do it?

A. No, sir; I told him that would be my decision if everything went smooth. We could not tell at that time if we were going to be able to get our charter.

Q. That was satisfactory to him?

A. It was satisfactory to me if it was to him.

Q. Did he say it was satisfactory to him?

A. Yes.

Q. And you both agreed to it?

A. We both agreed to it.

Q. If you could get your charter and all the legal formalities could be carried out?

A. He was acting for his stock and I for mine, with the condition that if the Northern Securities Company was organized the holders of the Northern Pacific stock should have the right to put in their stock the same as we did.

* * * * *

Q. You have explained that it was your idea that it would be a good plan to put the control of the Northern Pacific into a trust company or into a holding company, and Mr. Hill apparently held the same theory as to his stock.

A. Not at the same time.

Q. No; not at the same time; he had worked that out years ago in his mind.

You had both been working the same thing out. *Why was it agreed to put the stock of both of these companies in one holding company?*

A. *It seemed to me the better way of putting it.*

Q. But why?

A. Why, on the face of it, it did not make any difference to me.

Q. Why put the stocks of both of these companies into one holding company?

A. In the first place, *this holding company was simply a question of custodian*, because it had no other alliances.

Q. Can you tell me what special benefits accrued from putting them both in one company?

A. Because it seemed to me the best remedy. The company is so large. For instance, supposing I had gone to the United States Trust Company and they had issued to me some securities for the Northern Pacific (the persons who put their stock in a holding company would desire to have something for it—trust certificates or other securities). Supposing we had put our securities in the United States Trust Company and they had given me something or other. They have 2,000,000 of stock. *Somebody could get hold of that and do what they liked with it. I wanted to put it in a company with capital large enough that nobody could ever buy it*, and that is the only one I know of. It is the only investment or trust company that I knew of of that kind where the stock

was large enough so that in all human probability I felt that if it was not safe there it was not safe anywhere.

(2) The understanding or agreement between Messrs. Hill, Morgan, and their associates in regard to the organization of the Securities Company further contemplated that that company should acquire at least a majority of the stock of the Great Northern and Northern Pacific companies, respectively. That is to say, they would transfer their own holdings (which in themselves constituted a majority of the Northern Pacific shares—see Mr. Morgan's testimony, Record, p. 348) and advise or otherwise persuade other shareholders to do the same until the Securities Company obtained at least a majority of the shares of each road. The answers of the defendants and the testimony given by them are particularly clear and full on this point.

The answer of J. P. Morgan et al. states that (Rec., p. 91a)—

> For some years the defendant Hill and others, who were interested in the Great Northern Company, but not including these defendants, had in contemplation the formation of a corporation for the purpose of purchasing their separate interests in that company, with the general object that said interests should be held together, and the policy and course of business of the Great Northern Company should be continuous in developing the company's system and the

territory served by it, and not subject to radical change and possible inconsistency from time to time. *In or about August, 1901, as this plan was approaching maturity, said parties for similar reasons determined that they would also sell to the new company, when formed, their interests in the Northern Pacific Company, which were considerable in amount, and that the capital of the new company should be made sufficiently large to enable it to purchase all shares of the Great Northern and Northern Pacific companies which the holders might desire to sell and any other shares which the new company might deem it advisable to acquire.*

* * * Thereupon and therefore, with the view and for the purpose of protecting the Northern Pacific Company and the holders of its common stock against the possible control of the direction of said company in an adverse interest, *these defendants determined and also advised their friends to sell their Northern Pacific stock to the new company.*

The answer of James J. Hill et al. shows that (record, p. 64a):

To protect the interests of the shareholders of the Northern Pacific Company, J. P. Morgan & Co. made additional purchases of Northern Pacific common stock which, with the holdings in said stock of Mr. Hill and other Great Northern shareholders who had discussed with him the plan of forming a holding company, constituted about forty-two million dollars ($42,000,000), being a

majority of the common stock. In view of the injury apprehended to both companies, and to their shareholders, and the better to protect their interests in the future, the Great Northern shareholders, holding North ern Pacific shares, deemed it advisable that the projected holding company should have power to purchase, not only their own Great Northern and Northern Pacific shares, but also the shares of such other Great Northern and Northern Pacific shareholders as might wish to sell their stock to said holding company, and the shares of companies already formed, and others that might be formed, for the purpose of aiding the traffic or operations of the Great Northern and Northern Pacific companies, respectively. At this time it was not expected by any of the persons concerned that any *Northern Pacific* shares except the said forty-two million dollars ($42,000,000) would be acquired by the proposed holding company. [But these shares controlled the road.]

Mr. Morgan testified as follows:

Q. When did the idea of putting the *control* of both these roads in one place come up; after your return?

A. I suggested to Mr. Hill "why not." I think I did at any rate. If it was not, it may have been by Mr. Steele. Whether I did it or J. P. Morgan & Co., I think we are responsible for having made that suggestion. (Record, p. 345.)

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And again:

> Q. What was the result of your talk with Mr. Hill?
>
> A. The result of it was that we decided that the Northern Pacific, so far as I was concerned as a stockholder in the Northern Pacific, I would put my stock in provided that he would take everybody else's into the thing that he had proposed to arrange for the Great Northern. (Record, p. 348.)

Mr. Kennedy's testimony in this connection is particularly instructive (Record, pp. 195–197):

> Q. You wanted to have a majority of the stock of the Northern Pacific where you could absolutely control it?
>
> A. Yes, sir.
>
> Q. Under all circumstances?
>
> A. Under all circumstances.
>
> * * * * *
>
> Q. Mr. Kennedy, it was practically certain that Mr. Hill, yourself, and a few others controlled the Great Northern?
>
> A. I suppose we had enough stock to have controlled an election if there had been no combination against us.
>
> * * * * *
>
> Q. You were just as anxious to prevent an attempt to buy up a majority of the Great Northern by a rival interest as you were to prevent an attempt to buy up a majority of the Northern Pacific, weren't you?
>
> A. I didn't want an attack in either case.

Q. That is what I am getting at—that is, a purchase by a rival interest of a majority of the stock of either the Great Northern or the Northern Pacific was a thing which you were trying to prevent, was it not?

A. Yes, sir; that was our idea; at least, that was my idea. I speak for myself.

* * * * *

Q. Now, you gentlemen, Mr. Morgan, Mr. Hill and his associates, and yourself, at the time you conceived and agreed upon the plan organizing the Northern Securities Company, agreed among yourselves to turn in a majority of the stock of the Northern Pacific into the Securities Company, did you not?

A. I don't remember of any special agreement made on that subject. *I think it was understood they would turn it in.*

Q. So as to place a majority of the Northern Pacific absolutely in the Northern Securities Company?

A. *Yes, sir: that was my idea.*

Q. And so far as you know that was the idea of the other gentlemen associated with you?

A. I suppose it was. I have no information on that point.

* * * * *

Q. Was it the object or purpose of the Northern Securities Company, that is, was it talked over and agreed among you gentlemen, that the Northern Securities Company was to acquire other stocks besides the Great Northern and Northern Pacific?

A. That was spoken of as a possibility.

Q. But the primary object and purpose was to acquire the stocks of the Great Northern and Northern Pacific?

A. That was the first object.

At page 831 of the record will be found the following testimony of Colonel Clough:

Q. I repeat the question: Before you reached the conclusion to take out a New Jersey charter, Mr. Morgan's interests and the Great Northern interests had agreed to place their holdings in a common corporation [Mr. Morgan's interests being the Northern Pacific]?

A. Before that was done, as I have stated before, the gentlemen who were stockholders of the Great Northern and who also held stock of the Northern Pacific, and Mr. Morgan himself (the holdings of the Great Northern being, I think it was, about 33 millions, and of the Northern Pacific about 42 millions all together; somewhere in that neighborhood, about 40 or 42) had *decided that they would sell their stocks to the new company when created.* Now, it was after that *decision* relating to those stocks and, as I said, only a few days before the articles of incorporation were actually filed, that the conclusion was ultimately reached to incorporate under the laws of the State of New Jersey.

Mr. Hill admitted point-blank that the plan contemplated the transfer to the Northern Securities

Company of a controlling interest in the stocks of both the Great Northern and Northern Pacific:

> Q. At the time when the Northern Securities Company was formed, *was it your expectation and desire that a majority of the common stock of the Northern Pacific Railway Company should be turned into the Northern Securities Company in exchange for the latter company's stock?*
>
> A. In November?
>
> Q. Yes, sir.
>
> A. *Yes.*
>
> Q. It was?
>
> A. Of the Northern Pacific?
>
> Q. Yes.
>
> A. *Yes, sir.*
>
> Q. *Was it your expectation and desire at the time of the organization of the Northern Securities Company that a majority of the stock of the Great Northern Railway Company should also be exchanged for Northern Securities Company stock?*
>
> A. *I think it was expected that a majority would be exchanged.* At the same time the market price was considerably higher than the price the Northern Securities Company purchased the Great Northern stock at. It was a matter that was left to the shareholders. (Mr. Hill's testimony; record, p. 115.)

The understanding, which the foregoing excerpts from the answers and the testimony plainly disclose, was carried out to the letter by the parties to it—by Messrs. Hill and Morgan and their

associates. That is, they transferred their holdings in the Great Northern and Northern Pacific (their holdings in the latter constituting, alone, a clear majority) to the Securities Company in exchange for the latter company's stock at par, the basis of exchange being $180 per share for Great Northern and $115 per share for Northern Pacific; and then they advised and procured other stockholders of the Great Northern to do the same until the Securities Company had a large majority of the Great Northern shares also. The fact that the defendants' scheme contemplated the transfer of a majority of the Great Northern (as well as Northern Pacific) shares to the Securities Company, as testified by Mr. Hill and others, (*supra*, page 44), taken in connection with the further fact that such a majority was actually transferred, and at a valuation much less than the market price, too (record, p. 116), is abundant evidence that the shares necessary—in addition to those transferred by the defendants themselves—to make up the majority desired were transferred at the procurement of the defendants, and so the court below found. There is also other evidence on this point. Immediately after its organization the Securities Company sent a circular (record, p. 918), over the signature of Mr. Hill, to all of the Great Northern stockholders offering to purchase their stock at $180 a share, its own stock to be given in payment. Right on the heels of this followed a personal letter from Mr. Hill (record,

p. 920) to the Great Northern shareholders "explaining" the offer of the Securities Company and stating, among other things, that—

> The writer (Mr. Hill) is of opinion that the offer of the Securities Company is one that Great Northern shareholders can accept with profit and advantage to themselves.

And it was testified to by several witnesses, including Mr. Hill himself, that the great body of Great Northern shareholders were very loyal to Mr. Hill and would generally be guided by his opinion.

> I suppose that at any time we want any action of the Great Northern Railway Company the stockholders will be ready to do as they have in the past [i. e., follow Mr. Hill]. Generally I have felt they were a very loyal set of people. (Mr. Hill's testimony, record, p. 114.)

Now, if there be any doubt as to the real nature of Mr. Hill's "opinion" in this transaction—that is to say, if there be any doubt that his "opinion," that "the offer of the Securities Company is one that Great Northern shareholders can accept with profit and advantage to themselves," amounted to procurement—it surely ought to be dissipated by the fact that within a month after the organization of the Securities Company the holders of nearly a million of the Great Northern shares (the total number being only 1,230,000) had agreed to sell their holdings to that company at

from $15 to $20 a share less than the market price! (Record, p. 89.) A pretty severe test, by the way, of the "loyalty" of the Great Northern shareholders.

While it is thus clear that these additional Great Northern shares were transferred at the procurement of the defendants, we do not think that it was necessary to show this, it being enough to show, first, that the defendants designed to secure the transfer of a majority of Great Northern as well as Northern Pacific shares; and, second, that a majority was in point of fact transferred. In support of this view, let us suppose a case. Suppose the holders of these additional Great Northern shares necessary to make up a majority, hearing of the scheme of Mr. Hill and Mr. Morgan and their associates, had come forward, without request, persuasion, or procurement, and volunteered to transfer their holdings to the Securities Company—would that have in any way changed the essential character of the scheme? Would it have made it any less a combination in restraint of interstate transportation? Plainly not.

To sum up the result of the aforementioned exchanges of Great Northern and Northern Pacific stock for the stock of the Securities Company, the latter company, on December 11, 1901, had acquired and paid for 990,000 shares (in round figures) of Great Northern stock, the total capital stock of that company consisting of 1,250,000 shares, of which 1,230,000 have been issued

(Colonel Clough's testimony, record, pp. 244–247, 845); and by January 1, 1902, the Securities Company had acquired virtually all of the common stock of the Northern Pacific (the preferred stock was retired on that date, the resolution to retire it having been passed in the preceding November), its answer to the bill (record, p. 44a) admitting that it held 1,500,000 Northern Pacific shares out of a total of 1,550,000.

The final result of these transactions was that one and the same set of men—Mr. Hill and Mr. Morgan and their associates being the ruling spirits among them—acting together under a charter agreement and through the agency of a corporate organization, became vested with absolute power of control over two parallel and competing systems of interstate railway. In place of the two distinct sets of stockholders with rival and competing interests, namely, the stockholders of the Great Northern and Northern Pacific, there has been substituted (by means of the inter change of stocks described) the one set of stockholders with common and noncompetitive interests, namely, the stockholders of the Securities Company. Thus identically the same persons who controlled the Great Northern and Northern Pacific before the Securities Company came into possession of a majority of their shares control them now, only, now, these persons have a common interest—"a community of interest"—in the earnings of both

roads, while formerly the interests of the two sets of persons—the two sets of stockholders—were, in most respects, divergent and competitive. It borders on absurdity to say that two railway corporations which, under normal conditions, are naturally competitors for traffic, will continue to compete in any real sense after both become subject to the same source of control. It is not in the interest of the stockholders of the Securities Company that one of these railways should prosper at the expense of the other. They have a common interest in both; they receive their dividends from a fund created by pooling the earnings of both. A more effective method for combining competitive interests—for suppressing competition between rival and naturally competing business corporations—it would hardly be possible to conceive.

The preceding statement of facts may be recapitulated in the words of Thayer, J., who delivered the opinion of the court below:

> From admissions made by the pleadings, as well as from much oral testimony, we reach the following conclusions as respects matters of fact: Two of the defendants, namely, the Northern Pacific Railway Company and the Great Northern Railway Company, are the owners, respectively, of lines of railroad which extend from the cities of Duluth, St. Paul, and Minneapolis, in the State of Minnesota, thence across the

continent to Puget Sound. These roads *are*, and in public estimation have ever been, regarded as parallel and competing lines. For some years, at least, after they were built they competed with each other actively for transcontinental and interstate traffic. In the spring of the year 1901 they united in purchasing about 98 per cent of the entire capital stock of the Chicago, Burlington and Quincy Railway Company and became joint sureties for the payment of bonds of the last-named company, whereby the purchase was accomplished, which were to run twenty years and bear 4 per cent interest per annum. The amount of stock so acquired was of the par value of about $107,000,000, and as it was purchased at the rate of $200 per share the bonded indebtedness of the two companies was thus increased to the extent of $200,000,000.

Subsequent to the acquisition of the stock of the Burlington Company and in the summer of the year 1901 certain large and influential stockholders of the Northern Pacific and Great Northern companies, who had practical control of the two roads and who have been made parties defendant to the present bill, acting in concert with each other, conceived the design of placing a very large majority of the stock of both of the last-named companies in the hands of a single owner. To this end these stockholders arranged and agreed with each other to procure and cause the formation of a corporation under the laws of the State of New

Jersey, which latter company, when organized, should buy all or at least the greater part of the stock of the Northern Pacific and Great Northern companies.

The individuals who conceived and promoted this plan agreed with each other to exchange their respective holdings of stock in the last-named railroad companies for the stock of the New Jersey Company, when the same should be fully organized, and to use their influence to induce other stockholders in their respective companies to do likewise, to the end that the New Jersey Company might become the sole owner of the whole or at least a major portion of the stock of both railroad companies. In accordance with this plan the defendant, the Northern Securities Company (hereafter termed the Securities Company), was organized under the laws of the State of New Jersey on November 13, 1901, with a capital stock of $400,000,000, that sum being the exact amount required to purchase the total stock of the two railroad companies at the price agreed to be paid therefor. When the Securities Company was organized it assented to and became a party to the scheme that had been devised by its promoters before it became a legal entity. Very shortly after its organization the Securities Company acquired a large majority of all the stock of the Northern Pacific Company at the rate of $115 per share, paying therefor in its own stock at par. At the same time it acquired about 300,000 shares of the stock of

the Great Northern Company from those stockholders of that company who had been instrumental in organizing the Securities Company, paying therefor at the rate of $180 per share and using its own stock at par to make the purchase. The Securities Company subsequently made further purchases of stock of the Great Northern Company at the same rate, and in about three months had acquired stock of the latter company amounting at par to about $95,000,000, using for that purpose its own stock to the amount of about $171,000,000. The Securities Company was enabled to make the subsequent purchase of stock from stockholders of the Great Northern Company not immediately concerned in the organization of the Securities Company by the advice, procurement, and persuasion of those stockholders of the Great Northern Company who had been instrumental in organizing the Securities Company and had exchanged their own stock for stock in that company shortly after its organization.

At the present time the Securities Company is the owner of about 96 per cent of all the stock of the Northern Pacific Company and the owner of about 76 per cent of all the stock of the Great Northern Company. The scheme which was thus devised and consummated led inevitably to the following results: First, it placed the control of the two roads in the hands of a single person, towit, the Securities Company, by virtue of its ownership of a large majority

of the stock of both companies; second, it destroyed every motive for competition between two roads engaged in interstate traffic which were natural competitors for business by pooling the earnings of the two roads for the common benefit of the stockholders of both companies; and, according to the familiar rule that everyone is presumed to intend what is the necessary consequence of his own acts, when done willfully and deliberately, we must conclude that those who conceived and executed the plan aforesaid intended, among other things, to accomplish those objects. (Record, pp. 1703–1705.)

THE ISSUES OF LAW.

The questions of law growing out of the foregoing statement of facts are:

1. Has a combination been accomplished by means of the Securities Company in violation of section 1 of an act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," hereafter called the Anti-trust Act?

2. Have the defendants monopolized or attempted to monopolize *any* part of the interstate or foreign commerce of the United States, in violation of section 2 of the Anti-trust Act?

3. Was the relief granted by the circuit court authorized by law?

The Government maintains that each of these questions should be answered in the affirmative, and in that behalf submits the following brief of an argument. But if it is shown that *either* of the first two questions and the third question should be answered in the affirmative, the decree of the circuit court must be affirmed.

THE ARGUMENT.

I.

PURPOSE, SCOPE, AND INTERPRETATION OF THE ANTI-TRUST ACT.

1. The Anti-trust Act not primarily a criminal statute.

It has been said that the Anti-trust Act is a criminal statute, and that view was urged upon this

court by eminent counsel in the case of the *United States* v. *Joint Traffic Association* (171 U. S., 505). The court, however, did not consider the contention to have any material bearing in the decision of that case, and it is equally immaterial in the case at bar. But it may not be out of place here to point out that the primary aim—the motive—of Congress in passing the Anti-trust Act was not to create any new offenses against Federal law, but to pronounce and declare a rule of public policy to cover a field wherein the jurisdiction of the Federal Government is supreme and exclusive. The United States, having no common law, contracts in restraint of trade would not be repugnant to any law or rule of policy of the United States in the absence of a statute, and the controlling purpose of the Anti-trust Act was to declare that the public policy of the nation forbade contracts, combinations, conspiracies, and monopolies in restraint of interstate and international trade and commerce, and the jurisdiction conferred upon courts of equity to restrain violations of the act was intended as a means to uphold and enforce the principle of public policy therein asserted, not as a means to prevent the commission of crimes. As this court has said, "the civil remedy by injunction and the liability to punishment under the criminal provisions of the act are entirely distinct. * * *" (*United States* v. *Trans-Mo. Fr. Asso.*, 166 U. S., 342.)

But what if the Anti-trust Act is a criminal

statute; it is also in the highest degree a remedial statute, and it is as such that it is invoked in the case at bar. And in its remedial aspect it ought to be construed liberally and given the widest effect consistent with the language employed. It ought not to be frittered away by the refinements of criticism.

In Broom's Legal Maxim's, 5th Am. ed. (3d London ed.), 80, it is said:

> Again, in construing an act of Parliament, it is a settled rule of construction that cases out of the letter of the statute, yet within the same mischief or cause of the making, thereafter shall be within the remedy thereby provided; and accordingly, it is laid down that for the sure and true interpretation of all statutes (be they penal or beneficial, restrictive or enlarging of the common laws), four things must be considered:
>
> (1) What was the common law before the making of the act; (2) What was the mischief for which the common [in this case Federal] law did not provide; (3) What remedy has been appointed by the legislature for such mischief; and (4) the true reason for the remedy. And then the duty of the judges is to put such a construction upon the statutes as shall suppress the mischief and advance the remedy, to suppress the subtle inventions and evasions for continuing the mischief *pro privato commodo*, and to add force and life to the cure and remedy according to the true intent of the makers of the act, *pro bono publico*. In expounding

> remedial laws, then, the courts will extend the remedy so far as the words will admit.

In Potter's Dwarris on Statutes and Constitutions, page 234, the principle is laid down that—

> A statute made *pro bono publico* shall be construed in such manner that it may, as far as possible, *attain the end proposed.* (And Pierce and Hopper, Str. 253, is referred to.)

And in the same work it is said in a note, at page 231, that—

> In construing a remedial statute which has for its end the promotion of important and beneficial *public objects* a *large construction* is to be given, when it can be done without doing violence to its terms.

It is perhaps unnecessary to cite these rules for the interpretation of statutes, for the words of the Anti-trust Act are plain and comprehensive; but in the maze of sophistry employed to evade the force of this great remedial statute these rules are referred to "lest we forget."

And it makes no difference in the application of these rules that the statute have a penal as well as a remedial side.

> "Chancery will aid remedial laws," said Lord Keeper Wright, "*though they are called penal*, not by making them more penal, but by letting them have their course." (Ch. Prac., 215; Dwarris on Statutes, 653.) Also quoted in Sedgwick on Construction of Statutory and Constitutional Law (2d ed.), page 309.

> A statute may be penal in one part and remedial in another part. But in the same act a strict construction may be put on a penal clause and a liberal construction on a remedial clause. (Sedgwick on Construction of Statutory and Constitutional Law (2d ed.), p. 310; Dwarris on Statutes, 655; Hyde v. Cogan, 2 Douglass, 702.)

In the latter case Buller, J., said at page 705:

> The statute is so penned that the words might possibly admit of two constructions, and therefore it is material to consider, whether it is penal or remedial, because there is a well-known difference in the rule of construction as applied to laws of the one sort and of the other. Where they are remedial the interpretation is to be liberal, so as best to apply to the end. But a law may certainly be penal in one part and remedial in another, and that is the case here. There is no danger of the liberal construction of the remedial part being extended afterwards to the penal. The distinction has been too long established for any apprehension of that sort. If the clause upon which this case arises is remedial, which I think it is, the most extensive sense must prevail.

2. The Anti-trust Act purposely framed in broad and general language in order to defeat subterfuges designed to evade it.

Probably the first feature of the Anti-trust Act to strike the mind is the sweeping and comprehensive language in which it is framed.

Section 1 of the act provides:

> Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Section 2 provides:

> Every person who shall monopolize, or attempt to monopolize, or combine, or conspire with any other person or persons to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding five thousand dollars or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Every combination, regardless of its form or structure, in restraint of trade or commerce among the several States or with foreign nations, and every person, natural or artificial, monopolizing, attempting to monopolize, or combining with any other person to monopolize any part of such trade or commerce, come squarely within the sweeping

condemnation of the act. The form or framework of the combination is *wholly* immaterial. It may be cast in the form of a trust—the form that stood out most prominently when the Anti-trust Act was passed, and which it denounces in terms—or in any other form. It matters not how subtle and cunningly conceived be the disguise—it may be a holding company. But if beneath the forms and the fictions there is found what in truth and substance amounts to a combination or monopoly, the act has been violated, and no veil can hide that fact. Congress, no doubt, anticipated that attempts would be made to defeat its will through the "contrivances of powerful and ingenious minds," and to meet these it used the broad and all-embracing language found in the act; and it is in this light that that language is to be construed.

> Every contract, combination, or conspiracy in restraint of interstate or foreign commerce is illegal. The method adopted in bringing about the combination is immaterial; and *the device of a holding corporation for the purpose of circumventing the law can be no more effectual than any other means.* (Noyes on Intercorporate Relations, sec. 393.)

3. Some fundamental questions relating to the interpretation of the Anti-trust Act which this Court has decided.

It has been decided by this court that—

(*a*) The Anti-trust Act applies to and covers

common carriers by railroad as well as all other persons, natural or artificial. (*United States* v. *Trans-Missouri Freight Asso.*, 166 U. S., 290.) In that case the pleadings raised the issue of applicability as to both sections 1 and 2 of the act; and the court, in deciding the question, made no distinction between the two, but held that "the act," "the statute," as a whole, covered, and was intended to cover, common carriers by railroad.

(*b*) The words, "in restraint of trade or commerce," as used in the Anti-trust Act, are not confined to unreasonable or total restraints only, but extend to *any* and *all* direct restraints of trade or commerce, even if reasonable or only partial. (*United States* v. *Trans-Missouri Freight Asso.*, 166 U. S., 290; *United States* v. *Joint Traffic Asso.*, 171 U. S., 505.) And while this rule applies with equal force to restraints upon individuals, private corporations, and quasi-public corporations, such as railroads, there is a peculiar reason for its application to restraints upon the latter, as this court pointed out in the following passages from its opinion in the case of *United States* v. *Trans-Missouri Freight Asso.* (*supra*)—

> The business which the railroads do is of a public nature, closely affecting almost all classes in the community—the farmer, the artisan, the manufacturer, and the trader. It is of such a public nature that it may well be doubted, to say the least, whether *any contract* which imposes *any restraint*

upon its business would not be prejudicial to the public interest (p. 333).

* * * * * * * * while, in the absence of a statute prohibiting them, contracts of private individuals or corporations touching upon restraints in trade must be unreasonable in their nature to be held void, different considerations obtain in the case of public corporations like those of railroads, where it well may be that *any restraint* upon a business of that character, as affecting its rates of transportation, must thereby be prejudicial to the public interests (p. 334).

(*c*) In exercising the powers over commerce vested in the Federal Government, Congress may to some extent limit the right of private contract, the right to buy and sell property, without violating the fifth amendment. It may declare that no contract, combination, or monopoly which restrains trade or commerce by shutting out the operation of the general law of competition shall be legal. (*United States* v. *Joint Traffic Asso., supra; Addyston Pipe and Steel Co.* v. *United States*, 175 U. S., 211.)

The foregoing propositions are too well settled to require discussion; to state them is sufficient.

4. The tests to determine whether a combination or monopoly exists within the meaning of the anti-trust act.

(*a*) Combinations. When the natural effect of an agreement or combination is to stifle, smother,

destroy, prevent, or shut out competition, the agreement or combination is in restraint of trade or commerce and illegal under section 1 of the the Anti-trust Act. Any combination "for the purpose of avoiding the effects of competition"—using the words of the opinion in the case of the *United States* v. *Trans-Missouri Freight Asso.* (*supra*)—in interstate or international trade or commerce is within the prohibition of the act. The decisions of this court are conclusive on this point. Thus in *United States* v. *Trans-Missouri Freight Asso.* (*supra*) it was said, adopting the language of the dissenting opinion of Shiras, J., in the circuit court of appeals:

> There are benefits and there are evils which result from the operation of the law of free competition between railway companies. The time may come when the companies will be relieved from the operation of this law, but they can not, *by combinations and agreements among themselves*, bring about this change. The fact that the provisions of the Interstate Commerce Act may have changed in many respects the conduct of the companies in the carrying on of the public business they are engaged in does not show that it was the intent of Congress, in the enactment of that statute, to clothe railway companies with the right to combine together *for the purpose of avoiding the effects of competition* on the subject of rates. (P. 337.)

Again, in *United States* v. *Joint Traffic Asso.* (*supra*), it was argued by the eminent counsel who appeared for the defendants that the combination there in question was not in restraint of trade or commerce even though it did prevent competition to some extent. But this court held to the contrary. Said Mr. Justice Peckham, who delivered the opinion of the court:

> Upon the point that the agreement is not in fact one in restraint of trade, *even though it did prevent competition*, it must be admitted that the former argument has now been much enlarged and amplified, and a general and most masterly review of that question has been presented by counsel for the respondents. That this agreement does in fact prevent competition, and that it must have been so intended, we have already attempted to show. Whether stifling competition tends directly to restrain commerce in the case of naturally competing railroads, is a question upon which counsel have argued with very great ability.
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> * * * * *
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> The natural, direct, and immediate effect of competition is, however, to lower rates, and to thereby increase the demand for commodities the supplying of which increases commerce, and *an agreement whose first and direct effect is to prevent this play of competition restrains instead of promoting trade and commerce.* * * * (Pp. 575 and 577.)

In several other places in the same opinion this court expressed the view that to prevent or shut off competition is to restrain trade and commerce. Thus, at page 559:

> Has not Congress with regard to interstate commerce and in the course of regulating it, in the case of railroad corporations, the power to say that no contract or combination shall be legal which shall *restrain trade and commerce by shutting out the operation of the general law of competition?* We think it has.

And again, at page 570:

> Where the grantees of this public franchise are competing railroad companies for interstate commerce, we think Congress is competent to forbid any agreement or combination among them by means of which *competition is to be* smothered.

In the case of the *Addyston Pipe Co.* v. *United States* (175 U. S., 211, 244), this court once more held that a contract, agreement, or combination which prevents or destroys competition is in restraint of trade:

> We have no doubt that where the direct and immediate effect of a contract or combination among particular dealers in a commodity is *to destroy competition* between them and others, so that the parties to the contract or combination may obtain increased prices for themselves, such contract or com-

> bination *amounts to a restraint of trade* in the commodity, even though contracts to buy such commodity at the enhanced price are continually being made. Total suppression of the trade in the commodity is not necessary in order to render the combination one in restraint of trade.

This court and other courts when discussing this subject constantly use words of the same import as those above quoted. "To prevent or suppress competition" and "to restrain trade" are, in fact, often used by judges as convertible terms to express one and the same thought.

The decision of the House of Lords in the case of the *Mogul S. S. Co.* v. *McGregor* (L. R. App. Cas. (1892), 25) is sometimes cited, by courts as well as by counsel, in support of the contention that an agreement or combination between a number of traders to put an end to competition in their business is not an agreement or combination in restraint of trade and is therefore valid. This is a mistaken view of that decision, and inasmuch as the case is rightly regarded as a leading authority and is constantly cited on behalf of defendants in proceedings under anti-trust laws, it may not be amiss to point out precisely just what was decided.

In the first place, the case was decided upon common-law principles, there being no statute, such as the Federal Anti-trust Act, making it unlawful and criminal to enter into agreements or combinations in restraint of trade. The defend-

ants, who were shipowners, in order to secure a carrying trade exclusively for themselves and at profitable rates, formed an association and agreed that the number of ships to be sent by members of the association to the loading port, the division of cargoes, and the freights to be demanded, should be the subject of regulation; that a rebate of 5 per cent on the freights should be allowed to all shippers who shipped only with members of the association; and that agents of members should be prohibited on pain of dismissal from acting in the interest of competing shipowners, any member to be at liberty to withdraw on giving certain notices. The plaintiffs, also shipowners, who were not members of the association, having been refused admission thereto, sued for the injury they claimed to have been done to them by reason of the defendants' association, which was alleged to be an unlawful conspiracy—unlawful because in restraint of trade. Both the court of appeal and House of Lords held that the action could not be mintained, *not, however, because the agreement in controversy was not in restraint of trade*, but because, even if it were in restraint of trade, it still remained as a stumbling block to the action that an agreement in restrain of trade was not unlawful at common law in the sense that it furnished cause for a civil action by one damaged by it, but only in the sense that it was void and unenforceable if sued upon. That this was the point which the case really decided, and that it *did not* decide

that the agreement or combination in question was not an agreement or combination in restraint of trade, is unmistakably shown by the language of the judgments read both in the House of Lords and the court of appeal.

Thus Lord Halsbury, L. C., said in the House of Lords (pp. 36 and 39):

> Now it is not denied, and can not be even argued, that prima facie a trader in a free country in all matters "not contrary to law may regulate his own mode of carrying on his trade according to his own discretion and choice." This is the language of Baron Alderson in delivering the judgment of the Exchequer Chamber (in *Hilton* v. *Eckersley*, 6 E. and B., 74, 75), and no authority, indeed no argument, has been directed to qualify that leading proposition. It is necessary, therefore, for the appellants here to show that what I have described as the course pursued by the associated traders is a "matter contrary to law."
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> * * * * *
>
> A totally separate head of unlawfulness has, however, been introduced by the suggestion that the thing is unlawful because in restraint of trade. There are two senses in which the word "unlawful" is not uncommonly, though I think somewhat inaccurately, used. There are some contracts to which the law will not give effect; and therefore, although the parties may enter into what, but for the element which the law condemns would be perfect contracts,

> the law would not allow them to operate as contracts, notwithstanding that, in point of form, the parties have agreed. Some such contracts may be void on the ground of immorality; some on the ground that they are contrary to public policy; as, for example, in restraint of trade; and contracts so tainted the law will not lend its aid to enforce. It treats them as if they had not been made at all. But the more accurate use of the word "unlawful," which would bring the contract within the qualification which I have quoted from the judgment of the Exchequer Chamber, namely, as *contrary to law*, is not applicable to such contracts.
>
> It has never been held that a contract in restraint of trade is contrary to law in the sense that I have indicated. * * * [Not contrary to the *common* law, the lord chancellor means, of course.]

In the court of appeal, judgments were read by both Bowen, L. J. and Fry, L. J., who constituted the majority of the court, which was sustained by the House of Lords. The remaining judge who sat in the court of appeal, Lord Esher, M. R., dissented from the majority, he being of the opinion not only that the agreement or combination was in restraint of trade, but that as such it was indictable and therefore actionable.

Said Bowen, L. J., in the course of his judgment (L. R. 23 Q. B. D., 619, 620):

> Lastly, we are asked to hold the defendants' conference or association illegal, as

> being in restraint of trade. The term "illegal" here is a misleading one. Contracts, as they are called, in restraint of trade are not, in my opinion, illegal in any sense, except that the law will not enforce them. It does not prohibit the making of such contracts; it merely declines, after they have been made, to recognize their validity. The law considers the disadvantage so imposed upon the contract a sufficient shelter to the public. The language of Crompton, J., in *Hilton* v. *Eckersley* (6 E. and B. 47) is, I think, not to be supported. *No action at common law will lie or ever has lain against any individual or individuals for entering into a contract merely because it is in restraint of trade.* * * * If peaceable and honest combinations of capital for purposes of trade competition are to be struck at, it must, I think, be by legislation, for I do not see that they are under the ban of the common law.

The language of Fry, L. J., also shows that it was assumed, at least arguendo, that the agreement in question *was* in restraint of trade. He said at page 626:

> It is said that such an agreement is in restraint of trade, and therefore illegal. *Be it so.* But in what sense is the word 'illegal' used in such a proposition? In my opinion it means that the agreement is one upon which no action can be sustained and no relief obtained at law or in equity, but it does not mean that the entering into the agreement is either indictable or actionable.

The foregoing passages from the judgments of the House of Lords and the court of appeal show very clearly, as we have already said, that what the Mogul Steamship case actually decided was that, admitting the plaintiffs' contention that the agreement or combination out of which their action grew was in restraint of trade, they still had no case, because such an agreement or combination was not indictable or actionable at common law. So far, indeed, from it having been decided that the agreement or combination in controversy was not in restraint of trade, Lord Bramwell and Lord Hannen, two of the most learned of the law lords who sat in the case and who fully concurred with their associates, the judgment of the House of Lords being unanimous, expressed the opinion that *it was in restraint of trade*. L. R. App. Cas. (1892), 46 and 58. Lord Hannen was particularly clear on this point. He said, at page 58:

> It was contended that the agreement between the defendants to act in combination, which was proved to exist, was illegal as being in restraint of trade. *I think that it was so*, in the sense that it was void, and could not have been enforced against any of the defendants who might have violated it: *Hilton* v. *Eckersley*. But it does not follow that the entering into such an agreement would, as contended, subject the persons doing so to an indictment for conspiracy, and I think that the opinion to that effect expressed by Crompton, J., in *Hilton* v. *Eckersley* is erroneous.

Lord Esher, Master of the Rolls, was also, as already noted, of the opinion that the agreement or combination in question was in restraint of trade.

It is hardly necessary to say that the Government does not contend that ordinary corporations and partnerships, formed in good faith in the usual course of business, come within the prohibition of the Anti-trust Act because, incidentally, they may restrict competition to some extent. In such cases the restriction of competition, if any, is only ancillary and collateral to the main object. But there is a vast difference between corporations and partnerships of this class and associations of persons, in the form of corporation, partnership, or otherwise, formed *for the purpose of combining competing businesses* by bringing them under a common controlling body; and this difference has been recognized by this court and practically every other court which has had to deal with the subject, as the adjudicated cases hereinafter referred to show.

(*b*) Monopolies. The act embraces not only monopolies which have been consummated, but attempts to monopolize as well. As used in the act the word "monopoly" is not confined to its common-law meaning of an exclusive grant to one or a few to do that which before had been free and open to all in common. (*United States* v. *Trans-Missouri Freight Asso.*, *supra*.) The term, as used by modern legislators and judges, signifies

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the combining or bringing together in the hands of one person or set of persons the control, or the *power* of control, over a particular business or employment, so that competition therein may be suppressed. Thus the supreme court of Illinois said in *People* v. *Chicago Gas Trust Company* (130 Ill., 294):

> The *control* of the four companies by the appellee, an outside and independent corporation, suppresses competition between them and destroys their diversity of interest and all motive for competition. There is thus built up *a virtual monopoly* in the manufacture and sale of gas.

And in *People* v. *North River Sugar Refining Company* (54 Hun (N. Y.), 377), a monopoly was defined by Barrett, J., as follows:

> Any combination the tendency of which is to prevent competition in its broad and general sense and to control and thus at will enhance prices to the detriment of the public is a legal monopoly.

And this court said in *E. C. Knight Co.* v. *United States* (156 U. S., 1):

> Again, all the authorities agree that, in order to vitiate a contract or combination, it is not essential that its results should be a complete monopoly. It is sufficient if it really tends to that end, and to deprive the public of the advantages which flow from free competition.

So far as the present case is concerned, however, it is unnecessary to consider further what constitutes a monopoly within the meaning of the Anti-trust Act, as the Supreme Court has expressly decided that a combination or consolidation of two competing railroads—the very roads, by the way, now at the bar of this court—brought about by transferring to one road a majority of the stock of the other, is such a monopoly. In *Pearsall* v. *Great Northern Railway* (161 U. S., 646, 677), it was held that—

> The consolidation of these two great corporations will unavoidably result in giving to the defendant *a monopoly* of all traffic in the northern half of the State of Minnesota, as well as of all transcontinental traffic north of the line of the Union Pacific, against which public regulations will be but a feeble protection.

A similar ruling was made by the Supreme Court in *Louisville and Nashville Railroad Co.* v. *Kentucky* (161 U. S., 677).

(*c*) To prove that a combination or monopoly exists within the meaning of the act it is not necessary to show that the immediate effect of the acts complained of is to suppress competition or to create a complete monopoly. It is sufficient to show that they *tend* to bring about those results. As the court said in *People* v. *North River Sugar Refining Co.* (*supra*):

> Any combination the *tendency* of which is to prevent competition * * * is a legal monopoly.

And, to repeat the language used by Mr. Chief Justice Fuller in the *Knight case* (*supra*)—

> * * * all the authorities agree that in order to vitiate a contract or combination it is not essential that its result should be a complete monopoly; it is sufficient if it really *tends* to that end and to deprive the public of the advantages which flow from free competition.

The same rule was laid down and the above language of the Chief Justice quoted in support thereof in the *Addyston Pipe case* (175 U. S., 211, 237).

And in *Salt Co.* v. *Guthrie* (35 Ohio St., 672), the Supreme Court of Ohio stated the rule as follows:

> The clear *tendency* of such an agreement is to establish a monopoly and destroy competition in trade. It is no answer to say that competition in the salt trade was not in fact destroyed, or that the price of the commodity was not unreasonably advanced. Courts will not stop to inquire as to the degree of injury inflicted upon the public; it is enough to know that the *inevitable tendency* of such contracts is injurious to the public.

(*d*) It is not essential to show that the person or persons charged with monopolizing or combining have actually raised prices or suppressed competition, or restrained or monopolized trade or commerce in order to bring them within the condemnation of the act. It is enough that the necessary effect of the combination or monopoly is to give them the power to do those things. The decisive question is whether the power exists, not whether it has been exercised. The persons charged with combining or monopolizing may, indeed, have exercised their power to aid and promote commerce for the time being; they may lower prices; but notwithstanding this, if they have, in combining or monopolizing, acquired the *power* to suppress competition, to restrain or monopolize trade or commerce, they have brought themselves within the purview of the act. It is the *power* to suppress competition, the *power* to raise prices, the *power* to restrain or monopolize commerce, which constitutes the vice, and it was that which Congress aimed to reach. This court has spoken frequently to this effect. In each of the three leading cases in which the Anti-trust Act has been enforced, *United States* v. *Trans-Missouri Freight Asso.*, *United States* v. *Joint Traffic Asso.*, and *Addyston Pipe Co.* v. *United States* (*supra*), it was urged in defense that no violation of the act had been shown because it had not been shown that competition had been actually suppressed or trade actually restrained, the same argument that counsel

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for the defendants make in this case and to which they seem to attach great importance. But in each of those cases this court held that it was immaterial that trade or commerce had not actually been restrained—that it made no difference, even, that rates and prices had been lowered; it being enough to bring the combination within the condemnation of the act that it had the *power* to restrain trade or commerce. The very existence of the *power*, under these rulings, constitutes a restraint.

In *United States* v. *Joint Traffic Asso.* (*supra*), after denying the right of railroads to combine for the purpose of stifling competition, the court, through Mr. Justice Peckham, continued as follows (p. 571):

> And this is so, even though the rates provided for in the agreement may for the time be not more than are reasonable. They *may* easily and at any time be increased. *It is the combination of these large and powerful corporations*, covering vast sections of territory and influencing trade throughout the whole extent thereof, and acting as one body in all matters over which the combination extends, *that constitutes the alleged evil*, and in regard to which, so far as the combination operates upon and restrains interstate commerce, Congress has power to legislate and prohibit.

Furthermore, in that case, the terms of the agreement in question left each road free to enter into competition with the others whenever it chose

to do so, and it was argued with great emphasis by counsel that this fact showed that the agreement did not impose any restraint upon competition, but this court held the fact to be immaterial because the managers of the association had the "*power* to enforce the uniformity of rates" (p. 563).

Again, in *United States* v. *Trans-Missouri Freight Asso.* (*supra*), in replying to the argument that the association had not raised rates, this court said, at page 324:

> In this light it is not material that the price of an article may be lowered. It is in the *power* of the combination to raise it. * * *

And in the *Addyston Pipe case* (*supra*), the court held that it was immaterial whether or not the combination had raised prices. It was enough that—

> Its tendency was to give the defendants *power* to charge unreasonable prices had they chosen to do so (p. 238).

So in *Pearsall* v. *Great Northern Railway* (*supra*), this court, through Mr. Justice Brown, said, at page 676:

> Whether the consolidation of competing lines will necessarily result in an increase of rates, or whether such consolidation has generally resulted in a detriment to the public, is beside the question. Whether it has that effect or not, it certainly puts it in the *power* of the consolidated corporation to give it that effect—in short, puts the public at the mercy of the corporation.

(*e*) It is not necessary in order to bring a combination or conspiracy within the operation of the act that the members *bind* themselves each with the other to do the acts alleged to be in restraint of trade. It would certainly be attempting to introduce a novel principle into the law of combinations and conspiracies to contend that in order to form a combination or conspiracy those combining or conspiring must agree or contract with each other to do the illegal things in view. It has always been held to be enough that they act together in pursuance of a common object, and while, of course, this presupposes agreement between them in a broad sense, an agreement or contract in the technical sense is not at all essential. Said Coleridge, J., in *Reg.* v. *Murphy* (8 C. & P., 397):

> * * * Although the common design is the root of the charge, it is not necessary to prove that these two parties came together and actually *agreed* in terms to have this common design, and to pursue it by common means, and so carry it into execution. This is not necessary, because in many cases of the most clearly established conspiracies there are no means of proving any such thing, and neither law nor common sense requires that it should be proved. If you find that these two persons pursued by their *acts* the same object, often by the same means, one performing one part of an act, and the other another part of the same act, so as to complete it, with a view to the

> attainment of the object which they were pursuing, you will be at liberty to draw the conclusion that they have been engaged in a conspiracy to effect that object. The question you have to ask yourselves is, "Had they this common design, and did they pursue it by these common means—the design being unlawful?"

If the law were not as thus stated, evasion of the Anti-trust Act would be an easy matter, for when competing corporations combine, as they generally do now, through the agency of a purchasing corporation, or a holding corporation, or a consolidation, they do not formally agree or contract with each other to maintain a certain scale of prices, or to restrict production, or otherwise to restrain trade or commerce.

Mr. James C. Carter, in his argument for the Joint Traffic Association, recognized that it was acts, not necessarily contracts, in restraint of trade which the Anti-trust Law aimed at. Thus he said:

> It is a uniting together for a common purpose—a combination—or, when thought to be of an objectionable character, a conspiracy. Such unions always suppose agreement, but it need not be in writing; where it is in writing it is often called an agreement or contract, but in giving it this name we should not lose sight of its *real character*. *In reality it is simply an act*, and innocent or guilty according as the law may be inclined to regard it. (*United States* v. *Joint Traffic Asso.*, 171 U. S., 516.)

It therefore follows that it is sufficient to constitute a violation of the Anti-trust Act that a concert, combination, or conspiracy be entered into, and that it have the *power* to shut out competition in interstate commerce and thereby restrain it: it is not necessary that the component members of the combination or conspiracy bind themselves not to enter into competition with each other. This was, in fact, expressly decided in the case of the *United States* v. *Joint Traffic Association* (*supra*). The agreement between the railroads composing the Joint Traffic Association purported to leave any one of them free to charge different rates from those fixed in the schedule, and therefore free to compete for traffic with the others, if it chose to do so, and it was strongly insisted by counsel that this fact saved the association from illegality. But this court held that it did not.

(*f*) If it be shown that a combination or a monopoly has been formed the necessary effect of which is to restrain trade or commerce, a violation of the Anti-trust Act has been established, and the aim, motive, intention, or design with which the combination is entered into or the monopoly created is wholly immaterial and outside the question. It may have been to aid and further commerce rather than to restrain it; but if in point of law the effect or the tendency of the combination is to restrain trade or commerce the combination is unlawful, and the motive behind it,

however beneficent, does not alter that fact in the slightest degree. The question was squarely before this court in *United States* v. *Trans-Missouri Freight Asso.* (*supra*), where Mr. Justice Peckham, speaking for the court, said, at pages 341 and 342:

> In the view we have taken of the question, the intent alleged by the Government is not necessary to be proved. The question is one of law in regard to the meaning and effect of the agreement itself, namely: Does the agreement restrain trade or commerce in any way so as to be a violation of the act? * * *
>
> For these reasons *the suit of the Government can be maintained without proof of the allegation that the agreement was entered into for the purpose of restraining trade* or commerce or for maintaining rates above what was reasonable. The necessary effect of the agreement is to restrain trade or commerce, *no matter what the intent was on the part of those who signed it.*

In the *Addyston Pipe case* (*supra*) this court again laid down the same rule (p. 234):

> If the necessary, direct, and immediate effect of the contract be to violate an act of Congress and also to restrain and regulate interstate commerce, *it is manifestly immaterial whether the design to so regulate was or was not in existence when the contract was entered into.* In such case the design does not constitute the material thing. The fact

> of a direct and substantial regulation is the important part of the contract, and that regulation existing, *it is unimportant* that it was not designed.

And in the case of the *C. & O. Fuel Co.* v. *United States* (115 Fed. Rep., 623), Day, circuit judge, said:

> It is to be remembered in this connection that it is the *effect* of the contract upon interstate commerce, *not the intention* of the parties in entering into it, which determines whether it falls within the prohibition of the statute. (The *Trans-Missouri case*, 166 U. S., 341; the *Addyston case*, 175 U. S., 234.) It is, moreover, contended that the effect of this agreement has been the reduction of prices to the consumer. In determining whether a combination restrains interstate commerce, it is not only the effect upon consumers which is to be considered, but, as well, the effect upon others in the business, who, from choice or necessity, are left outside of the organization.

To sum up what has been said under (4), a combination or monopoly is within the prohibitions of the Anti-trust Act if its effect or tendency is to suppress competition, or if it have the power to suppress competition, though not exercising it; and it is not essential that the members of the combination bind themselves to do the acts alleged to be in restraint of trade, it being sufficient that they unite or act together in pursuance of the illegal object; and, finally, the intention with

which the combination or monopoly is formed is immaterial.

Having stated and discussed the foregoing general principles which bear more or less directly upon the case at bar, I shall now take up the main argument under the following heads:

II.

A COMBINATION OR MONOPOLY OF COMPETING LINES OF INTERSTATE RAILWAY—OF COMPETING INSTRUMENTALITIES OF INTERSTATE COMMERCE—IS A COMBINATION OR MONOPOLY IN RESTRAINT OF INTERSTATE COMMERCE WITHIN THE PROHIBITION OF THE ANTI-TRUST ACT; FOR—

1. This court has so often ruled that the transportation of persons and things is commerce that the principle has become a legal commonplace. And if a combination or monopoly of such transportation is a combination or monopoly in restraint of commerce within the Anti-trust Act, and hence illegal, as this court held in *United States* v. *Trans-Missouri Freight Association* and *United States* v. *Joint Traffic Association* (*supra*), then it follows as a corollary that a combination or monopoly of the means or instrumentalities of transportation is likewise a combination or monopoly in restraint of commerce, because a monopoly of the means of transportation leads directly and inevitably to a monopoly of transportation itself. The relationship between the two is indeed so close and inseparable that it may be said, with the nicest regard for the meaning of words, that a monopoly of the means of transportation *is* a monopoly of

transportation itself; for one in possession or control of all the means and instrumentalities for carrying on a particular business has, unquestionably, a monopoly of that business.

Viewing the subject in another light, a monopoly of the *means* of transportation puts it in the *power* of the monopolist to stifle competition in the *business* of transportation, and this court decided in the cases of the *United States* v. *Trans-Missouri Freight Association* and *United States* v. *Joint Traffic Association* (*supra*), that a combination or monopoly which had the *power* to stifle competition in the *business* of transportation among the States was in restraint of interstate commerce and therefore illegal.

Looking at the question from still another standpoint, it is unquestioned that Congress may prohibit, and has prohibited, combinations and monopolies in the *business* of interstate and international transportation. (*United States* v. *Trans-Missouri Freight Asso.* and *United States* v. *Joint Traffic Asso.*, *supra*.) But what does this power amount to if Congress may not also prohibit monopolies of the *means and instrumentalities* of such transportation—of the roads themselves? Virtually nothing; for he who has a monopoly of the means of transportation has a monopoly of transportation itself. How can I carry on the business of transportation if another controls all the means and instrumentalities for conducting that business? Clearly I can not. Does it not

plainly follow, then, that a grant of the power to prohibit combinations and monopolies in interstate and foreign transportation necessarily includes and carries with it the power to prohibit combinations and monopolies of the means and instrumentalities whereby such transportation is carried on? Unless this be so the grant is meaningless, worthless.

This subject really presents no difficulty if it be kept clearly in mind that the fundamental question—the decisive question—is not so much whether the combination or monopoly is a combination or monopoly of commerce (meaning thereby the businesses and transactions which come within the definition of that term) or of the instrumentalities of commerce, as it is, as this court stated it in the *Addyston Pipe case* (*supra*), "Whether *the necessary effect of the combination* is to restrain interstate commerce." It matters not, according to this rule, whether the combination or monopoly is one of commerce or of the instrumentalities of commerce, provided the *effect* of the combination or monopoly is directly to restrain commerce. If the *effect* of the combination is to restrain commerce, the law makes no further inquiry. The combination is illegal. What is the effect of the combination? That is the test which this court has prescribed. Now will any deny that the *effect*, or at least the tendency,—and, as heretofore shown, the law makes no distinction between the

effect and the tendency of a combination—of combining two competing instrumentalities of interstate commerce—two competing lines of interstate railway, such as the Great Northern and Northern Pacific,—will be to suppress competition and thereby restrain trade and commerce? This court said in *Pearsall* v. *Great Northern Railway* (*supra*), that this would be the effect of such a combination.

2. The Anti-trust Act prohibiting combinations and monopolies in restraint of interstate and foreign commerce is an exercise of the power granted to Congress to regulate commerce (*Champion* v. *Ames*, decided by this court February 23, 1903), and the term "commerce" as used in that grant embraces the instrumentalities by which commerce is or may be carried on.

In *Railroad Co.* v. *Fuller* (17 Wall., 560, 568) Mr. Justice Swayne defined commerce in these words:

> Commerce is traffic, but it is much more. It embraces also transportation by land and water and all the *means and appliances* necessarily employed in carrying it on.

In *Welton* v. *Missouri* (91 U. S., 275, 280), Mr. Justice Field stated the rule, as follows:

> Commerce is a term of the largest import. It comprehends intercourse for the purposes of trade in any and all its forms, including the transportation, purchase, sale, and exchange of commodities between the citizens

> of our country and the citizens or subjects of other countries, and between the citizens of different States. The power to regulate it embraces all the *instruments* by which such commerce may be conducted.

Again, in the well-known language of Chief Justice Waite, *Pensacola Tel. Co.* v. *Western Union Tel. Co.* (96 U. S., 1):

> The powers thus granted [referring to the commerce clause] are not confined to the instrumentalities of commerce, or the postal service known or in use when the Constitution was adopted, but they keep pace with the progress of the country, and adapt themselves to the new developments of time and circumstances. They extend from the horse with its rider to the stage coach, from the sailing vessel to the steamboat, from the coach and the steamboat to the railroad, and from the railroad to the telegraph, as these new agencies are successively brought into use to meet the demands of increasing population and wealth. They were intended for the government of the business to which they relate at all times and under all circumstances.

In *Gloucester Ferry Co.* v. *Pennsylvania* (114 U. S., 196, 203) Mr. Justice Field again defined the scope of the term:

> Commerce among the States consists of intercourse and traffic between their citizens, and includes the transportation of persons and property, and the navigation of

> public waters for that purpose, as well as the purchase, sale, and exchange of commodities. The power to regulate that commerce, as well as commerce with foreign nations, vested in Congress, is the power to prescribe the rules by which it shall be governed; that is, the conditions upon which it shall be conducted, to determine when it shall be free and when subject to duties or other exactions. The power also embraces within its control all the *instrumentalities* by which that commerce may be carried on, and the *means* by which it may be aided and encouraged. The subjects, therefore, upon which the power may be exerted are of infinite variety.

It is thus seen that "commerce," as that term has been construed by this court, embraces the instrumentalities employed in carrying it on—embraces railways as one class of such instrumentalities; and this being so, it necessarily follows that the prohibitions in the Anti-trust Act against combinations and monopolies in restraint of interstate commerce include combinations and monopolies of the instrumentalities of interstate commerce—include combinations and monopolies of interstate railways.

III.

IT IS NO VIOLATION OF THE RESERVED RIGHTS OF THE STATES, BUT, ON THE CONTRARY, IS CLEARLY WITHIN THE FEDERAL POWER FOR CONGRESS TO ENACT THAT NO PERSONS, NATURAL OR ARTIFICIAL, SHALL FORM A COMBINATION OF THE INSTRUMENTALITIES OF ANY PART OF INTERSTATE COMMERCE THE EFFECT OR TENDENCY OF WHICH WOULD BE TO RESTRAIN INTERSTATE TRADE OR COMMERCE, AND THAT NO PERSON OR PERSONS, NATURAL OR ARTIFICIAL, SHALL ACQUIRE A MONOPOLY OF SUCH INSTRUMENTALITIES.

This is a natural and logical deduction from the supreme, plenary, and exclusive nature of the power of the Federal Government over foreign and interstate commerce, in the exercise of which Congress may descend to the most minute directions. The "penetrating and all-embracing" nature of this power has been stated, explained, and emphasized so often by this court that any extended reference to it at this late day would be a trespass upon the time of the court. It is enough to refer to one or two of the leading decisions. In the first great case under the commerce clause, *Gibbons* v. *Ogden* (9 Wheat., 1), Chief Justice Marshall said, at page 197:

> We are now arrived at the inquiry—what is this power? It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution. These

> are expressed in plain terms, and do not affect the questions which arise in this case or which have been discussed at the bar. If, as has always been understood, the sovereignty of Congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations, and among the several States, is vested in Congress *as absolutely as it would be in a single government*, having in its constitution the same restrictions on the exercise of the power as are found in the Constitution of the United States.

And Mr. Justice Johnson, in a separate but concurring opinion delivered in the same case, said:

> The "power to regulate commerce" here meant to be granted was the power to regulate commerce which previously existed in the States. But what was that power? The States were unquestionably supreme, and each possessed the power over commerce which is acknowledged to reside in every sovereign State. * * * The law of nations, regarding man as a social animal, pronounces all commerce legitimate in a state of peace until prohibited by positive law. The power of a sovereign State over commerce, therefore, amounts to nothing more than a power to limit and restrain it at pleasure. And since the power to prescribe the limits to its freedom necessarily implies the power to determine what shall remain unrestrained, it follows that

> the power must be exclusive; it can reside but in one potentate; and hence the grant of this power carries with it the whole subject, *leaving nothing for the State to act upon.*

The principles announced in this case have never been departed from, but have been reaffirmed time and again by this court, notably in *Brown* v. *Maryland* (12 Wheat., 419); the *Passenger cases* (7 How., 283); *In re Debs* (158 U. S., 564), and *Champion* v. *Ames*, decided February 23, 1903, the latest case on the subject.

In *Stockton* v. *Baltimore & N. Y. R. Co.* (32 Fed. Rep., 11, 16), Mr. Justice Bradley, at circuit, defined the Federal power over commerce in striking language:

> The power to regulate commerce among the several States is given by the Constitution in the most general and absolute terms. The "power to regulate," as applied to a government, has a most extensive application. With regard to commerce, it has been expressly held that it is not confined to commercial transactions, but extends to seamen, ships, navigation, and the appliances and facilities of commerce. And it must extend to these or it can not embrace the whole subject. * * *
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> * * * We think that the power of Congress is supreme over the whole subject, unimpeded and unembarrassed by State lines or State laws; that in this matter the country is one and the work to be accomplished is national; and that State interests,

State jealousies, and State prejudices do not require to be consulted. *In matters of foreign and interstate commerce there are no States.*

In the *Debs case* (*supra*) the court said, through Mr. Justice Brewer (pp. 578, 586, 590):

> What are the relations of the General Government to interstate commerce and the transportation of the mails? They are those of direct supervision, control, and management.
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> * * * * *
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> As said in *Gilman* v. *Philadelphia* (3 Wall., 713, 724): "The power to regulate commerce comprehends the *control* for that purpose, and to the extent necessary, of all the navigable waters of the United States which are accessible from a State other than those in which they lie. For this purpose they are the public property of the nation, and subject to all the requisite legislation by Congress. This necessarily includes the power to keep them open and free from obstruction to their navigation, interposed by the States or otherwise; to remove such obstructions when they exist, and to provide, by such sanctions as they may deem proper, against the occurrence of the evil and the punishment of offenders. For these purposes Congress possesses all the powers which existed in the States before the adoption of the National Constitution, and which have always existed in the Parliament in England."

> Up to a recent date commerce, both interstate and international, was mainly by water, and it is not strange that both the legislation of Congress and the cases in the courts have been principally concerned therewith. The fact that in recent years interstate commerce has come to be carried on by railroads and over artificial highways has in no manner narrowed the scope of the constitutional provision or abridged the power of Congress over such commerce. *On the contrary, the same fulness of control exists in the one case as in the other*, and the same power to remove obstructions from the one as from the other.

Of course, it makes no difference whether the obstruction be physical or economic—whether it be a sand bar, a mob, or a monopoly—whether it result from the sinking of a vessel or the stifling of competition—the power of Congress to remove it is the same in each case. And the corollary of this, it may be remarked in passing (although the point is not before the court for decision in this case), is that no State has the power to obstruct or put restraints upon interstate commerce by authorizing combinations, consolidations, or monopolies of competing instrumentalities of interstate commerce—of competing lines of railway engaged in interstate transportation. In the *Debs case* (*supra*), Mr. Justice Brewer, speaking for the court, said:

> It is curious to note the fact that in a large proportion of the cases in respect to

> interstate commerce brought to this court the question presented was of the validity of State legislation in its bearing upon interstate commerce, and the uniform course of decision has been to declare that *it is not within the competency of a State to legislate in such a manner as to obstruct interstate commerce*. If a State, with its recognized power of sovereignty, is impotent to obstruct interstate commerce, can it be that any mere voluntary association of individuals within the limits of that State has a power which the State itself does not possess?

And in the *Addyston Pipe case* (*supra*) Mr. Justice Peckham, speaking for the court, said at page 232:

> It is true, so far as we are informed, that no State legislature has heretofore authorized by affirmative legislation the making of contracts upon the matter of interstate commerce of the nature now under discussion. Nor has it, in terms, condemned them. The reason why no State legislation on the subject has been enacted has probably been because it was supposed to be *a subject over which State legislatures had no jurisdiction*.

The court of appeals of New York has gone still further and has admitted that Congress has the power, under the commerce clause of the Constitution, to regulate the consolidation of railroad corporations of several States (where, of course, the consolidations would form interstate lines), even where the roads proposed to be consolidated

are not parallel or competitive, but constitute one continuous line. Thus in *Boardman et al.* v. *Lake Shore and Michigan Southern Railway Co.* (84 N. Y., 157, 185), the defendant company was organized as a corporation under the statutes of several States to operate a continuous line of railroad running through those States, and which had previously been operated by the several corporations which were consolidated in the defendant company. It was contended that these statutes, so far as they authorized the consolidation in adjoining States, were repugnant to the provision of the Federal Constitution conferring upon Congress the power to regulate commerce with foreign nations and among the several States. But the court of appeals overruled this contention, saying:

> There is, we think, no force in the position that the acts of the legislatures of the several States through which the railroads run, so far as they relate to or authorize the consolidation in the adjoining States, are in violation of subdivision 3 of section 8 of the first article of the Constitution of the United States, which confers upon Congress the power to "regulate commerce with foreign nations and among the several States." It is not claimed that Congress has legislated in respect to the subject * * * The conclusion, therefore, is inevitable that *in the absence of such legislation by Congress*, the power exists in the State to legislate upon the subject.

The necessary implication from this language is that, in the opinion of the court, Congress has the power to legislate upon the subject of consolidations of railroad corporations when the consolidations form interstate lines; that in the absence of legislation by Congress, the power exists in the States to legislate upon the subject, but that in the presence of legislation by Congress the power of the States over the subject is excluded.

The same view is expressed by Mr. Noyes at section 19 of his work on Intercorporate Relations:

> State legislation authorizing the consolidation of railroad corporations of several States is not a regulation of interstate commerce in violation of the Constitution of the United States, *in the absence of action by Congress.*

There is only one inference to draw from these words, and that is this: That, in the opinion of the author, Congress has the power to legislate upon the subject of interstate railroad consolidations, and if it should so legislate, State legislation covering the same field would be in violation of the commerce clause of the Federal Constitution.

In support of his statement of the law Mr. Noyes cites, among other cases, that of *Louisville and Nashville R. Co.* v. *Ky.* (161 U. S., 701), which counsel for the defendants erroneously claim to have decided that the States possess *exclusive* power over the consolidation of railroad cor-

porations chartered by them, even where such corporations operate competing interstate lines.

Certainly the commerce powers of the Federal Government, as thus expounded, are broad and ample enough to prevent the restraint or *obstruction* of interstate commerce by combinations and monopolies of competing lines or instrumentalities of interstate transportation, bearing in mind, of course, that such instrumentalities come within the generic term "commerce." And if this were not so, how could the Federal power over commerce be "supreme," "complete," and "plenary," and "vested in Congress as absolutely as it would be in a single government," as this court has said it is? Again, could not the States before the adoption of the Constitution have prohibited such combinations and monopolies? Beyond the shadow of a doubt they could. And can not the English Parliament prohibit them? Undoubtedly it can. Then, says this court, Congress can. And it is peculiarly the duty of Congress to legislate against restraints, economic or otherwise, upon interstate commerce, for of the various reasons for investing the Federal Government with the power to regulate commerce among the several States, the one uppermost in the minds of the members of the Constitutional Convention was to keep the channels of such commerce open and free from obstructions and restraints. Said Chief Justice Waite in *Pensacola Tel. Co.* v. *Western Union Tel. Co.* (96 U. S., 1):

> As they [the commercial powers] were intrusted to the General Government for the good of the nation, it is not only the right, but the duty, of Congress to see to it that intercourse among the States and the transmission of intelligence *are not obstructed or unnecessarily encumbered by State legislation.*

Again, it is to be borne in mind—and this is sometimes lost sight of—that the exclusive jurisdiction of the Federal Government over commerce with foreign nations and among the States, and over the instrumentalities of such commerce, includes the power of police, or, that which is its equivalent, over those subjects in all its undefined breadth and fullness. This police power of Congress, with reference to foreign and interstate commerce and the instrumentalities thereof, is just as full, complete, and far-reaching as is the police power of the State legislatures with reference to subjects within the exclusive jurisdiction of the States. In either case there are no limitations to its exercise, except the constitutional guaranties in favor of life, liberty, and property.

> It is not doubted that Congress has the power to go beyond the general regulations of commerce which it is accustomed to establish and to descend to the most minute directions, if it shall be deemed advisable; and that to whatever extent ground shall be covered by those directions, the exercise of State power is excluded. Congress may establish police regulations, as well as the

> States, confining their operation to the subjects over which it is given control by the Constitution. (Cooley, Const. Lim., 722, 723.)
>
> The vague and ill-considered notions that are widely entertained as to what is meant by the "police power," may be observed in certain misleading observations that have a considerable currency, e. g., that the Federal Government has no police power in the States; * * * As regards the affirmative power of the General Government, when it is remembered that certain entire topics are committed to it, for example, those of foreign relations, the taxing of imports, the post-office, the currency, bankruptcy, *the regulation of external and interstate commerce*, it is easy to see that much of what is understood by *the "police power" is wrapped up in these things;* * * * (Thayer's Cases on Const. Law, p. 742, note.)

The police power—or equivalent power—of the Federal Government over interstate and foreign commerce is not less plenary and complete because, as to those commercial subjects which are local and do not admit of uniform regulation, the States are permitted to exercise the power until Congress, by its legislation, covers the same field. As Judge Cooley says:

> * * * As the general police power can better be exercised under the supervision of the local authority, and mischiefs are not likely to spring therefrom so long as the power to arrest collision resides in the

> national courts, the regulations which are made by Congress do not often exclude the establishment of others by the State covering very many particulars. (Const. Lim., 723.)

Now—

> Laws against combinations for the purpose of restricting production, maintaining prices, or suppressing competition, have a relation to the end of all police regulations—the comfort, welfare, or safety of society. (Noyes on Intercorporate Relations, sec. 409.)

Anti-trust statutes, therefore, are enacted in the exercise of the police, or an analogous, power. (*State* v. *Firemen's Fund Ins. Co.*, 152 Mo., 46; *State* v. *Schlitz Brewing Co.*, 104 Tenn., 715; *Waters-Pierce Co.* v. *State*, 19 Tex. Civ. App., 1.)

If, then, Congress have the police power, or its equivalent, over foreign and interstate commerce and the instrumentalities thereof, it may, as a matter of course, in the exercise of that power, strike down restraints upon such commerce, whether they result from combinations and monopolies of the agencies of transportation or otherwise, just as a State could prohibit similar restraints upon intrastate commerce. To contend otherwise is to contend that the Federal power over interstate and foreign commerce is not supreme, but is in some respects subordinate to State authority; that the police powers or the reserved

powers of the States are, for some purposes, paramount to the powers of Congress in fields wherein the Federal Government has been invested by the Constitution with complete and supreme authority. This, of course, is not so. As Mr. Justice Harlan said in *New Orleans Gas Co.* v. *Louisiana Light Co.* (115 U. S., 650, 661):

> Definitions of the police power must * * * be taken subject to the condition that the State can not, in its exercise, for any purpose whatever, encroach upon the powers of the General Government. * * *

But counsel for the defendants claim that this court decided in the case of the *Louisville and Nashville Railroad Co.* v. *Kentucky* (161 U. S., 677, 702), that Congress has no power to prohibit the consolidation of competing interstate railroads, and in support of the claim they cite the following passage from the opinion of the court:

> In the division of authority with respect to interstate railways Congress reserves to itself the superior right to control their commerce and forbid interference therewith; while to the States remains the power to create and to regulate the instruments of such commerce, so far as necessary to the conservation of the public interests.

It was argued that this was conclusive to the effect that regulations concerning the consolidation of competing railroad corporations engaged in interstate commerce, being regulations of "the instruments of such commerce," are within the

State jurisdiction, and that Congress has nothing to do with the subject; that if it undertook to legislate with reference to it, it would invade the rights of the States. The quotation above, however, upon which defendants rely, is but one sentence of a paragraph in the opinion of Mr. Justice Brown, which paragraph must be read as a whole in order to comprehend what he really intended to say in reference to the powers of the States and the United States, respectively. The full paragraph is this:

> It has never been supposed that the dominant power of Congress over interstate commerce took from the States the power of legislation with respect to the instruments of such commerce, *so far as the legislation was within its ordinary police powers*. Nearly all the railways in the country have been constructed under State authority, and it can not be supposed that they intended to abandon their power over them as soon as they were finished. The power to construct them involves necessarily the power to impose *such regulations* upon their operation as a sound regard for the interests of the public may seem to render desirable. In the division of authority with respect to interstate railways Congress reserves to itself the superior right to control their commerce and forbid interference therewith; while to the States remains the power to create and to regulate the instruments of such commerce so far as necessary to the conservation of the public interests.

The words italicised by me indicate that Mr. Justice Brown had in his mind the distinction between legislation which affected interstate commerce generally and that which only affected it in respect to local matters. From this it will be seen that the court did not intend to give the words the effect contended for by the defendants. To give them that effect it would be necessary to insert the word "exclusive" before the word "power" in the second clause, so as to make it read, "while to the States remains the *exclusive* power to create and regulate the instruments of such commerce, etc." And surely this court did not mean that, for Congress has created "the instruments of such commerce," and it has passed regulations concerning them, and the power to do these things is now unquestioned. (*California* v. *Pacific Railway Co.*, 127 U. S., 1.)

What the court did mean, no doubt, was that in respect of matters of a local nature, which did not admit or require uniform regulation, the States may "regulate the instruments of such commerce" *until Congress legislates on the same subjects*, while in respect of matters of national importance, or which admit of uniform regulation, the power of the States is wholly excluded—a distinction explained and affirmed in a long line of decisions rendered by this court, and which has been regarded as a settled principle of constitutional construction, but which would lose its significance altogether if the above-quoted passage

from *Louisville and Nashville R. R.* v. *Kentucky* were construed as counsel for defendants contend. The distinction was aptly stated by Mr. Justice Field in *Welton* v. *Missouri* (91 U. S., 275):

> The power to regulate it [commerce] embraces all the instruments by which such commerce may be conducted. So far as some of these instruments are concerned, and some subjects which are local in their operation, it has been held that the States may provide regulations *until Congress acts with reference to them;* but where the subject to which the power applies is national in its character, or of such a nature as to admit of uniformity of regulation, the power is exclusive of all State authority.

To the same effect are the following cases, among others: *Cooley* v. *Port Wardens of Phila.* (12 How., 299, 320); *Sherlock* v. *Elling* (93 U. S., 99, 104); *Morgan* v. *Louisiana* (118 U. S., 455, 463); *Smith* v. *Alabama* (124 U. S., 465); *Nashville, Chattanooga, etc., R. Co.* v. *Alabama* (128 U. S., 96); *Hennington* v. *Georgia* (163 U. S., 299); *N. Y., N. H. & Hartford R. R.* v. *New York* (165 U. S., 628, 631); *Missouri, Kansas & Texas Ry.* v. *Haber* (169 U. S., 613, 626).

The last three of these cases, it is to be noted, were decided after the case of the *Louisville and Nashville R. Co.* v. *Kentucky* (*supra*). There can be no doubt, therefore, that when in the latter case the court said that to the States remains the power to regulate the instruments of interstate commerce

it had in mind those regulations of a local character which the States are permitted to make *in the absence of Federal legislation covering the same subjects*, and did not intend to change any old principle or to enunciate any new principle of constitutional construction.

IV.

OWNERSHIP OF A MAJORITY OF ITS STOCK CONSTITUTES THE *CONTROL* OF A CORPORATION WHEN THE INQUIRY IS WHETHER A COMBINATION OR MONOPOLY HAS BEEN FORMED TO STIFLE COMPETITION BETWEEN TWO OR MORE RIVAL AND COMPETING RAILROADS.

This is reasonable and in the strictest accordance with the principles of law governing combinations. It has already been dwelt upon with some emphasis that the question whether the Federal law against combinations and monopolies has been violated in a given case is, in the last analysis, a question of power, or—to be precise—of the possession of power. That is to say, the decisive circumstance in such a case is whether the alleged combination or monopoly has the *power* to stifle competition—to restrain trade; not whether it is exercising the power. And therefore, by a parity of reasoning, the question of control, in connection with the formation of combinations, is likewise a question of *power*—of power to control. It is not whether the persons with whom control is alleged to lie, immediately, and in their own proper persons carry on, operate, and in all respects exercise direct control over the property

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and business of the corporation. This may be done through the agency of the corporate entity—the trustee for the stockholders—and through officers and directors chosen by the latter. The material inquiry is, has a coterie of persons, by acquiring a majority of the shares of each of several rival corporations, obtained such *power* over them that they can cause competition between them to cease, and in that way, and to that extent, restrain trade or commerce? If so, such persons *control* the corporations.

This reasoning is not new. It was used by courts in reaching the conclusion that the "trust" form of combination is illegal. That form of combination was condemned because it centered in one body—the trustees—"the *control* of several corporations," usually competing corporations. Now what was the nature of this control? It was purely and simply the control incident to the legal ownership of a majority or more of the stock of the constituent corporations and the resulting right to choose their officers and directors. The trustees did not have the immediate and direct management and control of the property and affairs of the several corporations. The officers and directors of the constituent corporations retained that, just as they do when the attempted combination takes the form of a holding company.

But this proposition is not only in accord with reason; it is sustained by abundant authority.

In Noyes on Intercorporate Relations (sec. 294) it is said that—

> A corporation which owns a majority of the shares of the capital stock of another corporation *controls* it.

In the case of *Farmers' L. & T.* v. *N. Y., etc., R. Co.* (150 N. Y., 410, 424) the court of appeals of New York stated the rule that—

> * * * Where, as in this case, a majority of the stock is owned by a corporation or a combination of individuals, and it assumes the control of another company's business and affairs through its control of the officers and directors of the corporation, it would seem that for all practical purposes it becomes the corporation of which it holds a majority of stock. * * *

In the case of the *People* v. *Chicago Gas Trust Co.* (130 Ill., 268, 291) the question was before the supreme court of Illinois:

> "What results," the court inquired, "must necessarily follow from such ownership of a majority of the shares of stock of these four companies?
>
> "One result is that the Chicago Gas Trust Company can *control* the four other companies. The question is not whether it has attempted to exercise such control; the law looks to the general tendency of the power conferred. (Greenhood on Public Policy, p. 5; *Richardson* v. *Crandall*, 48 N. Y., 343; *Salt Co.* v. *Guthrie*, 35 Ohio Stat., 666). * * * It can not be denied that the appellee, as

> owner of the *majority of the shares* of stock of these four companies, can *control* them in the exercise of all their corporate powers through a board of managers of its own selection. In *Weidenger* v. *Spruance* (101 Ill., 278) this court, speaking through Mr. Justice Scholfield, said: 'The stockholders elect the directors, and through them carry into effect the corporate functions. Presumably, the directors act in obedience to the aggregate wishes of the stockholders, etc.' (*Milbank* v. *N. Y., L. E. & W. R. R. Co.*, 64 How., N. Y. Rep., 29.)"

In *Pearsall* v. *Great Northern Railway* (161 U. S., 646, 671), this court ruled that the transfer of one-half of the capital stock of the Northern Pacific Railway Company to the shareholders of the Great Northern would, with small additional acquisitions, give the latter company a "*controlling* interest" in—the "*mastership*" of—the former, in plain violation of the acts of the legislature of Minnesota prohibiting any railroad corporation from consolidating with, leasing or purchasing, or in any other way becoming the owner of, or *controlling* any other parallel and competing railroad corporation. Mr. Justice Brown, speaking for the court, said:

> But the fact that one-half of the capital stock of the reorganized company is to be turned over to the shareholders of the Great Northern, which is, in turn, to guarantee the payment of the reorganized bonds, is evidence of the most cogent character to

> show that nothing less than a purchase of a *controlling interest, and practically the absolute control*, of the Northern Pacific is contemplated by the arrangement. With half of its capital stock already in its hands, the purchase of enough to make a majority would follow almost as a matter of course, and the *mastership* of the Northern Pacific would be assured.

The decision in the Pearsall case, must be regarded as conclusive on this point.

Counsel for the defendants, however, insist that the ownership of the majority of the capital stock of a corporation does not constitute control thereof, and in that behalf they cite a remark made by Chief Justice Waite in the case of *Pullman Car Co.* v. *Mo. Pac. R. Co.* (115 U. S., 587), to wit:

> It [i. e., the company owning a majority of the stock of another corporation] has all the advantages of the control of the road, but that is not in law the control itself. Practically it may control the company, but the company alone controls its road. In a sense the stockholders of a corporation own its property, but they are not the managers of its business or in the immediate control of its affairs.

There is nothing in this language which contradicts the proposition that ownership of a majority of its stock constitutes the control of a corporation when the inquiry is whether the control of two competing railways engaged in inter-

state commerce has been concentrated in a single body in violation of the Anti-trust Act, for—

(1) It is sufficient, to constitute such control, that the majority stockholders "control the company," as the Chief Justice concedes they do; it is not essential that they should be "the managers of its [the company's] business or in the immediate control of its affairs." This has been fully shown.

(2) * * * "In that case (*Pullman Car Co.* v. *Mo. Pac. Co.*, *supra*) the meaning of the word *controlled*, as used in a private contract, was the point under consideration, and what was said on the subject can not be held applicable to cases arising under the Anti-trust Act when the point involved is whether the ownership of all of the stock of two competing and parallel railroads vests the owner thereof with the power to suppress competition between such roads." (From the opinion of Thayer, J., in the court below.)

But even though the remark of Chief Justice Waite in *Pullman Car Co.* v. *Mo. Pac. Co.* (*supra*) were susceptible of the construction that counsel for defendants put upon it, the case at bar would not be affected thereby, because if that remark can be construed to lay down the general rule that the ownership of the majority of its stock does not constitute the control of a corporation, it has been overruled by the decision in the case of *Pearsall* v.

Great Northern Railway (*supra*), where the question whether such ownership did constitute control was squarely before the court and was decided in the affirmative, as already noted. The language of Chief Justice Waite, on the other hand, was a dictum.

In *Pa. R. Co.* v. *Com.* (7 Atl. Rep., 368, 371), which was a case involving the construction of a provision of the constitution of Pennsylvania against the acquisition by one railroad corporation of the *control* of a competing company, the court held that the ownership of a majority of the stock constituted such *control*. Simonton, P. J., who, in the course of his decision, referred to the case of the *Pullman Car Co.* v. *Mo. Pac. Co.* (*supra*), which had then just been decided, said:

> * * * The case of *Pullman Palace Car Co.* v. *Mo. Pac. R. Co.* (6 Sup. Ct. Rep., 164), recently decided by the Supreme Court of the United States, is cited to sustain the proposition that the ownership of the stock of a corporation does not give control of the corporation. We have carefully considered the opinion delivered in that case, which, although not of binding authority upon the State courts, because not deciding a Federal question, is yet, in view of its source, entitled to the highest respect. *But we do not think it sustains the position contended for.* The decision of the question of control was not called for in the case, which was already decided on another and a fundamental point.

> But, waiving this, the point decided is merely that the ownership of the stock does not *necessarily* give control of the road. The Chief Justice says, speaking of the stock-holding company: "Practically, it may control the company, but the company alone controls its road." (6 Sup. Ct. Rep., 199.) This distinction seems very narrow, but it is certainly involved in the conclusion reached, which can not stand unless it is recognized; *for it is too plain to bear argument that the ownership of the stock of a corporation carries with it the control of the corporation.* Indeed, this is merely a different way of stating the truism that a corporation is controlled by its stockholders. That they do it through the agency of a board of directors and other officers does not alter the fact.

If the argument up to this stage has accomplished its aim it has shown that a combination or monopoly of competing lines of railway engaged in interstate transportation, such as the Great Northern and Northern Pacific Railways, is a combination or monopoly in restraint of interstate commerce within the prohibitions of the Anti-trust Act; and, further, that Congress may prohibit such combinations or monopolies of competing lines of interstate railway without invading any private or State rights; and, finally, that the ownership of a majority of the shares of capital stock of a corporation constitutes the control thereof

when the inquiry is whether a combination or monopoly has been created by concentrating in a single body the power to stifle competition between rival and competing railroads or other corporations.

With these propositions as a basis, the United States will undertake to show that—

V.

THE GREAT NORTHERN AND NORTHERN PACIFIC RAILWAY COMPANIES, COMPETING INTERSTATE CARRIERS, HAVE BEEN COMBINED IN VIOLATION OF SECTION 1 OF THE ANTI-TRUST ACT.

(1) The Great Northern and Northern Pacific Railway companies have been combined "in the form of trust;" that is to say, a majority of the stock of each road has been transferred to a common trustee, the Securities Company, which is thus vested with the power to control and direct both roads for the common benefit of the stockholders of each.

The Anti-trust Act condemns in express terms every "combination in the form of trust," which is in restraint of trade or commerce with foreign nations or among the several States. If, therefore, it can be shown that the Great Northern and Northern Pacific Railway companies have been combined "in the form of trust," a violation of the very letter of the statute has been proved.

There is no great difficulty in getting at what Congress meant by a "trust." The meaning of the term was well understood in the economic and industrial world at the time of the passage of the

Anti-trust Act, and is now. The word was first used to describe an arrangement whereby the business of several competing corporations is centralized and combined by causing at least a majority of the stock of the constituent corporations to be transferred to a trustee, who, in return, issues to the stockholders "trust certificates." The trustee holds the legal title to the shares and has the right to vote them, and in this way exercise complete control over the business of the combination. The trustee also receives the dividends on the shares, and out of these pays the former stockholders of the constituent corporations dividends on the "trust certificates." (Century Dictionary; A. & E. Ency. Law (2d ed.), title "Monopolies & Trusts;" *State* v. *Standard Oil Co.*, 49 Ohio St., 137.)

In Eddy on Combinations, section 582, "trusts" are defined to be—

> Combinations formed by creation of a trust, wherein the trustees or trustee body or *trustee corporation* hold the stock of the constituent corporations with power to vote the same, and so control the several corporations, issuing, as a rule, against the stock so held *certificates of stock of the* trustees, trustee body, or *trustee corporation.*

Mr. Noyes, at section 304 of his work on Intercorporate Relations, defines a "trust" as—

> A combination of competing corporations formed through the transfer by the stockholders of several corporations to a common

> trustee of *controlling* stock interests therein, in exchange for certificates issued by the trustee for each stockholder's proportional equitable interest in all the stock so transferred.

A definition often quoted is that of Mr. S. C. T. Dodd, the general solicitor and originator of the Standard Oil Trust—one of the first and perhaps the most perfect example of this type of industrial organization. In a pamphlet entitled "Combinations: Their Uses and Abuses," he describes a "trust" as—

> * * * An arrangement by which the stockholders of various corporations place their stocks in the hands of certain trustees, and take in lieu thereof certificates showing each stockholder's equitable interest in all the stock so held. The result is twofold: 1. The stockholders thereby become interested in all the corporations whose stocks are thus held. 2. The trustees elect the directors of the several corporations.

Does the case at bar come within these definitions? The pleadings and the evidence show, and the court below found as conclusions of fact, that Mr. Hill, Mr. Morgan, and the other individual defendants named in the bill, who were large and influential stockholders in the Great Northern and Northern Pacific Railway companies and who practically controlled their policies, conceived the plan of placing all or at least a majority of the stock of the two roads in the hands of a single

"custodian"—a holding corporation. The plan contemplated that these gentlemen would exchange their shares in the respective railroad companies for the shares of the holding corporation and use their influence to induce other stockholders in the railroad companies to do the same. (See statement of case *supra*, pp. 32–47.) The holding corporation was organized as planned, under the laws of New Jersey, with the corporate title, "Northern Securities Company." Thereupon, in pursuance of the preconceived design, stockholders of the Great Northern and Northern Pacific companies exchanged their respective holdings in the two railway companies for the stock of the new corporation—the Northern Securities Company—until the latter had acquired about 76 per cent of all the stock of the Great Northern and about 96 per cent of all the stock of the Northern Pacific. The Securities Company thus became clothed with the power to elect the officers and directors of the two railways, and thereby control absolutely their management and policy; while the formerly divergent interests of the stockholders of the respective roads were converted into a common interest in both roads.

The Government contends that these facts disclose all the essential elements of a "trust:"

(*a*) The trustee. The Securities Company holds, as trustee, a large majority of the shares of the Great Northern and Northern Pacific Railway

Companies—two competing corporations. Between a corporation and its stockholders there subsists the relation of a trust (using the term now in its strict and proper legal sense), the nature of which is declared in the charter or articles of incorporation. The corporation—the artificial entity—is the trustee; the stockholders are the cestuis que trustent. The former has the legal title to the corporate property; the latter have the equitable and beneficial interest therein, and the certificates of stock represent the proportionate equitable interests of the several stockholders. (Morawetz on Private Corporations, sec. 237, and cases there cited.) The Securities Company, therefore, is a trustee for its stockholders and its certificates of stock represent their proportionate equitable interests in the corporate property. Now the stockholders of the Securities Company are the former majority stockholders of the Great Northern and Northern Pacific companies, and the corporate property of the Securities Company consists of the Great Northern and Northern Pacific shares which these majority stockholders transferred to it. Whence it follows that the Securities Company holds a large majority of the shares of the Great Northern and Northern Pacific Railway companies as trustee for its stockholders, the former majority stockholders of the two railways (who thus continue to hold the equitable and beneficial interest in said shares), just as the "trustee," in the simplest form of "trust"

combination holds all or a majority of the shares of the constituent corporations in trust for the trust certificate holders. It makes no difference that the trustee in this case, the Securities Company, is a corporation. It is well settled that the trustee in a trust combination may be either a natural or an artificial person. (Beach on Monopolies and Industrial Trusts, sec. 159; Eddy on Combinations, sec. 582; *People* v. *Chicago Gas Trust Co.*, 130 Ill., 275.)

(*b*) The trust agreement. The terms of the trust are to be found in the charter or articles of incorporation of the Securities Company, the charter of a corporation being the unanimous agreement of its stockholders, declaring the nature and conditions of the trust relation between them and the corporate entity. (Morawetz on Private Corporations, sec. 237.) It is proper to say here that while a *written* trust agreement between the stockholders is a *usual* element of the trust form of combination, it is not an *essential* one. It is sufficient to show that the stockholders acted in pursuance of *any* understanding, plan, or scheme, written, verbal, or otherwise. This question was before the Supreme Court of Illinois in *Harding* v. *American Glucose Company* (182 Ill., 551), where it was held that—

> An agreement to form an illegal combination or trust need not be embodied in writing, but may rest upon a verbal understanding evidenced by the acts of the parties.

(*c*) The trust certificates. In return for the shares of the two railway companies the Securities Company issued its own certificates of stock. These correspond exactly to the "trust certificates." They fill the same office precisely; that is to say, like the latter, they represent the proportionate equitable interests which the holders thereof, respectively, have in all the stock held by the common trustee, which, in this case, is the Securities Company.

(*d*) The voting power. The Securities Company, the trustee, has the power to vote the stock of the constituent corporations, the Great Northern and Northern Pacific Railway companies, and thus elect the directors thereof, and in that way exercise control over their business, just as the "trustee" in the simplest form of trust combination controls the business of the several corporations composing the combination by voting at least a majority of their stock.

(*e*) The collection of dividends. The Securities Company, as trustee, collects the dividends accruing upon the stock of the constituent corporations—the Great Northern and Northern Pacific companies—and out of the fund thus realized it pays dividends on its own stock; just as the "trustee" in the simple "trust" collects the dividends on the stock of the several corporations in the combination and out of these pays dividends on his "trust certificates."

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Again, judged by its results, the Securities Company comes squarely within Mr. Dodd's definition of a trust (*supra*). For, first, the stockholders thereof have become interested in *all* the corporations whose stocks are held in trust (thus removing every motive for competition); and, secondly, the trustee, the Securities Company, elects the directors of the several corporations—the Great Northern and Northern Pacific Railway companies.

The case at bar thus responds to every test by which the existence of a "trust" is determined.

In still another light the Northern Securities Company constitutes a "trust."

As the courts throughout the country held with practical unanimity that the class of "trusts" just described is illegal, a second class was invented. "*A second class of 'trusts' consists of corporations that have acquired control of other corporations by purchasing their stock.* This organization is of the same general character as the preceding, but the form is changed in order to escape the force of the decisions of the courts relating to corporate partnerships." (Beach on Monopolies and Industrial Trusts, sec. 159.) The Securities Company clearly comes within this second classification of "trusts." It is a corporation which has obtained control of other and competing corporations by acquiring their stock.

Mr. Noyes, in his work on Intercorporate Relations, section 310, describes a combination of this type in the following language:

> In pursuance of an agreement between persons interested in competing corporations, a holding corporation is organized, under the laws of a State permitting its corporators to acquire and hold the stock of other corporations, with a capital stock at least equal to the aggregate capital of the several corporations. This corporation issues its own shares, upon an agreed basis, in exchange for the shares of the several corporations, provided that it obtain at least a majority of the shares of each corporation. All the corporations continue in existence, and the subsidiary companies are controlled by the holding corporation, which derives its income from the dividends paid by them. In organizing *this form of corporate combination* the dealings are entirely between the holding corporation and the stockholders of the several companies.

The combination of the Great Northern and Northern Pacific companies through the Securities Company corresponds to this description down to the most minute detail. Some writers, including Mr. Noyes, call this form a "corporate combination" rather than a "trust," but the difference in name has no significance—does not alter the nature of the combination—because, as Mr. Noyes himself says in his next section (sec. 311), "the legality of a combination of corporations in any form—trust,

corporate combination, or simple association—is to be ascertained by the application of the same principles." In another place (sec. 285) Mr. Noyes refers to holding corporations as "having taken the place of the earlier 'trusts' in the formation of industrial combinations. They have also been employed," he continues, "to effect a practical consolidation of railroad companies." And as to their validity, under the Federal Anti-trust Act, when so employed, he says:

> While a corporation, in the legitimate exercise of power conferred, may purchase and hold the shares of other corporations, the formation of a holding corporation, *as a part of a scheme* to bring about a combination of competing railroad companies—a practical consolidation through the pooling of earnings and virtual pooling of stocks—in restraint of interstate or foreign commerce, seems clearly in violation of the provisions of the statute. (Sec. 393.)

Again the language of the author fits the Securities Company perfectly.

An adjudged case exactly in point is that of the *People* v. *Chicago Gas Trust Company* (130 Ill., 268). In all its general and leading features that case presents a perfect and complete parallel to the case at bar. The Chicago Gas Trust Company was incorporated under the general incorporation law of the State of Illinois for two purposes, as expressed in its articles of association: First, for the purpose

of erecting and operating gas works for the manufacture and sale of gas in Chicago and other places in the State of Illinois, and, second, "to purchase and hold or sell the capital stock, or purchase or lease or operate the property, plant, good will, rights, and franchises of any gas works or gas company or companies, or any electric company or companies in Chicago or elsewhere." The company did not exercise the powers granted under the first clause, but it did exercise those attempted to be granted under the second clause; that is to say, it bought a majority of the stock of each of the other gas companies in Chicago, and thereby obtained control of them. It will be noted that the powers thus claimed and exercised by the Chicago Gas Trust Company are of identically the same nature as those claimed and exercised by the Securities Company. The two cases present precisely the same question, namely, whether a combination formed by one corporation buying a controlling interest in the stock of two or more competing corporations is legal. Furthermore, the principles of law for determining the legality of such a combination are substantially the same in both cases. The Chicago Gas Trust Company case was decided on common-law principles (see pp. 294, 295 of the report), no statute against trusts and monopolies having been enacted by the legislature of Illinois up to that time; and the case at bar must be decided by the application of practically the same principles, for it is conceded that the Sher-

man Anti-trust Act, under which the case was brought, engrafts upon the Federal jurisprudence (with some modifications which extend rather than limit their operation) the common-law principles governing combinations and monopolies in restraint of trade and commerce. In view, therefore, of the complete analogy between the two cases, it will be instructive to note briefly the reasoning by which the supreme court of Illinois was led to the conclusion that the Chicago Gas Trust Company was an illegal trust or combination. Magruder, J., speaking for the court, said at pages 292 and 302:

> The control of the four companies by the appellee, an outside and independent corporation, *suppresses competition between them, and destroys their diversity of interest and all motive for competition.* There is thus built up *a virtual monopoly* in the manufacture and sale of gas.
>
> * * * * *
>
> We held in *Chicago Gas Light Co.* v. *People's Gas Light Co.* (121 Ill., 530) that * * * a contract between two of these four companies, *the effect of which was to stifle competition* between them and necessitate an abandonment of their public duties, was against public policy and could not be enforced. *The attempt to consolidate the two companies, by placing the majority of their stock in the hands of the appellee, would accomplish the same unlawful result which was sought to be attained by the forbidden contract.*

Harding v. *American Glucose Co.* (182 Ill., 551) is another case in support of the contention that the Securities Company constitutes a "combination in the form of trust." The question there was whether "a trust is created where a majority of stockholders consolidate their interests by conveying their property to a corporation organized for the purpose of taking" it. The only distinction between the two cases, therefore, is that in one the *property* of the combining corporations is transferred to the new corporation, while in the other it is the *stock* which is so transferred. This distinction, of course, is formal rather than substantial. The supreme court of Illinois held that the facts in this case disclosed an illegal trust. Magruder, J., delivering the opinion of the court, said:

> A trust has usually appeared in the form of an agreement between stockholders in many corporations to place all their stock in the hands of trustees, and to receive trust certificates therefor from the trustees. But the question in the present case is whether a trust is created where a majority of stockholders consolidate their interests by conveying all their property to a corporation organized for the purpose of taking their property. Any combination of competing corporations for the purpose of controlling prices, or limiting production, or suppressing competition is contrary to public policy, and is void. (2 Cook on Corporations, 4th

ed., sec. 503*a*). It makes no difference whether the combination is effected through the instrumentality of trustees and trust certificates or whether it is effected by creating a new corporation and conveying to it all the property of the competing corporations. *The test is whether the necessary consequence of the combination is the controlling of prices, or limiting of production, or suppressing of competition in such a way as thereby to create a monopoly.*

It is not essential, however, to show that the Great Northern and Northern Pacific Railway companies have been combined in the technical form of "trust," or "corporate combination," as some writers call it when the trustee is a holding corporation. Section 1 of the Anti-trust Act covers any and every form of combination. A violation of that section will have been established, therefore, if it is shown that—

(2) Mr. Hill, Mr. Morgan, and the other individual defendants, acting in concert or in pursuance of a previous understanding, have caused the title to a majority of the shares of the Great Northern and Northern Pacific companies to be vested in a single person—the Securities Company—thereby centering the *control* of the two roads in a single head and in that way effecting a *combination* of them, the effect or tendency of which is to suppress competition between them.

As already noted (see Statement of Case, *supra*, pp. 32–47), the evidence in this case shows, and

the court below found, that Mr. Hill, Mr. Morgan, and the other individual defendants, who were stockholders in the Great Northern and Northern Pacific and who practically controlled the two roads, acting in pursuance of a previous understanding, plan, or scheme, procured the organization of the Securities Company, and caused it to acquire a large majority of the stock of the Great Northern and Northern Pacific (giving its own stock in exchange), thus enabling it to control and direct the policies of the two roads by electing officers and directors who will obey its will. As a result of this arrangement the former majority stockholders of the two railways, including the individual defendants, became practically the whole stockholding body of the Securities Company. For the purposes of this proposition (2), it may be considered that there were three steps in the execution of the scheme. The first was the organization of the Securities Company. As just remarked, the evidence shows (see Statement of Case, *supra*, pp. 32–47) and the court below found, that the Securities Company was organized in accordance with a previous understanding between the individual defendants, or some of them. They were thus parties to the first step in the plan. The second step was the transfer to the Securities Company of the stock which the aforesaid defendants held in the Great Northern and Northern Pacific companies, respectively.

This also was done in pursuance of the same previous understanding among the defendants. (Record, p. 831, Clough's testimony.) The defendants, or some of them, were thus parties to the second step. The third and final step was the transfer to the Securities Company of the holdings of other shareholders in the Great Northern and Northern Pacific companies until the Securities Company had acquired a large majority of the stock of both roads. This, as the evidence shows (see Statement of Case, *supra*, pp. 38 to 47), was accomplished through the influence and procurement of those instrumental in the organization of the Securities Company, namely, the individual defendants, and in pursuance of the same previous understanding. The defendants, or some of them, were thus parties to the third step, and this step completed the scheme—completed what the Government charges to be an unlawful combination—by vesting in it the *power* to control the two railways and suppress competition between them (the rule being, as heretofore pointed out, that a combination is complete as soon as it has acquired the *power* to accomplish its aim). The defendants, or some of them, were, therefore, parties to the scheme at every stage of its evolution, from beginning to end, from initiation to culmination. And, as a matter of fact, they do not deny this; they do not deny that they were parties to the formation of the Securities Company and the transactions

whereby that company acquired the major portion of the stock of the Great Northern and Northern Pacific Railway companies. They simply attempt to justify these acts. This is clearly shown by a passage from the answer of Hill and others at page 67*a* of the record:

> The Securities Company, as now existing, became, and is, necessary, as a defensive measure, against attempts of rival interests to gain control of the direction of one or both of defendant railway companies.

(The formation of the combination is divided into three steps for the purposes of this proposition only, that is, proposition numbered 2, page 126, *supra*. While as stated, the evidence, direct and presumptive, establishes that the additional Great Northern shares necessary to give the Securities Company a majority of that stock were transferred to it through the advice and procurement of the defendants, or some of them, yet, as already pointed out (*supra*, p. 47), it is not necessary to show this, it being sufficient to show the two steps: (1) that the plan of the defendants contemplated the transfer of a majority of the stock of each railway to the Securities Company, and (2) that this plan was actually carried out—consummated.)

(3) By still another course of reasoning it can be shown that the acts charged in the bill constitute an illegal combination under section 1 of the Anti-trust Act.

It will be conceded. as the court below says, that "the defendants would have violated the Anti-trust Act if they had done, through the agency of natural persons, what they have accomplished through an artificial person of their own creation. That is to say, if the same individuals who promoted the Securities Company, in pursuance of a previous understanding or agreement so to do, had transferred their stock in the two railroad companies to a third party or parties, and had agreed to induce other shareholders to do likewise, until a majority of the stock of both companies had been vested in a single individual or association of individuals, and had empowered the holder or holders to vote the stock as their own, receive all the dividends thereon, and pro rate or divide them among all the shareholders of the two companies who had transferred their stock, the result would have been a combination in direct restraint of interstate commerce, because it would have placed in the hands of a small coterie of men, the power to suppress competition between two competing interstate carriers whose lines are practically parallel."

The question—the only question—in this view of the case is whether the intervention of this artificial agency—the Securities Company—has, by some magic process, purged the scheme of its illegality and changed the complexion of the defendants' acts from guilt to innocence? In other words, is the element of combination or conspiracy wiped out by the fact that the transfer of the

controlling stock interests in the Great Northern and Northern Pacific Railway companies was made to the Securities Company, which the individual defendants promoted and controlled, instead of to the individual defendants directly? Plainly, the answer to this question must be No; because it makes no difference in the eye of the law whether the illegal acts were done by the Securities Company or by the individuals defendants. The latter controlled and largely composed the Securities Company, and therefore the acts which it nominally did were in reality done by them. The so-called rule of law that a corporation is a juristic person, having an existence separate and apart from its members and acting for itself, is merely a legal fiction invented for the convenience of justice, and it will always be disregarded when it would obstruct rather than serve the ends of justice. (See the discussion of this point, *infra*, pp. 139–146, where the authorities are reviewed.)

So, for the present purpose, the fiction that the Securities Company is a being separate and apart from the individual defendants who largely compose it and control it will be ignored; and when this is done—when we "lift the roof off of the Northern Securities Company" and look in—what meets the eye as the result of the defendants' acts? Why one and the same set of men—the individual defendants being the ruling spirits among them—acting together under a charter agreement and

through the agency of a corporate organization—the Securities Company—in absolute control of two parallel and naturally competing systems of interstate railway. In place of the two distinct sets of stockholders, with rival and competing interests, namely, the stockholders of the Great Northern and Northern Pacific, there has been substituted (by means of the interchange of stocks heretofore described) the one set of stockholders with common and noncompetitive interests, namely, the stockholders of the Securities Company.

Thus, identically the same persons who controlled the Great Northern and Northern Pacific before the Securities Company came into possession of a majority of their shares control them now, only, now, these persons have a common interest—"a community of interest"—in the earnings of both roads, while formerly the interests of the two sets of persons—the two sets of stockholders—were, in most respects, divergent and competitive. It is absurd to say that two railway corporations, which under normal conditions are naturally competitors for traffic, will continue to compete in any real sense after both become subject to the same source of control. It is not in the interest of the stockholders of the Securities Company that one of these railways should prosper at the expense of the other. They have a common interest in both; they receive their dividends from a fund created by pooling the earnings of both. A

more effective method for combining competitive interests—for suppressing competition between rival and naturally competing business corporations—it would hardly be possible to conceive.

When thus analyzed the disguise by which the defendants sought to hide the fact of a combination of the Great Northern and Northern Pacific, and their connection therewith, appears so thin and transparent that it is a cause of wonder that they should ever have adopted it. As Vice-Chancellor Kindersley said in the case of the *Attorney-General* v. *The Great Northern Railway Company* (6 Jur. (N. S.), 1006; S. C. 1 Drew. & Smale, 159), "a more flimsy device, when the particulars are once known, it is impossible to imagine. It may succeed for a time in baffling persons who may have an interest in preventing its being done and has succeeded, but it was a mere crafty contrivance to evade the requisition of the law * * *."

The defendants, however, actually seem to have thought that they could procure the organization of a corporation and have it do what they could not lawfully do themselves or through the agency of natural persons, as if that which would have been illegal if done through the agency of a natural person would lose the stamp of illegality if done through the agency of a corporate organization; but—

> It must not be thought that courts are powerless to strip off disguises that are de-

> signed to thwart the purposes of the law. The mere suggestion of such a condition is an insult to the intelligence of the judiciary. Whenever such disguises are made apparent they can readily be disrobed. The difficulty is in showing the disguises, not in penetrating them when they appear. (*Stockton, Attorney-General*, v. *Central R. Co.*, 50 N. J. Eq., 52.)

That the defendants should have thus attempted to evade the law by a contrivance so easily seen through becomes still more astonishing, however, when it is recalled that devices of exactly the same character had already been repudiated by courts of high standing. For example, the case of *Ford* v. *Chicago Milk Shippers' Association* (155 Ill., 166, 178, 179, 180) is a case of a combination of precisely the same nature, in all material respects, as the combination attempted through the Securities Company. The facts in that case were briefly as follows: The shippers of milk in and around Chicago, desiring to control the market for that product, formed themselves into a corporation, which had general powers to regulate the milk trade in Chicago, and in particular to fix and determine the price of milk. Competition between the various producers and shippers of milk was in this way suppressed. The Chicago Milk Shippers' Association was thus an attempt to convert various rival and competitive interests in the milk trade into one common interest, just as the Securities Company was an attempt to convert

rival and competitive interests in railroad transportation into one common interest. In each case the result was to center the power of control over competitive enterprises in a single corporate head, thus removing every motive for competition. In neither case was there any agreement between the stockholders except the articles of incorporation of their respective corporations; and it was contended in the Illinois case, as it is contended in the case at bar, that a person—a corporation—can not contract, combine, or conspire with himself. The two cases are, therefore, practically identical. The supreme court of Illinois held that the Chicago Milk Shippers' Association was an illegal combination or trust, and the reasoning by which it sustained that conclusion is so forcible and so clearly applicable to the case at bar that I shall quote at some length from the opinion of the court (pp. 179, 180):

> The purposes attempted to be accom plished through the corporation were illegal. *To carry out such purposes it stands as the active business agent of the members, who are stockholders, contracting with it to carry out the purposes of the organization.* It is a combination in violation of the statute and in restraint of trade. * * *
>
> It is urged that the corporation can not alone enter into a trust or combination that would be a violation of this statute. While it is true, as a general proposition, that a corporation may be created and constituted

a legal entity, existing separate and apart from the natural persons composing it, yet it can not act independently, or against the will, or abstain from complying with the direction, of the natural persons who constitute the corporate body. A corporation is, in fact, an association of persons united in one body, having perpetual succession, vested with political rights conferred upon it by the authority creating it. (Morawetz on Corp., sec. 227; 1 Kyd on Corp., 13.) *Such being the nature of the corporate body, acts done by it are the acts of the associated persons*, as corporators or as individuals, and in which capacity the act is done must be determined from the nature and character of the act and the purpose for which the corporation was organized. (*State ex rel.* v. *Standard Oil Co.*, 49 Ohio, 137.) * * * And where, in the organization of the corporate body or the control exercised by the stockholders in determining the agencies selected for managing its business, the business as thus conducted, managed, and controlled is against public policy or in contravention of a statute of the State, such acts of the corporate body and of the individual shareholders are the combined acts of all, and courts are not so powerless that they may not prevent the success of ingenious schemes to evade or violate the law. There can be no immunity for evasion of the policy of the State by its creations. *The corporation, as an entity, may not be able to create a trust or combina-*

> *tion with itself, but its individual shareholders may, in controlling it, together with it, create such trust or combination that will constitute it, with them, alike guilty.*

Again, in the case of the *Distilling and Cattle Feeding Co.* v. *The People* (156 Ill., 448, 490, 491) the supreme court of Illinois had to deal with a scheme of this sort, designed to evade the anti-trust laws of that State. A combination of distilling corporations which had been effected through a "trust" having been declared illegal by the courts, it was sought to accomplish the same purpose by the organization of a "holding corporation," which would take over the property of the constituent corporations; and the question was whether this "holding corporation" was also illegal. Said the court:

> But the defendant (the appellee) contends that * * * *the change in organization from an unincorporated association to a corporation* and the change in the mode of holding the distillery properties of the various corporations formerly belonging to the trust * * * have purged the combination of its illegality. It must be admitted that these changes, so far as they have any effect upon the rights or interests of the former stockholders in those corporations or of the public, are formal rather than substantial. The same interests are controlled in substantially the same way and by the same agencies as before. * * * The

conveyance and transfer of the properties of the constituent companies to the new corporation was merely a transfer by the trustees to themselves, though in a slightly different capacity, and the former stockholders in the constituent companies simply exchanged their trust certificates, share for share, for stock in the new corporation. That corporation thus succeeds to the trust, and its operations are to be carried on in the same way, for the same purposes, and by the same agencies, as before. The trust, then, being repugnant to public policy and illegal, it is impossible to see why the same is not true of the corporation which succeeds to it and takes its place. The control exercised over the distillery business of the country—over production and prices—and the virtual monopoly formerly held by the trust, are in no degree changed or relaxed, but the methods and purposes of the trust are perpetuated and carried out with the same persistence and vigor as before the organization of the corporation. *There is no magic in a corporate organization which can purge the trust scheme of its illegality*, and it remains as essentially opposed to the principles of sound public policy as when the trust was in existence. It was illegal before and is illegal still, and for the same reasons.

But the defendants insist that it is immaterial—that it has no bearing on the case—that a combination can be discovered by going behind the fiction that the Securities Company is a juristic

person with an existence separate and apart from its members, because, as they say, the law will not allow that fiction to be disregarded or contradicted—will not allow the acts of the corporate entity to be treated as the acts of the natural persons who compose it. The defendants thus seek to defeat the ends of the law by a fiction invented to promote them. They say that the acts complained of were done by the Securities Company acting in its own right as an artificial person; that the individual defendants—stockholders of the Securities Company—had nothing to do with these acts; and that inasmuch as a person, natural or artificial, can not contract, combine, or conspire with himself, the acts complained of are not in violation of section 1 of the Anti-trust Act. As the court of appeals of New York said in the case of the *People* v. *North River Sugar Refining Co.* (121 N. Y., 582, 615), in reply to a similar contention:

> The reasoning leading to that result is so severely technical as to have suggested a justification almost reminding one of an apology. We are called upon to sever the corporation, the abstract legal entity, from the living and acting corporators; as it were, to separate in our thought the soul from the body, and, admitting the sins of the latter, to adjudge that the former remains pure.

Fictions of law, invented to promote justice, can never be invoked to accomplish its defeat. "*In*

fictione juris semper æquitas existit," the maxim reads. And in *Mostyn* v. *Fabriges* (Cowper, 177), Lord Mansfield said that—

> It is a certain rule that a fiction of law shall never be contradicted so as to defeat the end for which it was invented, *but for every other purpose it may be contradicted.*

In *Morris* v. *Pugh* (3 Burr., 1243), Lord Mansfield again laid down the rule that—

> Fictions of law hold only in respect of the ends and purposes for which they were invented; *when they are urged to an intent and purpose not within the reason and policy of the fiction, the other party may show the truth.*

Now, following the rule applicable to fictions in general, it is well settled that when it is in the interest of the administration of justice to do so, courts may and will ignore the fiction that a corporation is a legal being apart from the stockholders, and will consider its acts as the acts of its constituent members; and this is emphatically the case when the State—the sovereign authority—is the complaining party. This proposition is supported by reason and precedent.

Mr. Morawetz in his work on Private Corporations, says, at section 1:

> While a corporation may, from one point of view, be considered as an entity without regard to the corporators who compose it, the fact remains self-evident that a corporation *is not* in reality a person or a thing

> distinct from its constituent parts. The word "corporation" is but a collective name for the corporators or members who compose an incorporated association; and where it is said that a corporation is itself a person or being or creature, this may be understood in a figurative sense only.
>
> * * * It is essential to a clear understanding of many important branches of the law on corporations to bear in mind distinctly that *the existence of a corporation independently of its shareholders is a fiction, and that the rights and duties of an incorporated association are in reality the rights and duties of the persons who compose it, and not of an imaginary being.*

In another place (sec. 227) the same author says:

> The statement that a corporation is an artificial person, or entity, apart from its members, is merely a description, in figurative language, of a corporation viewed as a collective body; a corporation is really an association of persons, and no judicial dictum or legislative enactment can alter this fact. It is true that the courts of law, *as distinguished from the courts of equity*, do not, as a rule, look beyond the fiction of a separate corporate entity.

In Taylor on Private Corporations, it is said (sec. 50):

> The shareholders, then, vested with the corporate powers, are the body corporate, corporation, or company. It is their acts,

> when done in the manner prescribed in the constitution of the corporation, that are, properly speaking, acts of the corporation.

The principle is stated in the following language in Clark and Marshall on Private Corporations (pp. 17 and 22):

> While a corporation is a legal entity distinct from its members for the purpose of suing and being sued, and for the purpose of contracting and taking, holding, and conveying property, etc., it is so by a mere fiction of the law only, and merely for the purpose of convenience in the transaction of its business. In reality, a corporation is a collection or association of individuals, and *the fiction must be disregarded and the fact recognized by the courts whenever the fiction is urged to an intent and purpose which is not within its reason and policy.*

In *People* v. *North River Sugar Refining Co.* (121 N. Y., 582, 621, 622) the court of appeals of New York was confronted with this question. Finch, J., speaking for the court, said:

> The abstract idea of a corporation, the legal entity, the impalpable and intangible creation of human thought, is itself a fiction, and has been appropriately described as a figure of speech. It serves very well to designate in our minds the collective action and agency of many individuals as permitted by the law; and the substantial inquiry always is what in a given case has been that collective action and agency. As

> between the corporation and those with whom it deals, the manner of its exercise usually is material, *but as between it and the State, the substantial inquiry is only what that collective action and agency has done, what it has, in fact, accomplished, what is seen to be its effective work, what has been its conduct.* It ought not to be otherwise.

In the case of the *State* v. *Standard Oil Co.* (49 Ohio St., 137) the stockholders of the Standard Oil Company had transferred their stocks to trustees under an agreement which was in violation of the anti-trust laws of the State of Ohio. The State brought a proceeding against the corporation—the Standard Oil Company—to forfeit its charter. One of the defenses was that the trust agreement was the act of the shareholders as individuals, and not the act of the corporation—the legal entity. The supreme court of Ohio overruled this defense, however, saying:

> The general proposition that a corporation is to be regarded as a legal entity, existing separate and apart from the natural persons composing it, is not disputed; but that the statement is a mere fiction, existing only in idea, is well understood, and not controverted by anyone who pretends to accurate knowledge on the subject. It has been introduced for the convenience of the company in making contracts, in acquiring property for corporate purposes, in suing and being sued, and to preserve the limited liability of the stockholders by distinguish-

ing between the corporate debts and property of the company, and of the stockholders in their capacity as individuals. All fictions of law have been introduced for the purpose of convenience and to subserve the ends of justice. It is in this sense that the maxim *in fictione juris subsistit æquitas* is used, and the doctrine of fictions applied. But when they are urged to an intent and purpose not within the reason and policy of the fiction they have always been disregarded by the courts. * * *

* * * So that the idea that a corporation may be a separate entity, in the sense that it can act independently of the natural persons composing it, or abstain from acting where it is their will it shall, has no foundation in reason or authority, is contrary to the fact, and to base an argument upon it, where the question is as to whether a certain act was the act of the corporation, or of its stockholders, can not be decisive of the question, and is therefore illogical; for it may as likely lead to a false as to a true result.

Now, so long as a proper use is made of the fiction that a corporation is an entity apart from its shareholders, it is harmless, and, because convenient, should not be called in question; but where it is urged to an end subversive of its policy, or such is the issue, the fiction must be ignored, * * *

In *Ford* v. *Chicago Milk Shippers' Association* (*supra*) this question was squarely before the

supreme court of Illinois, which held that "the acts done by it [the corporation] are [were] the acts of the associated persons." See the passage from the opinion in this case quoted supra. The following cases also bear on the general question: *Attorney-General* v. *Great Northern Ry. Co.* (6 Jur. (N. S.) 1006, S. C., 1 Drew & Smale, 157); *Pa. R. Co. et al.* v. *Com.* (7 Atl. Rep., 368); *Stockton, Attorney-General*, v. *Central R. Co.* (50 N. J. Eq., 52).

This concludes the argument under section 1 of the Anti-trust Act.

VI.

THE NORTHERN SECURITIES COMPANY, IN VIOLATION OF SECTION 2 OF THE ANTI-TRUST ACT, HAS MONOPOLIZED A PART OF INTERSTATE COMMERCE BY ACQUIRING A LARGE MAJORITY OF THE SHARES OF THE CAPITAL STOCK OF THE GREAT NORTHERN AND NORTHERN PACIFIC RAILWAY COMPANIES—TWO PARALLEL AND COMPETING LINES ENGAGED IN INTERSTATE COMMERCE; AND THE NORTHERN SECURITIES COMPANY AND THE INDIVIDUAL DEFENDANTS, OR TWO OR MORE OF THEM, HAVE COMBINED, EACH WITH THE OTHER, SO TO MONOPOLIZE A PART OF INTERSTATE COMMERCE.

It has been shown (pp. 72–74, *supra*) that in the modern sense of the term—the sense in which it is used in the Anti-trust Act (*E. C. Knight Co.* v. *United States*, *supra*; *United States* v. *Trans-Missouri Freight Asso.*, *supra*)—"to monopolize" signifies the combining or bringing together in the hands of one person or set of persons of the control of, or the power to control, several rival and competing businesses, to the end that competi-

tion between them may be suppressed. And, as this court has said (in the case of the *E. C. Knight Co.* v. *United States*, *supra*), in order to vitiate an attempt or effort to monopolize "it is not essential that its result should be a complete monopoly; it is sufficient if it really tends to that end and to deprive the public of the advantages which flow from free competition."

It has also been shown (pp. 84 et seq., *supra*) that a monopoly of the means and instrumentalities of transportation immediately leads to, in fact is, a monopoly of transportation, and that a monopoly of a part of interstate transportation is a monopoly of a part of interstate commerce.

And, finally, it has been shown (p. 106 et seq., *supra*) that, for the purpose of determining whether two or more competing corporations have been combined or their business monopolized, the ownership of a majority of its stock constitutes the *control* of a corporation.

From these premises the conclusion follows that by acquiring a majority of the shares of the Great Northern and Northern Pacific the Securities Company has obtained the control of, and, therefore, the power to suppress competition between, two rival and competing lines of railway engaged in interstate commerce, and in that way has monopolized a part of interstate commerce.

This conclusion is sustained by the judgment of this court in the case of *Pearsall* v. *Great Northern Railway* (161 U. S., 646), where the

question, what constitutes a monopoly of interstate railways, was determined with particular reference to the defendant railways themselves. In that case the court held that to concentrate a majority of the stock of the Great Northern and Northern Pacific companies in the hands of one person or body of persons "would be to practically consolidate the two systems," and that such a consolidation would "unavoidably result in * * * a *monopoly* of all traffic in the northern half of the State of Minnesota, as well as of all transcontinental traffic north of the line of the Union Pacific." To go a little further into the particulars of that case, it was there proposed to transfer half the capital stock of the Northern Pacific Railway to the shareholders of the Great Northern Railway, in consideration for which the latter company was to guarantee the bonds of the former, which was being reorganized. Touching the effect of such a transaction, the court said, through Mr. Justice Brown (p. 670):

> As the Northern Pacific road also controls, by its own construction and by the purchase of stock, other roads extending from the Mississippi River to the Pacific Ocean, and operates as a single system an aggregate mileage of 4,500 miles, most of which is parallel to the Great Northern system, *the effect of this arrangement* [i. e., the acquisition by the shareholders of the Great Northern of half the capital stock of the Northern Pacific, as aforesaid] *would be to practically consolidate the two systems*, to

operate 9,000 miles of railway under a single management, and to destroy any possible advantages the public might have through a competition between the two lines.

* * * But the fact that one-half of the capital stock of the reorganized company is to be turned over to the shareholders of the Great Northern, which is, in turn, to guarantee the payment of the reorganized bonds, is evidence of the most cogent character to show that nothing less than a purchase of a controlling interest, and practically the absolute control, of the Northern Pacific is contemplated by the arrangement. With half of its capital stock already in its hands, the purchase of enough to make a majority would follow almost as a matter of course, and the *mastership* of the Northern Pacific would be assured.

* * * * *

The consolidation of these two great corporations will unavoidably result in giving to the defendant a monopoly of all traffic in the northern half of the State of Minnesota, as well as of all transcontinental traffic north of the line of the Union Pacific, against which public regulations will be but a feeble protection. The acts of the Minnesota legislature of 1874 and 1881 undoubtedly reflected the general sentiment of the public, that their best security is in competition.

The Pearsall case is thus conclusive of the case at bar, since it establishes the principle that to vest, designedly, in one person or set of persons a

majority of the stock of two competing lines of interstate railway is to monopolize a part of interstate railroad traffic.

The *People* v. *Chicago Gas Trust Co.* (130 Ill., 268, 292, 297), heretofore referred to in other connections, also presents an instance of a monopoly precisely similar to the one now in issue. In that case the defendant company, which was organized with power to purchase the stocks of other gas companies, acquired a majority of the shares of stock of the four gas companies operating in Chicago. The supreme court of Illinois held that the Chicago Gas Trust Company thereby acquired a monopoly which was illegal. In delivering the opinion of the court, Magruder, J., said:

> It can not be denied that the appellee, as owner of the majority of the shares of stock of these four companies, can control them, in the exercise of all their corporate powers, * * *
>
> The control of the four companies by the appellee—an outside and independent corporation—suppresses competition between them, and destroys their diversity of interest and all motive for competition. There is thus built up *a virtual monopoly* in the manufacture and sale of gas.
>
> * * * * *
>
> That the exercise of the power attempted to be conferred upon the appellee company must result in the creation of *a monopoly*, results from the very nature of the power itself.

It seems hardly worth while to notice the argument, or rather the assertion, which has been made in and outside this case, that the Securities Company has not monopolized any part of interstate commerce, in violation of section 2 of the Anti-trust Act, because if a natural person with sufficient means had done the things that the Securities Company did—that is, had obtained control of the Great Northern and Northern Pacific by purchasing a majority of their respective shares—the transaction would not have been unlawful, would not have come within the prohibition of the Federal law against monopolies. What has been said in support of the Government's contention that the Securities Company has obtained an unlawful monopoly of a part of interstate commerce would apply with just as much force if the monopoly had been acquired by a natural person by any means prohibited by law. In the exercise of its regulative and police powers over interstate commerce, Congress may suppress monopolies in restraint thereof, by whomsoever created, notwithstanding that in doing so it restrict the right of private contract to some extent. (*U. S.* v. *Joint Traffic Asso.*, *supra*; *Addyston Pipe & Steel Co.* v. *U. S.*, *supra*.) The only material inquiry is, Has a monopoly been created? Not Who or what manner of man created it? It was monopoly that Congress aimed to prevent and which it had a right to prevent, as shown in another place; and in this light it is wholly imma-

terial and irrelevant to inquire whether the monopolist be a natural or an artificial person. The creation of the monopoly constitutes the offense.

But even if a natural person could lawfully have done what the Securities Company has done, that would be no argument to prove that the Securities Company, in so doing, has not violated the law against monpolies. For, as Finch, J., said (at p. 625), in the case of the *People* v. *North River Sugar Refining Company, supra:*

> It is not a sufficient answer to say that similar results may be lawfully accomplished; *that an individual having the necessary wealth might have bought all these refineries*, manned them with his own chosen agents, and managed them as a group at his sovereign will; for it is one thing for the State to respect the rights of ownership and protect them out of regard to the business freedom of the citizen, and quite another thing to add to that possibility a further extension of those consequences by creating artificial persons to aid in producing such aggregations. * * * What it *may* bear is one thing; what it should cause and create is quite another.

Moreover, it must constantly be kept in mind in the discussion under this head that the monopoly complained of is a monopoly of railway traffic resulting from centering in a single body controlling stock interests in two competing railways, and whatever may be the power of Congress or State

legislatures over monopolies in general, they may unquestionably, in the exercise of their broad regulative powers over quasi-public corporations, prohibit any monopoly of railway transportation within their respective spheres of action.

If it has been established that the Securities Company has thus monopolized a part of interstate commerce, then, a priori, the Securities Company and Mr. Hill, Mr. Morgan, and the other individual defendants, have combined, each with the other, to monopolize a part of interstate commerce, because, as the evidence and pleadings show, they were all parties to the plan by which the monopoly charged by the Government was accomplished; that is to say, the individual defendants had a common agreement or understanding among themselves for the organization of a holding company, which would take over their stock in the Great Northern and Northern Pacific and that of as many other stockholders as could be persuaded to exchange their shares; and the Securities Company, after its organization, became a party to this plan—that is, became the holding corporation, the agency for carrying the plan into effect.

In opposition to the Government's contentions, as stated in the foregoing propositions numbered

V and VI, it is argued that the Securities Company is simply an investing stockholder; that the transactions complained of are simply sales of shares of stock which the vendors had the right to sell and the Securities Company the right and the charter power to purchase; that to stamp such sales of property as illegal would be an unwarranted infringement upon the right of contract. But the argument that the Securities Company is a mere investor, and that it was never intended that it should take any active part in controlling or shaping the policies of the Great Northern and Northern Pacific railways by virtue of its ownership of a majority of their respective shares, is defeated, and its insincerity is exposed, by the answers and the testimony of the defendants themselves. Nearly every quotation from those sources, made in the statement of the case, supra, contains evidence that the object of the promoters of the Securities Company was to perpetuate certain policies of railroad economy. One or two additional passages in the testimony will be referred to here, however. At pages 82 and 83 of the Record will be found the following testimony of Mr. Hill:

> A. The Northern Securities Company, or a company of that character, has been considered by the large shareholders of the Great Northern Railway Company for several years.
>
> Q. And for what purpose, Mr. Hill?

A. *For the purpose of combining their interest in the property.*

Q. And what was the object or purpose of the combination?

A. Some of them were very old men and they had always acted together and in harmony, and *they desired to perpetuate that action.*

* * * * *

Q. And was that the purpose and object, Mr. Hill, of your organizing the Northern Securities Company?

A. That was the purpose.

* * * * *

Q. And for the same purpose?

A. For the same purpose, *so that we would all act together, and no one would sell out or leave the others. We would all act together.*

Q. For the purpose of unifying the interests that you had in the two roads?

A. *Yes, sir; for the purpose of unifying the interests in each road*, because when the Burlington was transferred or sold to the Northern Pacific and the Great Northern jointly, our owning an equal share in the company, it was a matter of great consequence to the Great Northern as to who would *own the stock of the Northern Pacific or control the Northern Pacific*, and some of our shareholders—some of them are 86 years old, others are more than 80, and so on—they might have concluded that they would sell their stock, *and it might have made a difference as to the majority of the common stock.*

And again, at page 706 of the Record, the same witness testified as follows regarding the object of the Securities Company:

> Q. It was to protect and continue that policy?
>
> A. Yes, sir.
>
> Q. And that meant to protect and continue the control which had carried out that policy; that is what you meant by it?
>
> A. Well, *it was to protect the policy* and to——

Mr. Morgan's testimony was to the same effect:

> Q. For the purpose of keeping control in one place?
>
> A. No; not *alone* to keep it in one place, but to keep it *so that the policy of the company* upon which its future depended *could be continued.* * * * What I wanted to accomplish was to put that stock so that it could be protected—to maintain the policy of the company as it then existed.
>
> Q. Held in one hand, in other words? [Still referring to the object of the Securities Company.]
>
> A. No; not in one hand, because it could be held in third hands. * * * I wanted the Northern Pacific stock put where nothing could interfere with the policy I had inaugurated and for the carrying out of which we were perfectly satisfied and morally responsible. (Record, p. 345.)

And again, at page 355 of the record, Mr. Morgan, referring to the Securities Company, said

that "this holding company was simply a question of *custodian*."

The leading actors in the transaction thus bear witness to the fact that the Securities Company was not a mere investor, but was the designed instrument for directing and controlling the policies of competing lines of transcontinental railway.

Mr. Hill, in giving his testimony, dropped one or two other remarks, not previously referred to, which are very significant of the purpose of those who transferred their shares to the Securities Company, and which show very clearly that the prime object of the parties to the transfers was not, on the one hand, actually and in good faith to dispose of property, nor, on the other, to acquire it as an investment, but that what they had in mind was entirely foreign to this. For exampie, Mr. Hill testified that Great Northern was "never an active stock"—"never a stock that has been dealt in in large amounts" (record, p. 117). Yet the Securities Company within a few months after its organization had purchased about 75 per cent of the Great Northern stock. What is the explanation of this suddenly developed activity; of these enormous sales to the Securities Company of a stock which had never been "active?" Not the high price offered by the Securities Company, for, as Mr. Hill testified (record, p. 115), "the market price at that time was considerably higher than the price the Northern Securities Company purchased the Great Northern stock

at." There must, therefore, be some other explanation; and is it not a fair inference that the true explanation is, that these majority stockholders of the Great Northern, who sold their shares at such a sacrifice, did so in pursuance of some understanding, plan, or concert that they had previously formed? Is not the fact that they sold their shares at considerably less than the market price evidence of the most cogent character to show that the sales in question were not made to a mere investor in the ordinary course of business, but were in pursuance of an ulterior object? Otherwise, what would be the motive for the great sacrifice involved? (Mr. Hill testified, Record, p. 89, that Great Northern shares were selling in the market at 200, twenty points higher than these shareholders sold out for.) And the inference is further borne out by a passage in the letter which Mr. Hill addressed to the Great Northern shareholders (Record, p. 920), a passage already quoted in another connection, but which will bear repetition:

> The writer is of opinion that the offer of the Securities Company is one that Great Northern shareholders can accept with *profit and advantage* to themselves.

This is a very significant admission. In what way could it be to the "profit and advantage" of Great Northern shareholders to accept the offer of the Securities Company when the market price of Great Northern stock was "considerably

higher"—twenty points higher—than that tendered by the Securities Company? Certainly, in the ordinary sense, there could be no "profit" or "advantage" in such a transaction. It is evident, therefore, that Mr. Hill had in mind some future or contingent "profit and advantage" which he expected to result from the fusion which the Securities Company would bring about between the stockholders of the Great Northern and Northern Pacific.

But in the face of these plain, unqualified admissions by the defendants that the Securities Company was organized for the express purpose of combining their interests in the Great Northern and Northern Pacific railways, and that it is not a mere investor, their counsel cite the following passage from Mr. Justice Brown's opinion in the *Pearsall case* (161 U. S., 671) in support of the contention that the transactions complained of by the Government are not unlawful:

> Doubtless these stockholders could lawfully acquire by individual purchases a majority, or even the whole of the stock of the reorganized company, and thus possibly obtain its ultimate control; but the companies would still remain separate corporations with no interests, as such, in common.

This language, however, manifestly and in terms refers to purchases and sales by individual stockholders on their individual account, without any thought or design of acting in concert with

others to create a combination or monopoly but, with the expectation of again selling in the due course of business. This is shown by the words of the Justice immediately following those above quoted, to wit:

> In a few years the two companies might by sales of the stock, so acquired, become completely dissevered, and the interests of the stockholders of each company thus become antagonistic.

But very different is the case at bar. As already pointed out, the purpose of the defendants, according to their own testimony, was to combine their interests in the two railways (*supra*, pp. 154–157), and to that end they made provision for a *perpetual* unity of ownership through the organization of the Securities Company, the admitted object of that company being to insure *permanent* community, not antagonism, of interest between the stockholders of the Great Northern and Northern Pacific and to continue unbroken the former policies of the two roads, as molded by the defendants. It is thus clear, from the subsequent language of Mr. Justice Brown himself, that when he put the hypothetical case first above quoted he had in mind a very different state of facts from that disclosed by the present case, and the distinction between the two classes of cases is remarked upon by Mr. Noyes in his work on Intercorporate Relations (sec. 36, n. 1, p. 62):

> The distinction between the ownership of controlling interests in competing railroad companies by individuals acting together in temporary harmony and the ownership of such interests by a single corporation is apparent. * * *

And as an illustration of the distinction he proceeds to cite the very language of Mr. Justice Brown in the Pearsall case quoted above and which counsel for defendants rely upon to establish their contention that there is no such distinction.

Again, it is well settled that because a person has the right to purchase stock it does not follow that stockholders of two or more competing corporations can combine among themselves and with such person to sell him their stock and induce others to do the same, so as to center the controlling stock interests of the several corporations in a single head, in violation of statutes against combinations, consolidations, and monopolies. (Noyes on Intercorporate Relations, sec. 36; *Penna. R. Co.* v. *Com.*, 7 Atl. Rep., 373.) In the latter case it was said:

> During the argument counsel invoked the aid of the undoubted general principle that the ownership of shares of stock carries with it the right to sell, and contended that the owners of the shares of the South Pennsylvania Railroad Company could not legally be restrained from so doing, and that an injunction against the purchase would

> have this effect. We do not think the principle applies to this case. We are not called upon to express any opinion as to the right of individual shareholders to sell their several shares bona fide in the open market. This, so far as they are concerned, is an intended *sale in combination* * * *

And the sale was consequently enjoined.

The failure to observe this distinction—that is, the distinction between an actual, bona fide sale, and what is nominally a sale but in reality only a cloak under which to accomplish a combination of corporate properties or interests—has sometimes led to confusion of language, if not of thought, in the discussion of trade combinations. Thus, in *Trenton Potteries Co.* v. *Olyphant* (58 N. J. Eq., 507), the supreme court of New Jersey said:

> Contracts by independent and unconnected manufacturers or traders looking to the control of the prices of their commodities, either by limitation of production, or by restriction on distribution, or by express agreement to maintain specified prices, are without doubt opposed to public policy. * * * Corporations, however, may lawfully do any acts within the corporate powers conferred on them by legislative grant. * * * Under such powers it is obvious that a corporation may purchase the plant and business of competing individuals and concerns. * * * It follows that a corporation empowered to carry on a particular business may lawfully purchase the plant and business of competitors, although

> such purchases may diminish, or, for a time at least, destroy competition. Contracts for such purchases can not be refused enforcement.

This may be true where the sales are actual sales—where there is an evident, bona fide intention to part with property on one hand and to acquire it on the other; but it is certainly not true where the sales are merely nominal and there is no real change in ownership, the object being to effect a combination of interests. As Mr. Noyes remarks, referring to the above language of the supreme court of New Jersey:

> These conclusions may be well founded in their application to an *actual* sale in the transaction of business, as distinguished from a combination in the form of a sale. A corporation having general power to dispose of its property may, like an individual, in good faith, sell to a competing corporation without violating the rule of public policy. There is no *combination* in such a purchase. But if the sale is for the purpose of forming a corporate combination, in which the vendor corporation participates, the same rule of public policy is applicable as in the case of any combination of corporations. As already stated, the object of a combination, or the necessary or natural consequence of its operation, determines its legality. The form—trust, corporate combination, or association—will not serve as a cloak for conspiracy nor prevent the application of the rule of public policy.

> Corporate power to purchase no more authorizes the exercise of such power for purposes opposed to public policy, than a general power to make contracts authorizes the execution of agreements conflicting with the public interests. (Intercorporate Relations, sec. 354.)

In further reply to the Government's charge that in doing the acts alleged the defendants created a combination and monopoly in restraint of interstate commerce, as set out in propositions V and VI, *supra*, counsel for the defendant, the Securities Company, contends that "acquiesence by the Government for more than eleven years in the actual merger and consolidation of many important parallel and competing lines of railroads and steamships engaged in interstate and international commerce has given a practical construction to the act of July 2, 1890, to the effect that it was not intended to forbid and does not forbid the natural processes of unification which are brought about under modern methods of lease, consolidation, merger, community of interest, or ownership of stock."

This argument, which, by the way, is not altogether without humor when its source is considered, has no force except to show that the defendants really planned and intended to accomplish a consolidation or merger of the Great Northern and Northern Pacific railways through the Securities Company, and that their denials to

the contrary were not sincere. The court below evidently deemed the argument too flimsy to answer, as Thayer, J., in delivering the opinion of the court, did not even refer to it. The answer, however, is evident and may as well be given:

1. The question whether the acquisition of control of competing lines of interstate railway by a holding corporation, formed for that purpose, constitutes a combination of such railways, is a new one; in fact, it arose for the first time out of the facts presented by the case at bar. (Noyes on Intercorporate Relations, sec. 36.)

2. Not until the decision of the cases of the *U. S.* v. *Trans-Mo. Freight Asso.* and the *U. S.* v. *Joint Traffic Asso.* (*supra*), the latter having been decided in October, 1898, were the constitutionality of the Anti-trust Act and its applicability to railroads finally settled.

3. But even if it were true that the Government had acquiesced for eleven years in the creation of combinations like the one now in issue, it would not thereby be estopped from prosecuting the case at bar, nor could its inaction for that period be considered a contemporaneous or practical construction of the act; for the question whether the State—the Government—shall proceed against any alleged combination or monopoly under the Anti-trust Act is wholly within the executive discretion, the exercise of which in a given case must necessarily be governed by various and often conflicting considerations of public policy. Therefore,

under these circumstances, to construe executive inaction into an admission of a lack of power to act might seriously embarrass the executive authority and unnecessarily hamper the operations of government. This very question was raised in *Louisville & Nashville R. R.* v. *Ky.* (161 U. S. 677, 689, 690). Said Mr. Justice Brown, speaking for the court in that case:

> Defendant, however, further urges in support of its assumed rights under the third section of the charter of 1856, a contemporaneous construction by the parties in interest, under which several lines were purchased which ran parallel to some of its own branches. * * *
>
> While the doctrine of contemporaneous construction is doubtless of great value in determining the intentions of parties to an instrument ambiguous upon its face, yet to justify its application to a particular case, such contemporaneous construction must be shown to have been as broad as the exigencies of the case require. In this view we can not say that a contemporaneous construction of this charter, which ratified the purchase of a few short local lines, was sufficient to justify the company in consolidating with a parallel and competing line between its two principal termini, with a view of controlling the through traffic from the lower Mississippi to Cincinnati, and destroying the competition which had previously existed between the two lines. It is possible that the Commonwealth might, *if it*

> *had seen fit to do so*, have enjoined the acquisition of some of these parallel lines, and the fact that it did not deem such purchases to be in contravention of public policy ought not to estop it from setting up an opposition to another purchase, which, in its view, is detrimental to the public interests. As said by Mr. Justice Cooley, in his Constitutional Limitations (6th ed.), page 85: "A power is frequently yielded to merely because it is claimed, and it may be exercised for a long period in violation of the constitutional prohibition without the mischief which the Constitution was designed to guard against appearing, or without anyone being sufficiently interested in the subject to raise the question; *but these circumstances can not be allowed to sanction a clear infraction of the Constitution*."

As a still further answer to the Government's contention that the facts in this case disclose an unlawful combination and monopoly, counsel for defendants set up a man of straw and then triumphantly knock it down. That is, they say that it is nothing less than an overturning of all settled rules upon the subject to say that the power of Congress extends to determining in what corporations stock may be held by citizens of the States and what shall be the qualifications of stockholders. Now, this simply tends to confuse the real issue. The Government does not claim—it has not even suggested—that Congress has any such general power. All that is necessary to the success of this

case is that Congress has the power to prevent a combination of the stock of two competing interstate railways whereby both are brought under a common controlling body, which thus becomes possessed of the power to stifle competition in interstate transportation, and in that way and to that extent restrain interstate commerce. Furthermore, it has already been shown (*supra*, pp. 153–163) that it is the merest fiction to say that the Securities Company owns the Great Northern and Northern Pacific shares in any real or substantial sense, and that, according to the defendants' own admissions, the Securities Company was simply the instrumentality by which they combined their interests in the two roads, Mr. Morgan himself testifying that it was simply a "custodian." In any possible view of the case, therefore, the issue which defendants' counsel have thus attempted to raise is foreign and irrelevant.

VII.

THE COMBINATION AND MONOPOLY CHARGED BY THE UNITED STATES IN THE FOREGOING PROPOSITIONS, NUMBERED V AND VI, OPERATE DIRECTLY ON INTERSTATE COMMERCE, AND DO NOT AFFECT IT ONLY INDIRECTLY, INCIDENTALLY, OR REMOTELY.

This proposition need not be argued: the bare statement of it is sufficient. And this for the reason that the facts in the case at bar disclose either a combination of competing interstate carriers or a monoply of interstate railway traffic, or

both; or they disclose no combination or monopoly at all—no case at all. And that a combination or monopoly of competing interstate carriers affects interstate commerce directly, and not incidentally or remotely, is universally conceded. Noyes on Intercorporate Relations, section 392, and authorities there cited.

The question in this case, let it be borne in mind, is not whether the means by which the power of the combination is brought into play are direct or indirect, but whether the combination itself, whenever its power has been brought into play—it matters not how indirect may have been the means employed in bringing it into play—operates directly on interstate or international commerce. The failure of the defendants' counsel to bear this in mind has led them to make very elaborate arguments to show that the combination charged by the Government affects interstate commerce only indirectly and remotely.

In reply to the contention of the defendants' counsel on this point, the court below said at page 15 of its opinion:

> We fail to find in either of these cases (*United States* v. *E. C. Knight Company*, 156 U. S., 1; *Hopkins* v. *United States*, 171 U. S., 578; *Anderson* v. *United States*, 171 U. S., 604), which counsel for defendants relied upon to support their contention that the combination or monopoly, if there really were one, affected interstate commerce only

indirectly, any suggestion that a combination, such as the one in hand, the object and necessary effect of which is to give to a single person or to a coterie of persons full control of all the means of transportation owned by two competing and parallel lines of road engaged in interstate commerce, as well as the power to fix the rate for the transportation of persons and property, does not directly and immediately affect interstate commerce. *No combination, as it would seem, could more immediately affect it.*

VIII.

THE RELIEF GRANTED BY THE CIRCUIT COURT IS AUTHORIZED BY SECTION 4 OF THE ANTI-TRUST ACT.

Section 4 provides that—

> The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may

at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

The gist of the Government's charge is, (1) that a combination of the Great Northern and Northern Pacific Railway companies has been formed by centering the title to a majority of their respective shares in the Securities Company; (2) that the Securities Company, by obtaining a majority of the stock of the two roads, has acquired a monopoly—all in violation of the Anti-trust Act. Now this unlawful combination and monopoly exists solely by virtue of the Securities Company's ownership of a majority of the stock of the two railways. That being the case, the logical and most direct way to destroy the combination and monopoly and prevent the continued violation of the statute is to strip such ownership, which was acquired in pursuance of an illegal object, of its powers and incidents—to disarm it of its power to violate the law. And this is what the circuit court did. Its decree, in substance, enjoined the Securities Company from voting its holdings of Great Northern and Northern Pacific stock and from otherwise exercising any control over the two roads by virtue of such holdings, and enjoined the two roads from paying any dividends to the Securities Company. Clearly this decree violates no rights of property which the Securities Company or any of the other defendants is entitled to claim. All it does is to say to the Securities

Company, You have been vested with certain powers in pursuance of an illegal object, to which you were privy, namely, a combination and monopoly in restraint of trade. When you are allowed to exercise those powers, that illegal object is accomplished. We will, therefore, enjoin you from exercising them, because the statute charges us with the duty of preventing, by injunction, restraining order, or otherwise, the accomplishment of such objects.

But it is urged that the relief should not have been granted because the combination had been executed—had accomplished its purpose, to wit, the organization of the Securities Company and the lodgment in its hands of a majority of the stock of the two railways—before this bill was filed. Or, to use the exact language of counsel: "The Government is not entitled to maintain this proceeding under sections 1 and 4 of the Anti-trust Act, nor has the court jurisdiction of it under those sections, for the conspiracy or combination relied on by the Government, if it ever existed, had done all it was formed to do and had come to an end before the proceeding was instituted." (See p. 92 of Mr. Young's brief filed in the Cir. Ct.)

It will be noticed, in the first place, that this argument is only directed to sections 1 and 4 of the Anti-trust Act. Therefore, even if there were any force in it it would not affect the case under sections 2 and 4. But the contention is groundless in any light. The conclusive answer

to it is that the combination had not "accomplished its purpose," had not "done all it was formed to do," had not "come to an end," "before the proceeding was instituted." The combination charged by the Government is a combination of the Great Northern and Northern Pacific railways, formed by concentrating in the Securities Company (through the concerted action of that company and the individual defendants) the power to control both roads. This combination did not "come to an end," did not "accomplish its purpose," with the organization of the Securities Company, and therefore the violation of the Anti-trust Act did not "come to an end" there, but continued on without interruption. The organization of that company was but a step—an important step, it is true—in the formation of the combination. The combination itself continued in existence so long as the Securities Company possessed the power to control the two railways by voting a majority of their stock, and every moment of its existence was a violation of the Anti-trust Act, and the Federal courts are expressly authorized to prevent such violations. Section 4 invests the circuit courts with full jurisdiction "to prevent and restrain," "to enjoin *or otherwise prohibit*," violations of the act, whenever they are shown to exist, by any means consistent with the Constitution, and unhampered by any refined distinction between things executory and things executed, other than that which may be

implied in the words "prevent," "restrain," and "prohibit." It makes no attempt to limit the exercise of the jurisdiction by enumerating the methods by which violations may be prevented or prohibited. On the contrary, the circuit courts are left free to frame their remedial process to meet the exigencies of any case that may arise under the act, and, as courts of equity, they enjoy the same wide latitude in formulating relief in cases of this class that they enjoy in any other class of cases within the jurisdiction of equity.

> "Equity," says Mr. Pomeroy, "* * * has * * * never placed any limits to the remedies which it can grant, either with respect to their substance, their form, or their extent; but has always preserved the elements of flexibility and expansiveness, so that new ones may be invented, or old ones modified, in order to meet the requirements of every case, and to satisfy the needs of a progressive social condition, in which new primary rights and duties are constantly arising, and new kinds of wrongs are constantly committed." (Pomeroy on Equity Jurisprudence, 2d ed., sec. 111, p. 115.)
>
> "It is absolutely impossible," says the same author at another place, "to enumerate all the special kinds of relief which may be granted, or to place any bounds to the power of the courts in shaping the relief in accordance with the circumstances of particular cases." (Ibid., sec. 170, p. 192.)

And equally strong is the language of equity judges. In *Taylor* v. *Simon* (4 Mylne & Craig, 141), Lord Chancellor Cottenham said that a court of equity has the power and it is its duty to—

> * * * adapt its practice and course of procedure, as far as possible, to the existing state of society, and to apply its jurisdiction to all those new cases, which, from the progress daily taking place in the affairs of men, must continually arise, and not from too strict an adherence to the forms and rules established under very different circumstances, decline to administer justice and to enforce rights for which there is no other remedy.

And in *Chicago, Rock Island and Pacific Ry.* v. *Union Pacific Ry.* (47 Fed. Rep., 15), Brewer, circuit judge, in reply to an argument that there was no precedent for a decree for the specific performance of a contract which was to run for 999 years, said, at page 26:

> * * * I believe most thoroughly that the powers of a court of equity are as vast, and its processes and procedure as elastic, as all the changing emergencies of increasingly complex business relations and the protection of rights can demand. * * * The powers and processes of a court of equity are equal to any and every emergency. They are potent to protect the humblest individual from the oppression of the mightiest corporation; to protect every corporation from the destroying greed of

> the public; to stop state or nation from spoliating or destroying private rights; to grasp with strong hand every corporation and compel it to perform its contracts of every nature, and do justice to every individual.

It is not open to doubt, therefore, that the court below, as a court of equity, had ample power to decree the relief it did and in the form it did.

It has been suggested that the decree of the circuit court is too broad, admitting the existence of a combination in violation of the Anti-trust Act. That is, it is said that the decree ought not to have enjoined the Securities Company from voting its majority holdings of the stock of the two railways, but that it ought only to "have enjoined the Northern Securities Company from doing what would have been (according to the decision) a violation of the act, namely, using its control or influence in such a way as to suppress competition in so much of the traffic of the two railways as was carried on between different States." It has already been shown that the power to vote the majority stock of the Great Northern and Northern Pacific companies was vested in the Securities Company in pursuance of an illegal object, and that in enjoining said company from voting such stock and receiving dividends thereon the court simply enjoined the use of the means by which, alone, the illegal object could be accomplished. A further answer to the contention, however, is that, under

the rulings of this court (see *supra*, pp. 75–78), the *power* to restrain commerce, when held by a combination, is of itself a restraint, and in this case the *power* to restrain *is* the Securities Company's *power* to vote the majority of the stock of the two interstate railways so as to elect officers and directors who will obey its will. Therefore, in enjoining the Securities Company from exercising this voting power, the circuit court did no more than to enjoin a restraint upon interstate commerce.

IX.

THERE IS NO DEFECT OF PARTIES: ALL INTERESTS MATERIALLY AFFECTED BY THE DECREE OF THE CIRCUIT COURT ARE REPRESENTED BY THE PARTIES BEFORE THE COURT.

The bill prayed, among other things, "That the individual defendants named, and their associate stockholders, and each and every stockholder of either of said railway companies who has exchanged his stock therein for the stock of the Northern Securities Company, be each, respectively, perpetually enjoined from in any manner holding, voting, or acting as the owner of any of the stock of the Northern Securities Company, issued in exchange for the stock of either of the said railway companies, unless authorized by this court." And it was contended that, inasmuch as all the persons—over 1,300 in number—who exchanged stock of the two railway companies for stock of the Securities Company were not made

defendants, there was a defect of necessary parties. (Answer of Northern Securities Co., record, p. 49a.)

Now, this contention would have been untenable even if this particular part of the relief prayed for had been embodied in the decree of the circuit court, because the interests of the absent parties, being of like character as the interests of the parties before the court, were represented by the latter, and therefore the case comes within the universally accepted rule of equity pleading, stated in the following language by this court in the case of *Smith et al.* v. *Swormstedt et al.*, 16 Howard, 288, 302:

> Where the parties interested in the suit are numerous, their rights and liabilities are so subject to change and fluctuation by death or otherwise, that it would not be possible, without very great inconvenience, to make all of them parties, and would oftentimes prevent the prosecution of the suit to a hearing. For convenience, therefore, and to prevent a failure of justice, a court of equity permits a portion of the parties in interest to represent the entire body, and the decree binds all of them the same as if all were before the court. The legal and equitable rights and liabilities of all being before the court by representation, and especially where the subject-matter of the suit is common to all, there can be very little danger but that the interests of all will be properly protected and maintained.

> The case in hand illustrates the propriety and fitness of the rule. There are some fifteen hundred persons represented by the complainants, and over double that number by the defendants. It is manifest that to require all the parties to be brought upon the record, as is required in a suit at law, would amount to a denial of justice. The right might be defeated by objections to parties, from the difficulty of ascertaining them, from the changes constantly occurring by death or otherwise.

But any question as to a defect of parties which might have existed has been removed from the case by the form of the decree entered by the circuit court. That decree simply adjudges that the parties defendant have entered into an unlawful combination and conspiracy in restraint of interstate commerce, and then proceeds to enjoin the defendants, the Securities Company, the Great Northern Railway, and the Northern Pacific Railway, from doing the things which alone give life and force to the combination. The decree thus operates only on the parties to the bill and materially affects only their interests. The defendant corporations, the Securities Company, the Great Northern Railway, and the Northern Pacific Railway, stand for the interests of their respective stockholders. (*Sanger* v. *Upton*, 91 U. S., 59; *Hawkins* v. *Glenn*, 131 U. S., 329; *Minnesota* v. *Northern Securities Co.*, 184 U. S., 199.)

As a matter of fact, however, argument upon the question, whether there is a defect of parties in this case, is entirely unnecessary in view of the decision of this court in the case of *Minnesota* v. *Northern Securities Co.*, supra. In that case the same interests were involved as are here, and in substantially the same way; and it was there held, in effect, that all such interests would have been represented if the Securities Company and the Great Northern and Northern Pacific Railway companies had all been parties to that suit, as they are to this.

In conclusion, it is respectfully submitted that the decree of the circuit court should be affirmed.

PHILANDER C. KNOX,
Attorney-General.
W. A. DAY,
Assistant to the Attorney-General.

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IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1903.

No. 277.

NORTHERN SECURITIES COMPANY ET AL.

v.

THE UNITED STATES.

ORAL ARGUMENT OF THE ATTORNEY-GENERAL FOR THE UNITED STATES.

26371

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 277.

NORTHERN SECURITIES COMPANY ET AL.

v.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

ORAL ARGUMENT OF THE ATTORNEY-GENERAL FOR THE UNITED STATES.

This suit was instituted "to prevent and restrain violations of the Act of Congress to protect trade and commerce against unlawful restraints and monopolies" accomplished by defendants through a combination vesting the absolute control of two parallel and competing inter-state railroads in the hands of the Northern Securities Company, an instrumentality created by defendants for that purpose. Specifically, the suit was instituted to determine whether the particular de-

vice employed by defendants to restrain and monopolize interstate commerce by merging the interests and controlling the operations of the Northern Pacific and Great Northern Railways, two parallel and competing lines, will prevail against a law declaring all devices to that end illegal.

The Government's attitude towards this case is one of grave concern, based upon its conviction that a mischievous evasion of the law has been attempted, as well as upon its especial interest in and relations to one of the properties affected; and in order that your Honors may understand the reasons for this concern, I shall undertake to pass in review before the court the principal facts connected with the organization and subsequent history of the Northern Pacific Company, its relations to the Great Northern Railroad, and other facts out of which the questions in this case arise, without comment thereon other than such as may be necessary to make prominent these relevant and significant ones:

1st. That the Northern Pacific Railroad was built under the authority of the United States and in the main with capital furnished by the United States, and that the United States intended, and attached such a condition to its con-

tribution, that the railroad should be a great *independent* national highway and specified that the object of its construction was "to promote the public interests."

2d. That by different devices employed during the past ten years, the defendants, or some of them, have endeavored to destroy the independence of the Northern Pacific Company and bring it under the domination of the Great Northern Company.

3d. That the Northern Securities Company is an instrumentality devised by defendants to acquire, hold, and exercise control over these two parallel and competing lines of railroad, to destroy competition between them, to create a monopoly of transportation in the section served by them, and to defeat the condition attached by the United States to the franchise and land grants of the Northern Pacific Company.

Upon these facts the Government proposes,

1st. That the arrangement effected by defendants is a combination in restraint of inter-state commerce and is illegal under the first section of the Act of July 2, 1890.

2d. That it constitutes a monopoly under the second section of that Act.

3d. That the court has the power to prevent, restrain or otherwise prohibit it.

The Northern Pacific Railroad Co. was chartered under the provisions of an Act of Congress approved July 2, 1864.

By the first section of the Act it is provided that "the stockholders shall constitute said body politic and corporate." The corporation was authorized to construct a railroad which by the eleventh section of the Act "Shall be a post route and military road, subject to the use of the United States, for postal, military, naval, and all other government service."

Section three says the grant of alternate sections of land is "for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific Coast, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores over the route of said line of railway", and section twenty provides "that the better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the government at all times (but particularly in time of war) the use and benefits of the same for postal, military, and other purposes, Congress may * * * add to, alter, amend, or repeal this act."

Of a similar reservation of power over the charter of the Union Pacific Company, this court said, in United States *vs* Union Pacific Railway Company (160 U. S., 1, 36):

> In this view, it must be held that by its reservation of authority to add to, alter, amend, or repeal the acts in question, whenever it chose to do so, Congress * * * intended to keep within its control the entire subject of railroad and telegraphic communication between the Missouri River and the Pacific Ocean, through the agency of corporations created by it, or that had accepted the bounty of the government.

The charter of the Northern Pacific Company places the control, management, and operation of this railroad in its directors, who are to be elected by its stockholders and who are to manage it for the benefit of the corporation and the government; and in order that the stockholders, the directors, and the corporation may not escape the obligation to keep and operate this national enterprise independently by its alienation in any way, it is provided by Section 10 that no mortgage or lien of any kind shall be made upon the road without the consent of Congress.

The relations of the new national road to the other railroads of the country are specifically pro-

vided for in Section 5, wherein, after the most minute specification as to the character of the work upon the highway and its equipment, it is provided that the rails shall be of the best quality and of American make, that a uniform gauge shall be established throughout the entire length of the work, and that any other railroad which shall be authorized to be built by the United States or any State or Territory shall have running connections with it upon fair and equitable terms.

The charter of the Northern Pacific Company (section 3) expressly authorizes that Company to consolidate with or absorb lines of any other railroad company holding land grants from the government conflicting with those of the Northern Pacific Railroad, but this power of consolidation does not extend beyond the cases specified.

The government scheme, though simple, was complete in all its details, and to secure its execution 12,800 acres of land to the mile of track were granted to the company in the States of Minnesota and Oregon. and 25,600 acres to the mile of track in the intermediate Territories.

The re-organization committee of the Northern Pacific Company in 1895 reported to its stock and security holders (Record, page 1647): "It is estimated that under the grant the company is

entitled to receive about forty-three million acres."

When the United States created the Northern Pacific Company and authorized it to construct a railroad, and for that purpose endowed it with 43,000,000 acres of the public domain, it was "to secure to the Government at all times the use and benefits of the same for postal, military, and other purposes." It is therefore obvious that the United States intended that the use and benefits of the road for Government purposes and service should be a use and benefit unhampered and free from the blighting influences of a combination whereby the control of the property would pass from the hands of those in whom it was lodged by the law to the hands of others whose greater interests might be subserved by the suppression of its development.

In other words, Congress gave the people's land to the Northern Pacific Company, and to no other company, and the United States is directly interested in seeing to it that the Northern Pacific Company shall maintain an undiminished ability to render the service which was the consideration of the grant, unaffected by the domination of other interests.

THE DEVICES EMPLOYED TO GAIN CONTROL OF THE NORTHERN PACIFIC RAILROAD.

The first attempt to gain control of the Northern Pacific Company came about in the following manner:

The Northern Pacific Company being bankrupt in 1895, the Great Northern Company entered into an agreement with the holders of the bonds secured by the second and third general mortgages and the consolidated mortgage of the Northern Pacific Company, by the terms of which agreement these mortgages were to be foreclosed and all the property and franchises of the Northern Pacific Company, including its land grants, were to be bought in by its bondholders.

The agreement further provided that the purchasing bondholders were to re-organize the franchises and property of the Northern Pacific Company, so to be purchased, and issue $100,000,000 of bonds, which were to be guaranteed by the Great Northern Company, and $100,000,000 of stock, of which stock one-half part was to be transferred to the stockholders of the Great Northern Company or a trustee for their use.

That is to say, the second and third general mortgage bonds and the consolidated mortgage

bonds were to be displaced bonds and for $100,000,000 issued instead; and for a guarantee of these bonds, primarily payable by the Northern Pacific Company and secured by a mortgage on its franchises and property, the liability upon which guarantee was limited to $6,200,000 per year, the stockholders of the Great Northern Company were to take over one-half of the total capital, which, as this court said, gave the Great Northern Company control of the Northern Pacific Company. I have often wondered why Pearsall, a Great Northern stockholder, challenged this transaction.

This Court held the arrangement invalid, because, as the Court said (161 U. S., 672):

> We think the proposed arrangement is a plain violation of the acts of the State Legislature * * * prohibiting railroad corporations from consolidating with, leasing or purchasing, or in any other way becoming the owner of, or controlling any other railroad corporation, or the stock, franchises or rights of property thereof, having a parallel or competing line.

The Court also said (p. 677):

> The consolidation of these two great corporations will unavoidedly result in giving to the defendant a monopoly of all traffic in

> the Northern half of the State of Minnesota, as well as of all trans-continental traffic north of the line of the Union Pacific, against which public regulations will be but a feeble protection.

Thus ended the first effort to gain control of the Northern Pacific Company in the interests of the Great Northern Company, and to establish a monopoly of transportation facilities in the northwest.

Mr. Morgan knew of this attempt, sympathized with it, and assured Mr. Hill if he failed they could work the two railroads in harmony. (Record, p. 347.)

Let us next see what steps were taken to get the Northern Pacific property in such situation as would enable Mr. Morgan to make good his assurance to Mr. Hill that if he failed to acquire the Northern Pacific stock in the manner just described they could work in harmony.

The decision of this Court defeating Mr. Hill's attempt to secure the Northern Pacific Company by the means described, was rendered March 30, 1896. The case had been submitted to the court December 16, 1895.

Three months after the case was submitted to the court and two weeks before its decision, a

plan was promulgated, addressed to the security holders of the Northern Pacific Company, which provided a means of securing the harmony so much to be desired in case the law interfered with Mr. Hill's arrangement to exchange a carefully limited measure of credit of his road for one-half the stock of the other road.

Under this plan and agreement the reorganization was effected, and a new company organized under the laws of Wisconsin with power so to do. took over the property and franchises of the Northern Pacific Company.

By the reorganization agreement J. P. Morgan & Co. were made "managers" of the reorganization. No creditor, stockholder, or bondholder was to be entitled to any benefit under the reorganization who did not "sell, assign, and transfer to J. P. Morgan & Co., the managers, each and every share of stock, bond, security, or obligation, vesting in the managers" "all the rights and powers of owners," in respect thereto.

At this time the common and preferred stock of the Company were valueless.

The annual fixed charges against the property were $10,905,690 and the average net income of the road applicable thereto for five years preceding was but $7,801,645. (Record, p. 1645.)

The preferred stockholders under the plan gave up their valueless shares and paid $15.00 in cash per share for the new preferred stock, and the common stockholders gave up their stock and paid $10.00 in cash per share for the new common stock. (Record, p. 1650.)

These stocks represented nothing but the control of the property, and by the terms of the reorganization they were locked up in a voting trust for five years, J. P. Morgan being the head of the trust. (Record, p. 1654.)

This put Morgan in control of the Northern Pacific Railroad for five years and assured for that period the harmony he promised, in the event of Hill's failure to get the stock of the Northern Pacific Company under the scheme defeated by Pearsall.

The public put no value on the common stock beyond the new cash paid in, and Mr. Hill and Lord Mount Stephen, a large stockholder of Great Northern stock and a coadjutor of Mr. Hill, immediately began to accummulate it.

There was issued under the reorganization scheme seventy-five millions of preferred and eighty millions of common stock at par, and while both classes of stock were entitled to vote at corporate elections, while outstanding, there was a

provision that the preferred could be retired. This made the common stock the controlling issue.

Of this common stock as early as February, 1897, Mr. Hill and Lord Mount Stephen had acquired 258,341 shares at $16.00 per share, or $25,834,000 of par value, for $4,133,456. (Record, p. 317.) Some idea of the commercial value of a monopoly of transportation to the participants may be had when it is considered that this stock, which cost $16 per share in 1897 was put into the Securities Co. in 1901 at $115 per share, netting the owners $25,000,000 of profit.

What is known as "harmony" now prevailed between the two roads and continued as such until 1901, when the two roads made a joint purchase of the Chicago, Burlington and Quincy Railroad.

This partnership in the ownership of the Burlington was almost immediately followed by the merger of which the Government complains.

I now ask your Honors' attention to—

THE BURLINGTON PURCHASE.

Early in 1901 the Northern Pacific and Great Northern railway companies, for the purpose of promoting their joint interests, and, as the Gov-

ernment claims, in contemplation of ultimately placing the Northern Pacific and Great Northern systems under a common control, united in the purchase of the total capital stock of the Chicago, Burlington and Quincy Railroad Company.

The Burlington system was about 8,000 miles in length, and connected the vast region between Chicago and St. Paul on the east, and Kansas City, Denver, Cheyenne, and Billings on the west, and prior to such purchase was gradually pushing its rails northwesterly into the territory occupied by the purchasers, and westwardly toward the Pacific Ocean. It connected with the Great Northern at St. Paul, and with the Northern Pacific at St. Paul, Minnesota, and Billings, Montana, and was in part parallel to and in competition with the Union Pacific Railway system.

Some time during the year 1900 the controlling financial interests of the Union Pacific Railroad Company had endeavored in the open market to purchase a controlling interest in the stock of the Chicago, Burlington and Quincy Railroad Company and had failed.

Shortly thereafter the dominating factors in the Northern Pacific and Great Northern Railway Companies met, and agreed that, acting ultimately for these two companies, they would, if it could

be brought about, purchase a controlling interest in the Burlington Company. Through negotiations with the directors of the Burlington Company, they obtained a practical option on a majority of its stock at two hundred dollars for each one hundred dollar share, which was much in excess of its market value at that time.

The Great Northern and Northern Pacific shareowners accepted this option in April, 1901, and to meet the payments required therefor, issued joint bonds of the Great Northern and Northern Pacific Companies for two hundred millions of dollars, secured by pledge of the stock acquired.

About the time the general public was informed of the consummation of this purchase, one of the financial agents of the Union Pacific Railroad Company asked Mr. Hill, President of the Great Northern Railway Company, who had conducted the negotiations for the purchase of the Burlington system, to admit the Union Pacific interests to a share in that purchase. This request Mr. Hill refused, and the Union Pacific interests accepted this refusal as final.

After the refusal to admit the Union Pacific to an interest in the Burlington property the controlling spirits of the Union Pacific system under-

took to secure by purchase a controlling interest in the Northern Pacific Company. They succeeded in acquiring considerably more than half of the Northern Pacific preferred and somewhat less than half of the Northern Pacific common stock. In all they acquired more than $78,000,000 out of $155,000,000 total capital stock, divided into $75,000,000 preferred and $80,000,000 common, which was more than half of the total capital. These stocks had equal voting privileges.

The proposition which now confronted Morgan and Hill was how to take the control of the Northern Pacific Railroad away from the people who owned it.

They both admit in their answers and testimony that they suddenly realized in the spring of 1901 that the property *was* owned by the Union Pacific people. There is a note of boasting in both their answers in describing the strength of their adversary's position. Morgan said that their holdings, referring to the Union Pacific, constituted an absolute majority of the total capital stock of the Northern Pacific Company (Record, p. 342) and Hill's language is that they had a "clear majority of the entire capital stock." (Record, p. 53.)

Mr. Morgan states he was "apprehensive;" he was alarmed.

He feared the owners of the "absolute majority of the total capital stock of the Northern Pacific Company" might have acquired their stock, as he puts it in his answer, "for the purpose of securing control of the direction of the Northern Pacific Company and thus managing it, not for what said firm (of J. P. Morgan & Co.) conceived to be the best interest of the company, but for some ulterior purpose of which said firm was not informed." (Morgan's Answer, Record, p. 90*a*.) At this time Morgan's holdings amounted to only about $6,000,000, and the combined holdings of Morgan, Hill, and their respective associates in the Northern Pacific were only about $26,000,000 of a total of $155,000,000. They then by purchase and otherwise brought to their combination about $15,000,000 more common stock, which gave them a majority of the common shares.

It was this struggle for the shares of the Northern Pacific Railway that caused the extraordinary spectacle of the ninth of May, 1901, when the common stock of that company, which shortly before had been selling at par, on that day sold on the stock exchange at one thousand dol-

lars per share; and that carried in its train disaster to so many who had no relations whatever to either of the companies or any of the parties who were directly engaged in that struggle.

In November, 1900, the voting trustees of the Northern Pacific Company had declared that the time had arrived for the dissolution of the trust, and that the restoration of the certificates of stock to the owners thereof should *begin* January 1, 1901, when in ordinary course the share owners would elect the successors to the directors who had been appointed by the voting trust. So that at the time of the struggle for control of the Northern Pacific property in the spring of 1901, the directors then in actual possession of the property were those who had been appointed by Mr. Morgan and his associate trustees.

The action that led up to the formation of the Northern Securities Company was now rapid and interesting.

The results of the May contest were that the Union Pacific interests had $78,000,000 of the preferred and common stock, which constituted a majority of the total capital of the company, and the Hill and Morgan alliance had $41,000,000 of the common stock of the Northern Pacific Railway

Company, and it was claimed by the former that they would secure the control of the property at the annual election to be held in the autumn of 1901. To this the Hill-Morgan interests replied that there was a provision in the plan of reorganization which enabled the company on any first of January until 1917 to retire the preferred stock, which when done would reduce the Union Pacific holdings to a minority interest in the common stock, and that the existing board of directors would take that action. To this it was in effect said that the existing board was the creation of Mr. Morgan and his associates, and was by reason of the dissolution of the voting trust a moribund board, and would become extinct in October, 1901, when the Union Pacific interests having a majority of the stock would elect a board that would rescind any action of that kind that Mr. Morgan's board of directors might take; and this would checkmate the Hill-Morgan plan, as, even under the provision for retiring the preferred stock its owners could not be required to accept the redemption of it before January 1, 1902, and by that time the board elected by the shareowners would be in control. The Hill-Morgan alliance then made final reply that if necessary the annual election of directors for 1901 would be postponed until after Jan-

uary 1, 1902, when the preferred stock would be retired.

This conflict produced the greatest consternation and a stock market panic resulted, and it was feared a financial and commercial panic would follow.

The organization of a holding company had at this time been determined upon between Hill & Morgan, and, acting in its behalf, J. P. Morgan & Co. entered into negotiations for the purchase of the Union Pacific holding of the Northern Pacific stock. Those negotiations resulted in the withdrawal of the Union Pacific opposition to the retirement of the Northern Pacific preferred stock, and the surrender to Morgan & Co. of its holdings of Northern Pacific stock, which had been held by Harriman and Pierce, trustees. A part of the consideration therefor was the payment of $8,915,629 in cash and the acceptance by the Union Pacific of the balance ($82,491,871) in the stock of the Northern Securities Company, *to be organized.* (Record, p. 657.)

In this state of affairs a meeting was held at the office of Mr. Harriman, at which representatives of the controlling owners of the shares of the Great Northern, Northern Pacific, and Union Pacific Railway Companies were present, when

it was agreed that their contests should cease; that the existing board of directors should resign, and that Mr. Morgan should name a new board of directors for the Northern Pacific Company in which the theretofore conflicting interests should be represented, and a new and greater corporation should be formed to take over the Great Northern and Northern Pacific Railway Companies and through them the Burlington Railway system, in which corporation the former conflicting interests should be represented; and through this community of interests, harmony between the three great trans-continental lines of railway would be assured.

A paper was prepared by these representatives which set out as much of the results of this conference as they deemed best to publish to the world, and it was by them sent to a newspaper called the "Wall Street Summary," and was published in the issue of that paper of June 1, 1901, and is as follows:

> It is officially announced that an understanding has been reached between the Northern Pacific and Union Pacific interests, under which the composition of the Northern Pacific board will be left in the hands of J. P. Morgan. Certain names have already been suggested, not now to be made

> public, which will especially be recognized as representative of the *common interests.* It is asserted that *complete* and *permanent harmony will result* under the plan adopted *between all interests involved.* (Record, p. 341.)

Mr. Morgan defined "community of interest" to mean that there was to be no more fighting of each other by the various interests involved. And again:

> The community of interests is that principle that a certain number of men who own property can do what they like with it. (Record, p. 343.)

Pursuant to the agreement reached by the conferees, Mr. Morgan named a new board of directors for the Northern Pacific Railway Company, composed of representatives of the Union Pacific, Northern Pacific and Great Northern Railway interests, which board was unanimously elected; the Union Pacific holdings in Northern Pacific being voted for them. That board then voted to retire the preferred stock, the means for which was to be raised by issuing bonds of the Northern Pacific Company convertible at the will of the owner into common stock of that company; but subscriptions to such bonds were to be limited to

owners of the then existing common stock of the Northern Pacific Company.

Shortly thereafter the Northern Securities Company was organized by Mr. Hill and his associates for the purpose of taking over the control of both the Great Northern and Northern Pacific Companies through the transfer to it of their capital stock, respectively. Of its capital stock of $400,000,000, but $30,000 was to be paid in cash. The remainder, represented in its unassessable shares, was to be exchanged for Northern Pacific stock on the basis of $115 of Northern Securities stock for each share of Northern Pacific stock, and $180 Securities stock for each share of Great Northern stock.

The capital stock of the Securities Company when all was issued was just sufficient to take over, at the exchange valuation stated, the entire capital stock of the two railway companies, which was $122,000,000 in excess of their par value.

The former individual stockholders of the railroad companies were thus eliminated and the Northern Securities Company was substituted. The individual shareholders of the Northern Pacific Railway Company were no longer to draw their dividends from the earnings of that company; and the individual shareowners in the

Great Northern Railway Company were no longer to draw their dividends from the earnings of that company, but instead, both were to draw their dividends from the earnings of both systems. The former Northern Pacific shareowners by this combination became as deeply interested in the Great Northern and its economies and earning power as they formerly had been in those of its rival, the Northern Pacific Railway.

In this manner share-owners of each railway became jointly interested in both railways, and the earnings of both were pooled for the benefit of the former shareowners of each; and there was vested in the Securities Company the selection of the directors and managing officers of each railway and the power and duty to do all "acts or things designed to protect, preserve, improve, or enhance the value of the" stock of such railway companies. Of the stocks of the two railroads, the Securities Company had received, when the testimony was taken in this case, $95,000,000 of the $125,000,000 of Great Northern stock, and $151,000,000 of the total of $155,000,000 of the Northern Pacific stock.

I have detailed somewhat at length the facts out of which the Northern Securities Company was evolved. They clearly establish that it is an

instrumentality created to control the Northern Pacific and Great Northern railroads, and through their ownership of the Burlington to control that road likewise. It is also an instrumentality devised to carry out an arrangement between these properties and the Union Pacific Company, which held the majority of the stock issue of the Northern Pacific Company, by which the Union Pacific surrendered its potential ability to control and operate the Northern Pacific as a competitor to the Great Northern.

It is therefore a combination in restraint of commerce among the States, and was intended so to be, and with or without a proven intention it is illegal, as by virtue of the combination it is guilty of the mischief which the law is designed to prevent, namely, it brings transportation and trade throughout a vast section of country under the controlling influence of a single body and destroys any possible advantages the public might have through any competition between the two lines.

Let us determine first what this arrangement is, as a fact.

What end does it in fact accomplish?

Is that end violative of the law or has the

ingenuity of the defendants devised a scheme which is a *successful evasion* of the law?

WHAT AS A FACT HAS BEEN DONE.

The majority of the stockholders of two corporations have put their stock into the hands of a third person and have taken from that third person its certificates designating their respective interests in the deposited stock. They have merely exchanged an interest in one company for an interest in two.

By this arrangement two competing interstate railroads have been brought into such relations that their independence as competitive factors in interstate commerce is destroyed.

By this arrangement the legal incident of control which the law wisely vested in the holders of a majority of the stock of the Northern Pacific Company is now lodged in a trustee who likewise controls its greatest competitor.

The real mischief accomplished by this arrangement has been to bring transportation and trade throughout a vast section of country under the controlling influence of a single body.

The thing that has been done was declared illegal when brought about by the methods pursued in the Joint Traffic and Trans-Missouri cases.

The Trans-Missouri and Joint Traffic cases were cases of contracts or agreements between independent and competing lines of railroad for the regulation of traffic charges. The government charged that these agreements restrained interstate commerce, and this court sustained that contention.

The court heard the cases patiently, and the arguments thrice presented by the railroads failed to disturb the court's conclusions that the contracts or agreements in question violated the law.

The exigencies of the cases rendered necessary a complete interpretation of the statute. The power of Congress to enact the law, the application of the law to common carriers, and specifically its application to contracts or agreements regulating rates, were all denied. Dark forebodings of resultant commercial disaster, should the government's contention prevail, were solemnly and forcefully impressed upon the court by gentlemen of eminent personal and professional standing. These considerations invited and secured patient and full consideration of the cases and exhaustive analysis and interpretation of the statute in the judgment.

After making it perfectly clear that the court was not to be dissuaded from giving effect by its

judgment to a public policy declared by a constitutional statute, the court stated what that public policy is and wherein it was infringed by the challenged agreements. This exposition of the law is now the Government's reliance, as it should have been the defendants admonition. The court's decision was not followed by disaster, but by years of abundant prosperity, undisturbed until new devices were put into operation to accomplish again the destruction of competition and to thwart the wise policy of the law. It is not the observance of the law or its enforcement that creates panics or distress. It is willful violations of its wholesome provisions, or defiance of the laws of economic health. It is not my intention to reargue any of the propositions settled by those cases, but to do what I can to show their application to the facts of this case.

The great questions settled by the court in the Trans-Missouri and Joint Traffic cases are these:

First. That to shut out the operation of the general law of competition between competing interstate railroads is to restrain interstate commerce.

Second. That to bring the operations of two or more competing interstate railroads under the control of a single body shuts out the opera-

tion of the general law of competition and constitutes a restraint upon interstate commerce.

Third. That Congress is competent to forbid any agreement or combination among companies competing for interstate commerce which retrains commerce among the states by shutting out the operation of the general law of competition.

Fourth. That in order to maintain a suit the government is not obliged to show an intent to restrain commerce, if such restraint is the natural and necessary effect of the arrangement.

It would seem, therefore, that the government's case can be put in this sentence: Is there a combination—does it restrain commerce among the States?

The Joint Traffic and Trans-Missouri cases dealt with traffic agreements or contracts. The law not only inhibits all *contracts*, but all *combinations* in restraint of interstate trade.

There is a difference between a contract and a combination for such a purpose. A contract depends for its cohesion upon the will of the parties. True, its breach may be compensated by damages, or in case of decree for specific performance, by punishment for failure to perform; yet in the end it is a matter of personal volition with the parties

whether or not they abide by the terms of their contracts.

A combination upon the other hand is usually an arrangement whereby the power to defeat the purpose for which the combination is formed is withdrawn from the constituent units.

The language of the law is "combination in the form of trust or *otherwise;*" that is, combinations in any other form. Combinations in the form of trusts were well understood at the time of the enactment of this law. They were invariably formed by transferring the stocks or property of the constitutent units to a holding trustee, whose will was thus dominantly enthroned over the whole; and against the stocks or property so transferred; the holding trustee issued certificates to the transferrors, representing their respective proportions of the whole. This form of combination was evolved from the experience that a "gentlemen's agreement" to control competition works better when the collateral is up.

Any combination that has these features is a combination in the form of trust and is specifically invalidated by the statute.

Mr. Noyes, in his work on Intercorporate Relations (sec. 310), describes a combination of this type in the following language:

In pursuance of an agreement between persons interested in competing corporations, a holding corporation is organized under the laws of a State permitting its corporators to acquire and hold the stock of other corporations, with a capital stock at least equal to the aggregate capital of the several corporations. This corporation issues its own shares, upon an agreed basis, in exchange for the shares of the several corporations, provided that it obtain at least a majority of the shares of each corporation. All the corporations continue in existence and the subsidiary companies are controlled by the holding corporation, which derives its income from the dividends paid by them. In organizing *this form of corporate combination* the dealings are entirely between the holding corporation and the stockholders of several companies.

The validity of this form of combination has been passed upon by many courts. The language of the Supreme Court of Illinois in *Harding* vs. *American Glucose Company,* (182 Illinois, 551, 615), concisely expresses the principle running through them all.

It is there stated that:

> It makes no difference, whether the combination is effected through the instrumentality of trustees and trust certificates, or whether it is effected by creating a new corporation and conveying to it all the property of the competing corporations. *The test is,*

whether the necessary consequence of the combination is the controlling of prices, or limiting of production, or suppressing of competition, in such a way as thereby to create a monopoly.

The essential idea of a combination in the form of trust, it will be seen, is that it is a holding company whose position is similar to that of a trustee holding the legal title to properties, the equitable interest in which belongs to others.

The Northern Securities Company is a combination in the form of trust as just described. It is such a holding company. It is so described by the men who are responsible for its existence. The answers and the testimony of Messrs. Morgan and Hill, Kennedy, Steele, and Clough make this clear and certain.

Let me quote from the record what these gentlemen say.

And while I read from their testimony, I ask the court to note not only the form of this combination, but what power over the two railroad systems these gentlemen understood that the Securities Company was to have.

First, from the testimony of Mr. Morgan:

Q. By whom was the matter (i. e., the organization of a holding company) first brought to your attention?

A. I think it was rather in my own mind, as far as the Northern Pacific was concerned.

Q. Well, as far as the Great Northern was concerned, when was that first suggested?

A. *I had heard it discussed for a year or two.*

Q. *Had you talked with Mr. Hill generally about it?*

A. I talked to him on that subject.

Q. And that was a separate holding company for the Great Northern?

A. Yes, sir.

Q. And then you had it in your own mind to have a holding company for the Northern Pacific?

A. * * * My idea was first to go to some trust company to take the Northern Pacific stock and hold it.

Q. That is, to hold control?

A. Hold control of the stock. *Just surrender it to them and take their receipt.* (Record, pp. 344, 345.)

Q. What was the result of your talk with Mr. Hill?

A. *The result of it was that we decided that the Northern Pacific—so far as I was concerned as a stockholder in the Northern Pacific—I would put my stock in provided that he would take everybody else's into this thing that he had proposed to arrange for the Great Northern.*

Q. That is the Northern Securities Company?

A. Yes.

Q. That is, provided he would go in himself?

A. Yes, of course. Well, I didn't care whether he went in or not. We had a majority without him. *I wanted a majority of the Northern Pacific stock in that securities company.* I didn't care who went in, provided there was enough there to protect the Northern Pacific. (Record, pp. 347, 348.)

Your honors will observe that throughout this case the word "protect," as used by the witnesses, means to protect their control.

* * * * * *

Q. Why was it agreed to put the stock of *both* of these companies in one holding company?

A. It seemed to me the better way of putting it.

Q. But why?

A. Why, on the face of it, it did not make any difference to me.

Q. Why put the stocks of *both* of these companies into one holding company?

A. *In the first place, this holding company was simply a question of custodian, because it had no other alliances.*

Q. Can you tell me what special benefits accrued from putting them *both* in one company?

A. Because it seemed to me the best remedy. The company is so large. For instance, supposing I had gone to the United

States Trust Company and they had issued to me some securities for the Northern Pacific. (The persons who put their stock in a holding company would desire to have something for it—trust certificates or other securities.) Supposing we had put our securities in the United States Trust Company, and they had given me something or other. They have 2,000,000 of stock. *Somebody could get hold of that and do what they liked with it. I wanted to put it in a company with capital large enough that nobody could ever buy it,* and that is the only one I know of. It is the only investment or *trust* company that I knew of *of that kind* where the stock was large enough so that in all human probability I felt that if it was not safe there it was not safe anywhere. (Record, pp. 355, 356.)

NOTE.—What did Mr. Morgan say was the reason he did not use the United States Trust Company? It was because whoever got control of *it*, got control of the stocks which it held. Why is it he made the capital of the Securities Company so large? To prevent a change of control of the railroads that would follow a change of ownership in the majority of the holding company.

Mr. Charles Steele, a member of the firm of J. P. Morgan & Co. also said upon this subject:

> Upon Mr. Morgan's return from Europe, about mid-summer of 1901, the question of transferring the Northern Pacific stock to the Northern Securities Company was discussed. *The question of forming some sort of a holding corporation to hold the Northern Pacific stock, which we had bought and which was held by our friends at that time, was discussed about then* (Record, pp. 289–290).

Not only was a holding company agreed upon but its control of both railroads was provided for.

The answer of J. P. Morgan et al. states that (Record, p. 91*a*):

> For some years the defendant Hill and others who were interested in the Great Northern Company, but not including these defendants, had in contemplation the formation of a corporation for the purpose of purchasing their separate interests in that company, with the general object that said interests should be held together and the policy and course of business of the Great Northern Company should be continuous in developing the company's system and the territory served by it, and not subject to radical change and possible inconsistency from time to time. *In or about August, 1901, as this plan was approaching maturity, said parties for similar reasons determined that they would also sell to the new company, when formed, their interests in the Northern Pacific Company, which were con-*

siderable in amount, and that the capital of the new company should be made sufficiently large to enable it to purchase all shares of the Great Northern and Northern Pacific Companies which the holders might desire to sell and any other shares which the new company might deem it advisable to acquire.

* * * Thereupon and therefore, with the view and for the purpose of protecting the Northern Pacific Company and the holders of its common stock against the possible control of the direction of said company in an adverse interest, *these defendants determined and also advised their friends to sell their Northern Pacific stock to the new company.*

Mr. Morgan says:

I heard in Aix, where I was, about the 1st of April or 1st of May, 1901, that the Union Pacific interests had acquired control of the Northern Pacific. (Record, p. 337.) And when I got this news I felt that something must have happened; somebody must have sold. I knew where certain stocks were and I figured it up. So I made up my mind that it would be desirable to buy 150,000 shares of stock, which we proceeded to do, and with that I KNEW *we had a majority of the common stock, and I knew* THAT ACTUALLY GAVE US THE CONTROL *and they couldn't take the minority and have it sacrificed to the Union Pacific interests.* (Record, p. 338.)

Every share of that stock I bought in the market. (Record, p. 338.)

Q. Did Mr. Hill act with you?
A. He generally did.
Q. In that matter?
A. Certainly; that is to say, his interests ere the same as ours. (Record, p. 340.)

The answer of James J. Hill et al. shows that (Record, p. 64*a*):

> To protect the interests of the shareholders of the Northern Pacific Company, J. P. Morgan & Co. made additional purchases of Northern Pacific common stock, which, with the holdings in said stock of Mr. Hill and other Great Northern shareholders who had discussed with him the plan of forming *a holding company*, constituted about forty-two million dollars ($42,000,000), being a majority of the common stock. In view of the injury apprehended to both companies, and to their shareholders, and the better to support their interests in the future, the Great Northern shareholders holding Northern Pacific shares deemed it advisable that the (*projected*) *holding company* should have power to purchase not only their own Great Northern and Northern Pacific shares, but also the shares of such other Great Northern and Northern Pacific shareholders as might wish to sell their stock to said holding company.

Mr. Hill testified,

> *Between May 7 and May 9, J. P. Morgan & Co. asked me if myself and friends*

would hold our stock and not sell out. I told them we would, and they went into the market and bought some $15,000,000 or $16,000,000.

Before myself and friends would agree to hold our Northern Pacific we had the promise of Morgan & Co. that the preferred stock would be retired. (Record, p. 65.)

Mr. Hill adds, that on the 9th of May there was a good-sized panic. I think Morgan & Co. bought the stock on Saturday or Monday prior to that time. (Record, pp. 47–48.)

By the morning of May 9, myself and friends and Morgan and his associates held between $41,000,000 and $42,000,000. By my associates I mean those who are interested with me in Great Northern matters, or those who were interested with me in the purchase of a large block of the Northern Pacific which I bought from the reorganization committee. (Record, p. 48.)

Subsequent to May 9, 1901, I understood that Kuhn, Loeb & Co., representing the Union Pacific interests, held about $41,000,000 of the preferred and about $37,000,000 of the common stock. (Record, p. 49.)

There was a meeting of those representing the Union Pacific, and myself and Mr. Bacon and Mr. Steele. The Union Pacific people claimed that they had the control by the ownership of a majority of all the stock, while Mr. Bacon and Mr. Steele insisted

that they held, as long as myself and friends held our stock, a majority of the common stock, which would control the property. (Record, p. 50.)

I think, after consulting with two or three of the shareholders, I fixed the rate upon which each, the Northern Pacific and the Great Northern, would be taken or purchased by the holding company when such holding company was organized. (Record, p. 86.)

The value of the Northern Pacific common was fixed with reference to the value of the property taken as a whole, its capacity to earn money, its land grant, the situation in the country, and so on. The same thing was true of the Great Northern. (Record, p. 89.)

Mr. Morgan testified as follows:

Q. When did the idea of putting the (*control*) of both these roads in one place come up; after your return?

(And remember it is the putting of control of competing roads in one place that is the mischief the law was designed to remedy).

A. I suggested to Mr. Hill "why not." I think I did, at any rate. If it was not, it may have been by Mr. Steele. Whether I did it or J. P. Morgan & Co., I think we are responsible for having made that suggestion. (Record, p. 345.)

I deem it unnecessary to quote the testimony of the other witnesses to the same effect.

The testimony shows conclusively, I think, that as a matter of fact and law the thing which these gentlemen did was to create a combination in the form of trust, the form specifically prohibited by the act of Congress, if it restrained interstate commerce; and also that the Northern Securities Company was formed for the *purpose* of taking over the control of the Great Northern and Northern Pacific Railroads, and actually took over that control, and with that control absolute power over both roads, the thing which your Honors have said constitutes such restraint under circumstances substantially the same as those of this case.

While the purpose of an act is ordinarily determined by its effect and operation, in this case the purpose is clearly avowed by the defendants to have been the control of these two properties.

I have shown by the testimony of Messrs. Hill and Morgan that their purpose and intent during the period of the formation of the Securities Company was to get into its hands enough of the stocks of the two roads to control them. Now let me read to you what Mr. Hill says in his

answer of the *effect* of the consummation of their plans. (Record, p. 67*a*.)

> The Securities Company, *as now existing, became* and *is* necessary as a defensive measure against attempts of rival interests to *gain control* of the direction of one or both of the defendant railway companies.

That is, by the Securities Company having control of both, no one else can control either or both.

Morgan's idea was that when they got together they would be big enough to be safe. That is, safe and unassailable in their control of both roads.

The men who know the purpose of the organization of the Northern Securities Company, the history of the events that preceded and led up to its formation and the purposes designed to be accomplished, are James J. Hill and J. P. Morgan, and I have told the court their story in their own language.

I have endeavored to show that *in form* their combination belongs to the class specifically prohibited by the law—that it is a combination in the form of trust.

But the law likewise prohibits combinations otherwise formed. That is to say, the law distinctly and plainly provides that its policy shall

never be defeated by the exercise of any ingenuity in the devising of forms. The object of the law once clearly determined, all difficulty ceases if it is established that that object is defeated through contracts, combinations in the form of trust or otherwise, or by conspiracies.

To deny that the Northern Securities Company is a combination in the form of trust is to deny what seems clear to a demonstration.

To deny it is a combination at all is to challenge common intelligence.

To deny that it restrains commerce by shutting out the natural law of competition is to deny the authority of this court.

I have endeavored thus far to show what this combination is as a fact.

THE END ACCOMPLISHED.

I shall now invite your consideration to the end that the Securities Company accomplishes.

The device resorted to in this case, if sustained, defeats the policy of the law, as it accomplishes all and *more* in the way of effectual destruction of competition than was accomplished in the Trans-Missouri and Joint Traffic cases.

It should be noted how much more complete and absolute the control of the Securities Com-

pany is over these roads than the control vested in the managers of the Trans-Missouri and Joint Traffic cases.

The one secures permanent, absolute control and power to administer every feature of management and operation of the properties, while the others were but temporary arrangements which related to the single feature of rates, and depended for their duration upon the will of the parties.

Because it includes more, it can not be less lawless.

Because the arrangement is incorporated does not change its essential character, as you can not make wrong right by incorporating it. No State can construct a creature and endow it with immunity to defy the supreme law of the land.

If the Joint Traffic pool had been incorporated, would the decision of the court have been different?

Suppose you incorporate a company to fix rates on all lines, or

Suppose you were to incorporate a company *to control* all the railroad companies of the United States?

What difference in law would there be between the two in their effect upon competition? None!

The fixing of rates is an incident of control and

it is wholly immaterial in its effect upon commerce whether the power to fix rates depends upon the control of the roads by a combination effected through the holding of their stock, or depends upon the delegation of power for that purpose by the railroad companies.

In the Trans-Missouri case the railroads delegated the power to fix rates, and agreed to be bound by them when fixed.

The court in the Joint Traffic case demonstrates the relative unimportance of the binding force of the contract, as such, compared with the power existing in the combination, by its mere existence, effectually to prevent competition between the different roads.

In the present combination the power over the two railroads is complete and requires no agreement between them to make it effective. The Securities Company, the custodian of the power, absolutely dominates the whole situation.

There is more reason for striking down a combination by which perpetual power is established over competition than for striking down a contract to control competition which may be terminated at the *will of the parties.*

In this case the power to fix rates is established by the formation of a combination possessing that

and all other powers over the action of the two roads, and with power to enforce its will upon the properties in respect to all of their relations to the public, without the necessity of any contract upon the subject.

Surely, a combination which controls all the acts, operations, and policies of competing railroads is more obnoxious to the spirit and reason of the law than a contract under which control is limited to a single function.

While it is true that the Trans-Missouri and Joint Traffic cases had to do with *agreements* for the establishment of rates, yet the court met the full situation and said that Congress in regard to interstate commerce and in the course of regulating it in the case of railroad corporations has the power to say that no contract *or combination* shall be legal which shall restrain trade and commerce by shutting out the operation of the general law of competition.

The prohibition of the act extends to combinations as well as to contracts. The Trans-Missouri and Joint Traffic cases were cases of contracts which shut out the operation of the general law of competition. This is a combination which accomplishes the same result.

It is the arrangement, whatever it may be,

vesting control, however the control may be exercised, which is illegal, if that arrangement restrains interstate commerce.

You may call it a merger, a combination, a pool, a conspiracy, a consolidation, a contract, a *securities company*, or what you like. The thing it accomplishes is not varied by a variation in name or manner of bringing it about.

Congress meant that the government should have the right to prevent the exercise of the power to restrain interstate commerce by preventing its acquisition through contracts, combinations, conspiracies, or monopolies; and it is the contracts, combinations, and conspiracies by which the restraint is brought about that the act declares illegal.

The *great* object of Congress was to declare a policy against which no arrangement could stand by which the parties fully equip themselves with the power to defeat its purpose.

THE POWER TO SUPPRESS COMPETITION HAS BEEN EXERCISED.

It has been suggested that though this arrangement vests the power in the Northern Securities Company to suppress competition between these two railroads, the law is not violated until that

power is exercised. Of course, all know this court has determined otherwise.

In the case of the *United States* v *The Joint Traffic Association*, the court said (171 U S., 570):

> We do not think, when the grantees of this public franchise are competing railroads seeking the business of transportation of men and goods from one State to another, that ordinary freedom of contract in the use and management of their property requires the right to combine as one consolidated and powerful organization for the purpose of stifling competition among themselves, and of thus keeping their rates and charges higher than they might otherwise be under the laws of competition. And this is so, even though the rates provided for in the agreement may for the time being be not more than are reasonable. THEY MAY EASILY AND AT ANY TIME BE INCREASED.

So again, in *Pearsall* v. *The Great Northern Co.* (161 U. S., 676) the court said:

> Whether the consolidation of competing lines will necessarily result in the increase of rates, or whether such consolidation has generally resulted in a detriment to the public, *is beside the question.*
>
> Whether it has that effect or not, it certainly puts it *in the power* of the consolidated corporation to give it that effect; in short,

puts the public at the mercy of the corporation.

And in *The Trans-Missouri* case (166 U. S., 341): The question of intent, said the court, with which the act was done, even when charged in the bill, is immaterial, and need not be shown by the Government, if the necessary consequences of the act is to restrain commerce. *To stifle competition is of itself to restrain commerce.*

Take the act as a whole, and it clearly appears that it was never intended to cast upon the Government the almost impossible burden of following the countless ramifications of railroad operations, to discover if, under a combination which unifies the interests of two parallel and competing railroads, and thereby empowers it to impose all manner of restraints upon commerce, such restraints are being manifested by particular acts.

The second section of the act creating the offense of monopolizing or attempting to monopolize interstate commerce says nothing about the offense depending upon the fact of actual restraint of commerce following from the monopolization. From this it can be fairly inferred Congress assumed that to monopolize interstate commerce was to restrain it, just as your Honors have said,

"to stifle competition is of itself to restrain commerce."

I therefore state the rule to be, as laid down by this court in the *Trans-Missouri Case*, the *Joint Traffic Case*, and the *Addyston Pipe Case*, that where the necessary effect of a combination is to give the combination the *power* to restrain interstate commerce, that combination is a violation of the Anti-trust Act, regardless of the intention with which the combination was formed. Counsel have denied that this is the rule laid down in those cases. They say that the agreements in the *Trans-Missouri Case* and the *Joint Traffic Case* were, on their faces, agreements which accomplished an *actual* restraint of trade. But this is contrary to the fact. The agreement in the *Joint Traffic Case* at least, certainly did not, on its face, look to the *actual* restraint of trade or commerce by raising transportation charges or suppressing competition between the railroads which were parties to it or otherwise. On the contrary, the agreement provided that the rates to be charged should be those already on file with the Interstate Commerce Commission and which had received at least the tacit approval of the Commission as to their reasonableness; and, furthermore, it was stipulated that the Traffic

Association should co-operate with the Commission in the enforcement of the laws. Moreover—and this is a very significant point—the agreement left each road free to depart from the schedule of rates and enter into active competition with any or all of the other members of the association if it chose to do so. It is very clear, therefore, that the agreement in the *Joint Traffic Case* did not stipulate for the doing of any acts that would *actually* restrain trade or commerce by shutting out competition or otherwise. This court, however, held the association to be illegal under the Anti-trust Act because it had the *power* to suppress competition and thereby restrain trade, even if it did not on its face prevent competition. (See pages 563 and 571 of the report.)

But let us meet the defendants on their own ground, and accept, arguendo, the proposition that in its application to this case, that actual suppression of competition must be shown. The Government claims the power has been exercised and competition between these two railroads has been destroyed.

Morgan and Hill had the power to suppress competition between these two roads when they held the control of the majority of the stock of

the two roads. They executed that power and actually suppressed and destroyed competition between them the moment they parted with the legal title to their segregated holdings and vested it in the Northern Securities Company, with the power in that company, as its charter specifies, "to exercise all the rights of ownership, including the right to vote thereon."

This actually destroyed competition between the two roads.

To be competition there must be competitors in different interests.

Any act which eliminates the competitors or unifies the interests destroys competition.

There is no competition where the net results of operation go into a common purse.

There may be rivalry between the different departments or agencies as to which will contribute the most to the common fund or as to which is the most economically administered or operated, but so long as all are interested in the operations of each by sharing a fixed proportion of a common fund, unaffected by the proportion contributed by each, there is no competition.

A stockholder of the Northern Pacific Company who surrendered 1,000 shares of his stock and took shares of the Northern Securities Com-

pany in lieu thereof, gets no less dividend upon his shares if every ton of freight is moved over the Great Northern Lines, and the stockholder of the Great Northern Road gets no more under similar circumstances.

Neither does it make any difference to the Northern Securities Company. What it loses out of its right hand it accumulates with its left. No one is foolish enough to contend that if two concerns agree to pool their earnings in the hands of a third person and divide them upon a fixed basis having no relation to the results of their respective operations, that they are competing.

Such arrangements have been determined by the courts over and over again to be *ipso facto* destructive of competition.

The object of business is gain, and when the gains of competitive enterprises are combined and arbitrarily divided, competition is destroyed.

The arrangement defeated by Pearsall was but the transfer of the *control* of a railroad to its competitor *through the ownership* of its stock, and this court said "the *effect* of this arrangement would be to practically consolidate the two systems, to operate 9,000 miles of railway under a single management, *and to destroy any possible advantages the public might have through a com-*

petition between the two lines." Domination and competition do not coexist.

It is said by the court in the Joint Traffic case, "It is the *combination of* these large and powerful corporations, covering vast sections of territory and influencing trade throughout the whole extent thereof, and acting as one body in all the matters over which the combination extends, that constitutes the alleged evil." (171 U. S., 571.)

If a combination is formed for the purpose of control and has control, it is idle to say it is not exercising control. It is exercising control at all times. It may be exercising it beneficently, nevertheless what it is doing it is doing because it wills to do it and has the power to do it. This court has said if the combination gives the power to suppress competition, it is obnoxious to the law.

My contention in this case is, that this sort of a combination *does* suppress competition and restrain commerce the instant it is completed, for the reasons which I have undertaken to state.

Upon the question of the power of a majority holding and its effect upon a railroad property when in a competitor's hands, the Government and defendants seem to agree. It remained for Mr. Hill, in the hands of his attorney, Mr. Young, to develop the full scope of such a situation.

Let me read Mr. Young's question and Mr. Hill's answer (Record, p. 742):

> Q. You have been questioned as to what effect or what injury the acquisition of the Northern Pacific stock by interests hostile to the Great Northern or hostile to the development of this Northwestern country, would have on the Great Northern Company. Now, I want to ask you what effect would such an acquisition of the majority or of the control of the Northern Pacific by a corporation which had greater interests in other directions than it had in developing the country traversed by the Northern Pacific, and making that property valuable—what effect would that have on the minority stockholders of that company, including yourself—on their property, their stock?
>
> A. The value of the property would be destroyed. Its growth would be restricted. It would be controlled in the interests of another property or body for the reason that it would be restricted or might be restricted so as not to interfere with the growth of the other property.

What more striking and concise statement could be made showing the nature of the power that goes with the control.

Restraint of commerce does not mean alone the fixing of rates, whether they be high or low. That is probably the least harmful of the many

evils that flow from a combination of competing lines. It means also getting the commerce which was conducted by many into the hands of the few. In this case it means combining the railroad facilities of a section into one control.

In this case it means that the 8,600 miles of the Burlington system, the 5,400 miles of the Great Northern system and the 5,500 miles of the Northern Pacific system now constitute the 19,500 miles of the Northern Securities system, being in round numbers one-tenth of all the railroad trackage of the United States.

It means that forever the normal workings of the law of competition in the Northwest are checked by the dead hand. That the extension and expansion of railroad facilities no longer depends upon the legitimate demand therefor, growing out of the necessities of increasing commerce by which they are naturally governed, but depends upon the will of the master, who dominates the whole situation. It means that new lines can be brought into existence to meet new needs only if the combination wills it so, or as the result of successful effort against the fearful odds of intrenched monopoly.

It means, in the language of Mr. Hill, restriction of the growth of one property in the interest

of another; the subordination of the interests of one section to advance the interests of another section.

These are some and a very few of the reasons for the American policy of free and unrestrained competition in the business of transportation declared in the statutes of Congress and the constitutions or laws of almost every State, and these are the things which this combination in fact accomplishes.

DEFENDANTS HAVE MONOPOLIZED A PART OF INTERSTATE COMMERCE.

The Government contends that not only have defendants violated the first section of the act of July 2, 1890, by combining in restraint of interstate commerce, but that they have violated the second section of the law by attempting to monopolize and by monopolizing a part of interstate commerce.

It is undesirable to review again the facts of the case for the purpose of sustaining this proposition. The combination created, as I have described, constitutes the monopoly. The monopoly is a monopoly in the hands of the Securities Company of the means of transporta-

tion formerly conducted competitively by the Great Northern and Northern Pacific roads.

The scheme of the so-called Anti-trust law is apparently this: By its first section "every contract, combination, or conspiracy in restraint of trade or commerce among the several States is hereby declared to be illegal." The thing declared by the act to be illegal is the contract, combination, or conspiracy. Now contracts, combinations, and conspiracies are the results of joint action. It is necessary that two or more persons should be parties to them. The law plainly says in the first section that combinations in restraint of commerce among the States are "hereby declared to be illegal," and this without regard to whether the restraint is reasonable or unreasonable. So that to make out a case under the first section of the act all that it is necessary to establish is that there is a contract, combination, or conspiracy and that it effects the prohibited restraint.

Under the second section of the act the offense is monopolizing or attempting to monopolize any part of the trade or commerce among the several States, and every person is forbidden so to do, whether by his individual act or by combination or conspiracy with other persons.

Whether the acts of defendants, which constitute a violation of the first section of the law, come also within the prohibition of the second section, depends upon the meaning of the words "monopolize" or "attempt to monopolize" in their application to the facts of this case; that is, it depends upon a determination of what constitutes "monopolizing" interstate transportation.

While authority upon this subject is abundant, I shall content myself now with but one reference, and that is to the case decided by this court, which involved the consideration of the legal effect of the unification of these same railroads through the control by the Great Northern road of the stock of the Northern Pacific road.

The court in that case said:

> The consolidation of these two great corporations will unavoidably result in giving to the defendant a *monopoly* of all traffic in the northern half of the State of Minnesota, as well as of all transcontinental traffic north of the line of the Union Pacific, against which public regulations will be but feeble protection. The acts of the Minnesota legislature of 1874 and 1881 undoubtedly reflected the general sentiment of the public, that their best security is in *competition*. (161 U. S., 677.)

Monopolizing, or attempting to monopolize in-

terstate transportation, *which is interstate commerce,* is getting or attempting to get under single control the business of interstate transportation which had been carried on competitively by different companies.

It is well to recall, in connection with this argument of defendants, viz: that the Government is powerless to interfere with their combination until it is able to show some concrete act of restraint, that at another time defendants have earnestly pressed the point that the Government has come into court too late to secure relief under the act, because its petition should have been filed before the combination was actually effected.

How could it have been possible for the Government then to have shown that which defendants in this connection assert to be essential to its case, that the combination was actually restraining trade? Surely these positions are inconsistent, as the combination could not actually be doing *anything* until after it was brought into existence.

I have endeavored thus far to show to your Honors that as a fact this merger is a combination in the form of trust, or otherwise.

That the end it accomplishes is to bring under one control the Northern Pacific and Great Northern railroads in such a way as to destroy

competition between them and to create a monopoly of transportation in the section served by them.

That this end was the deliberate purpose of the parties defendant who conceived and carried out the combination.

That such a combination is in restraint of trade, as your Honors have repeatedly decided, and therefore violates the act of Congress.

To all of this defendants make vigorous objection, much of which is wholly irrelevant.

I hardly think it necessary to call the court's attention to the fact that all the counsel who opened for the appellants said about the Anti-trust Act being essentially a criminal statute, and all that he said about the object of the Securities Company being to promote, enlarge, and build up commerce, and to protect it from destruction by its enemies, was said by himself and others, *mutatis mutandis*, in the *Joint Traffic Case*, where the fallacy or irrelevancy of the argument was so clearly exposed by this court that it is a little surprising it should now be repeated.

I shall not deny the fact of a tendency to combination throughout the land nor discuss its economic value.

I presume that fact accounts for the existence of laws designed to regulate the tendency along

the lines of its manifestation, where necessary to protect the rights and interests of the people.

I have not the slightest doubt about it, however, that this particular manifestation of that tendency has no economic merit. It is bad enough to bring the entire railroad facilities of an important section of the country under monopolistic control, but when to the power to fix charges for transportation you add the creation of scores of millions of *fiat* stock upon which those charges are expected to pay dividends, you impose an unjustifiable burden upon the people and exact too high a price for a successful evasion of the law.

While it may be true that the recapitalization of these companies was based upon existing market values for their stock, yet existing market values rested at that time upon total forgetfulness of the fact that the progress of material prosperity is not continuous, and that those values were lifted upon the wings of an optimism that had converted into stock and stock values all the prosperity in sight, as well as all hopes and expectations of many future years.

This thing was done when men who have been regarded as wise men and safe men lost their hold upon their judgment and failed to withstand the

temptation to gather for their instant personal advantage the fruits which, conserved, would have lasted many years and benefited many people.

It is not to considerations such as these, however, that I shall address myself, but to such objections by defendants to the Government's case as will be considered by the court.

These, so far as they have not been covered by what I have said, may be fairly said to come under these heads:

First. Assuming there has been a combination to obtain the control of these two railroads and that it has the control and is exercising the control, the effect upon interstate commerce is only remote and indirect and it is only direct restraint that is prohibited by the law.

Second. The Great Northern and Northern Pacific shares held by the Securities Company were acquired in the ordinary course of business, and there is nothing unlawful in one corporation investing in the stocks of other corporations when it is authorized to do so by the law of its creation.

Third. While admitting that the act of 1890 applies to combinations in the business of transportation, that is, the business done by railroads, it is contended that it can not be construed to apply to the railroads themselves, that is, the

instrumentalities of transportation, and that if so construed, it is an invasion of rights reserved to the States.

THE DOCTRINE OF DIRECT AND IMMEDIATE EFFECT UPON INTERSTATE COMMERCE.

It is argued that it is only such contracts and combinations as directly and immediately affect interstate commerce that are declared illegal by the statute.

This is true, but the Northern Securities arrangement *operates directly* upon commerce, because its certain effect is to control every act, policy and operation of two gigantic systems of railroads by which commerce is carried on.

"Transporting commodities is commerce, and if from one State to or through another it is interstate commerce." (*United States* vs. *Freight Association*, 166 U. S., 325.)

Nowhere does it appear by suggestion even, that the purpose of organizing the Northern Securities Company was other than to secure the control of these two roads.

The case of *United States* vs. *Knight*, contains nothing that the government need distinguish or explain in this case.

There the combination was of the instrumen-

talities of production, and production is not commerce.

Here, the combination is of the instrumentalities of transportation, and transportation is commerce.

There, the restraint upon commerce was indirect, because it only operated upon commerce through its effect upon production, i. e., by monopolizing production it restrained production, and that, in its turn, had an indirect effect upon commerce.

But here, it being a monopoly of instrumentalities of commerce. the effect upon commerce is direct, immediate, and necessary.

A monopoly of manufacturing in that case was held not to violate the law, because the business of manufacturing is not commerce.

A monopoly of railroads, however, does violate the law because the business of railroads is commerce.

"Railroads are the instrumentalities of commerce and their business is commerce."

The character of the business carried on by the use of the instrumentalities affected by the combination is the test as to whether the effect is direct or indirect.

It was not held in the Knight case that the

States or individuals have the legal right to affect interstate commerce directly or indirectly. It can not be successfully contended that a State may control or authorize others to control in a certain way what Congress is given previous power to control and has legislated to control in a different way, whether the States proceed directly or indirectly. The notion that the law is content to be defeated if indirectly defeated is a new one, which this court had no thought of sanctioning in the Knight case. It is a restraint upon *commerce* that the law prohibits, and the Knight case decided that a restraint upon production, under the facts of that case, as presented by the pleadings and proofs, did not violate the law, because its effect upon commerce was indirect or remote.

The subject to which the act of 1890 relates is interstate commerce, a subject under the exclusive control of Congress. The thing prohibited is combinations in restraint thereof, and if interstate commerce *is* restrained and is restrained by a *combination*, it is immaterial who are the parties to the combination, or how directly or indirectly the agencies they employ are connected with the subject. If the thing that is restrained is interstate commerce, the law is violated.

What possible difference does it make whether

the restraint is brought about by the action of the officers of the two railroads, as in the Trans-Missouri and Joint Traffic cases, or by their stockholders? The effect upon commerce is the same, and it is commerce that the law protects.

THE CLAIM THAT THE COMBINATION IS MERELY AN INVESTOR.

It is also argued that the Northern Securities Company is simply an investor; that the transactions complained of by the Government are simply sales of shares of stock which the vendors had the right to sell and the Securities Company the right to purchase; and that to condemn such sales of property as illegal would violate the right of private contract. But the argument that the Securities Company is a mere investor, and that it was never intended that it should take any active part in controlling the policies of the Great Northern and Northern Pacific railways by virtue of its ownership of a majority of their shares, is defeated by the evidence furnished by the defendants themselves. Nearly every excerpt I have made from the pleadings and the testimony contains evidence that the object of those who planned and accomplished the organization of the Securities Company was

to control the Great Northern and Northern Pacific railways. The evidence is overwhelming that the alleged sales and purchases of stock here in question were made in concert, in combination. Now, it is well settled that, because a person has the right to purchase stock in the ordinary course of business, it does not follow that stockholders of two or more competing corporations can combine among themselves and with such person, natural or artificial, to sell him or it their stock and induce others to do the same, so as to center the controlling stock interests of the several corporations in a single head, in violation of statutes against combinations, consolidations, and monopolies. I have collected the authorities on this point in my brief and will refer to but one of them now. In the case of *Penna. R. R. Co.* v. *Com.* (7 Atl. Rep., 373), it is said:

> During the argument counsel invoked the aid of the undoubted general principle that the ownership of shares of stock, as of other property, carries with it the legal right to sell, and contended that the owners of the shares of the South Pennsylvania Railroad Company could not legally be restrained from so doing, and that an injunction against the purchaser would have this effect. We do not think the principle applies to this case. We are not called upon to express any opinion as to the right of indi-

vidual shareholders to sell their several shares *bona fide* in the open market. This, so far as they are concerned, is an intended *sale* in combination. * * *

And the sale was consequently enjoined.

I do not deny the very spirited contention that the construction we put upon the law in question interferes with the power of people to do what they will with their property.

That was the very object of the law, and it was certainly contemplated that the rights of purchase, sale, and contract would be controlled, so far as necessary, to prevent those rights from being exercised to defeat the law.

I can not imagine a combination coming into existence without more or less redistribution of property between individuals through purchases, sales, or contracts. Combinations are never bestowed upon us ready made.

THE ALLEGED INVASION OF STATE RIGHTS.

Coming to defendants' next proposition, Does legislation by Congress for the protection of commerce, which affects or regulates the *instrumentalities* of commerce incorporated by the States, infringe upon the authority of the States?

The act of 1890 is an exercise of the power

granted to Congress to regulate commerce (*Champion* v. *Ames*, 188 U. S., 321), and the term "commerce," as used in that grant, embraces the *instrumentalities* by which commerce is carried on.

In *Railroad Co.* v. *Fuller* (17 Wall., 560, 568), Mr. Justice Swayne defined commerce in these words:

> Commerce is traffic, but it is much more. It embraces also transportation by land and water, and all the *means and appliances* necessarily employed in carrying it on.

And in *Welton* v. *Missouri* (91 U. S., 275, 280) Mr. Justice Field stated the rule as follows:

> Commerce is a term of the largest import. It comprehends intercourse for the purposes of trade in any and all its forms, including the transportation, purchase, sale, and exchange of commodities between the citizens of our country and the citizens or subjects of other countries, and between the citizens of different States. The power to regulate it embraces all the *instruments* by which such commerce may be conducted. So far as some of these instruments are concerned, and some subjects which are local in their operation, it has been held that the States may provide regulations until Congress acts with reference to them; but where the subject to which the power applies is national in its character, or of such a nature as to admit of uniformity of regulation, the power is exclusive of all State authority.

It is thus seen that "commerce," as that term has been construed by the court, embraces the instrumentalities employed in carrying it on—embraces railroad corporations as one class of such instrumentalities; and this being so it necessarily follows that the prohibitions in the Anti-trust Act against combinations and monopolies in restraint of interstate commerce include combinations and monopolies of the instrumentalities of interstate commerce—include combinations and monopolies of railroad corporations.

When it comes to legislating for the protection of commerce, there is no difference between the power of the Federal Government over the instrumentalities of interstate commerce and its power over the persons engaged therein.

There is no difference between its power over persons and corporations engaged therein in favor of the corporations.

As the power extends to citizens of the United States and of the several States, so it extends to corporations of the United States, the several States, and foreign countries. The power covers the subject and all things by which the subject is affected.

It can never be a question as to whether parties to a combination in restraint of trade are in-

dividuals or corporations; it is always a question as to the nature, effect, and operation of the combination.

Of course a State has certain powers over the instrumentalities of commerce which it creates, as it has over the individuals by whom commerce is conducted. But a State has no power over either instrumentalities or individuals that can be interposed between them and the obligations imposed by a Federal statute regulating interstate commerce.

Where the subject is national in its character the Federal power is exclusive of the State power. (*Welton* vs. *Missouri*, 91 U. S., 280.)

Congress has power to regulate commerce among the States, and when in the exercise of that power it becomes necessary to legislate respecting the instrumentalities of commerce, it may do so, irrespective of the question as to how or by what authority those instrumentalities were created.

And if regulation of the control of these instrumentalities is essential to prevent the subversion of a policy of Congress it may regulate that control.

The power to regulate commerce among the several States includes the power to prevent restraint upon such commerce.

To restrain commerce is to regulate it.

Therefore any law of any State which restrains interstate commerce is invalid; and any contract between individuals or corporations, or any combination in any form which restrains such commerce is invalid.

The supreme power extends to the whole subject.

Under this plenary power Congress has supervised interstate commerce from the granting of franchises to engage therein, to the most minute directions as to its operation. For this purpose it "possesses all powers which existed in the States before the adoption of the National Constitution, and which have always existed in the Parliament of England." (*In re Debs*, 158 U. S., 586; *Gilman* v. *Philadelphia*, 3 Wall., 725.)

ALL STATE LEGISLATION IS SUBJECT TO THIS PARAMOUNT AUTHORITY.

A State has a right to tax the occupations of people within its borders, and particularly the occupations of its own people. A State has a right to tax bills of lading and other commercial paper used in carrying on business within the State. A State has a right to tax the gross receipts of a telegraph company, received from

business done within the State; and so a State has a right to charter corporations and give them such powers as it may see fit. But this court has held that a State cannot tax the occupation of an importer; that it cannot tax a bill of lading of an export shipment of gold; and that it cannot tax the gross receipts upon business done within the State of a telegraph company, without excepting from the tax the receipts from messages going to or coming from other States. The State's right to give powers to corporations is no more clear and unquestioned than its general rights and powers of taxation in the three other instances mentioned. But it cannot, in giving powers to corporations, meddle with, or empower corporations to meddle with, the freedom of interstate commerce. And to say that it cannot is no more to deny its right to form and empower corporations, than its powers to regulate occupations, tax commercial paper, and tax the gross receipts of telegraph companies were denied by this court in the other cases.

In *Philadelphia Steamship Co.* v. *Pennsylvania* (122 U. S. 326, 345) this court said:

> The corporate franchises, the property, the business, the income of corporations created by a state may undoubtedly be taxed

> by the state; but in imposing such taxes care should be taken not to interfere with or hamper, *directly or by indirection*, interstate or foreign commerce, or any other matter exclusively within the jurisdiction of the Federal Government. This is a principle so often announced by the courts, and especially by this court, that it may be received as an axiom of our constitutional jurisprudence.

In *Crutcher* v. *Kentucky* (141 U. S. 47, 61, 62) this court said:

> The character of police regulation, claimed for the requirements of the statute in question, is certainly not such as to give them a controlling force over the regulations of interstate commerce which may have been expressly or impliedly adopted by Congress, or such as to exempt them from nullity when repugnant to the exclusive power given to Congress in relation to that commerce. This is abundantly shown by the decisions to which we have already referred, which are clear to the effect that neither licenses nor indirect taxation of any kind, nor any system of State regulation, can be imposed upon interstate any more than upon foreign commerce; and that all acts of legislation producing any such result are, to that extent, unconstitutional and void.

The question in this case is not whether Congress can regulate and has regulated State corpo-

rations or the ownership of their capital stock. The question is, can the owners of such capital stock regulate interstate commerce?

It is settled law that interstate commerce can not be regulated by State constitutions, nor by State legislatures existing under State constitutions, nor by corporations created by State legislatures acting through their directors, as attempted in the Trans-Missouri and Joint Traffic cases.

Whence comes such power, then, to stockholders, if the sources of all *their* rights and powers are impotent to defeat the law of Congress?

It is certainly not an incident to the ownership of capital stock of a State corporation that it is licensed to defy a law to which all the sources of its being must bow.

The United States is not undertaking in this case to deprive the owners of railroad shares of any rights incident to their ownership under any law of any State. What is denied here is the right of stockholders of competing railroads to combine their holdings in such a way as to center controlling stock interests in the two roads in a single person or coterie of persons, thereby effecting a restraint upon commerce in violation not only of the express prohibition ot the Federal

Anti-trust Act, but of the policy of the States creating the corporations as well.

But put the proposition as it is put by appellants: Can Congress regulate the ownership of interstate railroads under its power to regulate commerce among the States, and has it done so by this act of 1890?

Most certainly, yes. Congress can regulate anything and everything in the sense that it can prohibit and prevent its use in a way that will defeat a law that Congress may constitutionally enact. For this purpose, the supreme power operates upon everything, upon every one.

No device of State or individual creation can be interposed as a shield between the Federal authority and those who attempt to subvert it. No rules of law which govern the relations which individuals have created *inter sese*, or which have been assumed between themselves and a State, are to be considered in an issue between them and the United States to defeat the ends of a constitutional law. The Federal power would not be supreme if the operation of its laws could be defeated, embarrassed, or impeded by any means whatsoever.

For the purpose of showing that the act of 1890 is unconstitutional, it has been suggested

that if the Northern Securities Company effected a virtual consolidation of the Northern Pacific and Great Northern railroads, it infringed the authority of the States, as the control over the consolidation of railroad companies is exclusively a State power and function.

Curiously enough, in the case of the State of Minnesota against the Northern Securities Company, where the State charged that the merger effected a consolidation of the two railroads and therefore violated the statutes of the State prohibiting consolidations effected in any way, the defendants succeeded in satisfying the circuit court that such a contention was erroneous.

It appears to me, however, that it is not necessary for the purposes of this case to maintain either that this arrangement was or was not a consolidation of these two railroads. The Government's contention is, that a combination was effected between the stockholders of the Great Northern and Northern Pacific railroads through the instrumentality of the Northern Securities Company, which combination restrains interstate commerce by destroying the operation of the general law of competition between these two roads by bringing transportation and trade throughout a vast section of country under the con-

trolling influence of a single body. If it were necessary to meet the question in this case, I should not hesitate to state that in my opinion it is not material whether the arrangement effects a consolidation or not. If the arrangement accomplishes that which the law prohibits, through the means which the law prohibits, it is certainly within the prohibition of the law, and if this *were* a consolidation under State *authority* INSTEAD of being a combination which effects that which defies the law of every foot of land which these railroads occupy, I should not hesitate to say that it violated the Federal statute, if it accomplished a restraint upon interstate commerce. To hold otherwise would be to read into the law a proviso to the effect that the act should not apply when the combination took the form of a railroad consolidation under authority of State legislation.

In the *License Cases*, 5 How., 600, Mr. Justice Catron, speaking for the court upon the subject of the relations between State and Federal power, says:

> And here is the limit between the sovereign power of the State and the Federal power. That is to say, that which does not belong to commerce is within the jurisdiction

> of the police power of the State; and that which does belong to commerce is within the jurisdiction of the United States.

Do not railroads belong to commerce? Your Honors have said they are the instrumentalities of commerce; that their business is commerce, and that the power to regulate commerce includes the power to regulate its instrumentalities.

The States have no more power to bring about a consolidation of the highways of interstate transportation, which restrains interstate commerce, than they have to define what shall be the subjects of interstate commerce. Of an undertaking to do the latter, this court said (*In re Rahrer*, 140 U. S., 558):

> If this be the true construction of the constitutional provision, then the paramount power of Congress to regulate commerce is subject to a very material limitation; for it takes from Congress, and leaves with the States, the power to determine the commodities, or articles of property, which are the subjects of lawful commerce. Congress may regulate, but the States determine what shall or shall not be regulated. Upon this theory, the power to regulate commerce, instead of being paramount over the subject, would become subordinate to the State police power; for it is obvious that the power to determine the articles which may be the sub-

jects of commerce, and thus to circumscribe its scope and operation, is, in effect, the controlling one.

What effect can be given to the decision of this court that the power to regulate commerce includes the power "to prescribe the conditions under which commerce shall be conducted," if the power to govern the fundamental condition of free and uninterrupted intercourse between the States rests exclusively with the States? If it is possible to bring about under State authority the unification of all of the railroad interests of the United States, then it is within the power of the States and not of Congress "to prescribe the conditions under which commerce shall be conducted."

The act of 1866 authorizes every railroad company in the United States to connect with roads of other States and to carry passengers and property from State to State. That is, continuous lines may be formed throughout the length and breadth of the land over which persons and goods may be continuously transported, without power in the States to prevent or burden the transportation. Thus a condition is prescribed by Congress under which interstate commerce may be conducted.

The act of 1890 provides for another condition, to-wit: a condition of freedom from restraint, a condition where the normal laws of competition have full sway, which it is beyond the power of States or individuals to defeat.

We are not dealing here with a consolidation of railroads under State authority.

We are dealing with a combination that restrains interstate commerce, and I again quote the decision of this court, that "so far as the combination operates upon and restrains interstate commerce, Congress has power to legislate and to prohibit." (*Joint Traffic Case*, 171 U. S., 571.)

THE THEORY OF SEPARATE CORPORATE ENTITY.

Notwithstanding Messrs. Morgan's and Hill's admissions that the Securities Company was a mere device, a creature to carry out their plans of control over these properties, it is now solemnly argued that it is a substantive thing with rights and a status of its own unaffected by the illegality of the purpose it was called into being to accomplish; and unaffected by the fact that the thing challenged in this case is the thing that the Securities Company was created to do, and which it did in blind obedience to the will of the individuals who are the beneficiaries of its acts.

This is a gross perversion of a useful fiction adopted for the convenience of persons doing a lawful business in a lawful way. This is the entity theory of corporate rights pushed to an untenable point. No question is involved here as to corporate dealings with third persons and the rights and obligations incident thereto, nor as to corporate obligations incurred in the course of the performance of a legitimate corporate function in a usual way. The thing challenged is the corporation's dealings with the men who projected it and those who became parties to their schemes for the purpose of executing their own illegal will through the use of an incorporated instrumentality.

In the case of the *People of the State of New York* vs. *The North River Sugar Refining Company*, Justice Finch of the court of appeals of that State said:

> The abstract idea of a corporation, the legal entity, the impalpable and intangible creation of human thought is itself a fiction, and has been appropriately described as a figure of speech. It serves very well to designate in our minds the collective action and agency of many individuals as permitted by the law; and the substantial inquiry always is what in a given case has been that collective action

and agency. As between the corporation and those with whom it deals, the manner of its exercise usually is material, but as between it and the State, the substantial inquiry is only what that collective action and agency has done, what it has, in fact, accomplished, what is seen to be its effective work, what has been its conduct. It ought not to be otherwise. The State gave the franchise, the charter, not to the impalpable, intangible and almost nebulous fiction of our thought, but to the corporators, the individuals, the active and living men, to be used by them, to redound to their benefit, to strengthen their hands and add energy to their capital. If it is taken away, it is taken from them as individuals and corporators, and the legal fiction disappears. The benefit is theirs, the punishment is theirs, and both must attend and depend upon their conduct; and when they all act, collectively, as an aggregate body, without the least exception, and so acting, reach results and accomplish purposes clearly corporate in their character, and affecting the vitality, the independence, the utility, of the corporation itself, we can not hesitate to conclude that there has been corporate conduct which the State may review, and not be defeated by the assumed innocence of a convenient fiction. (121 N. Y., 621,622.)

All of which is but an elaboration of the thought of Mr. Justice Wilson, who more than

one hundred years ago said in the great case of *Chisholm, Exr.* vs. *Georgia:*

> In all our contemplations, however, concerning this feigned and artificial person, we should never forget, that, in truth and nature, those who think and speak, and act, are men. (2 Dall., 455, 456.)

The stockholders of a corporation *are* the corporation for all *purposes of responsibility for its observance of the law.*

This is so because in the majority the law has vested the control of corporate action and that majority cannot by the sum of their individual acts accomplish that which the law prohibits them to do in their corporate capacity.

If a majority of the stockholders of two or more railroads could not by themselves or through their agents, the directors, temporarily vest in a third person the power to regulate the traffic of the roads by a naked delegation of power, *a fortiori* they could not make such an arrangement permanent by surrendering the voting power of their stock, or the stock itself.

A duty of corporate management rests upon stockholders of which they cannot divest themselves by surrendering its performance to another; neither can they divide it with others. They are

the trustees of the power lodged in them by the law and can no more shift the responsibility of performance than any other trustee.

THE THEORY OF MINORITY POWER TO COMPEL OBSERVANCE OF THE LAW.

A theory has been advanced upon behalf of defendants that these two railroads are bound to refrain from restraining commerce, because to restrain commerce is to violate the law, and notwithstanding the overwhelming majority the Securities Company has of the stocks of the two roads and the power that is vested in that majority, there is a minority interest in both roads which can compel their competitive operation as if no such control existed.

I say this is a theory advanced upon behalf of defendants. I fully acquit defendants themselves of entertaining any such fanciful notions of the power of a minority.

What was the struggle of May, 1901, about? It was to gain control of the Northern Pacific road through the ownership of the majority of its stock.

What was Mr. Morgan's conception of the extent of that power as against the minority? His words are, "I knew we had a majority of the

common stock, and I knew *that* actually gave us the control." (Record, p. 338.)

What was Mr. Kennedy's notion of the power of the majority? He says (Record, p. 195), "We wanted to have a majority of the stock of the Northern Pacific where we could *absolutely control it* under all circumstances."

What was Mr. Hill's notion of his position if he had been left in the minority? He says, "We would not have held the Great Northern a day longer than we could have sold it." (Record, p. 84.)

Observe the significance of Mr. Hill's statement, that if the Union Pacific people obtained the control of the Northern Pacific, the Great Northern road "would not have been held a day longer than we could have sold it". This is equivalent to saying that by the ownership of the majority of the Northern Pacific stock the Union Pacific people could have operated the Northern Pacific road as a competitor of the Great Northern, and it is likewise equivalent to saying that so important was it to the Great Northern to prevent the Northern Pacific from being operated as a competitor, that the Great Northern would have been for immediate sale if it had failed in its effort to secure the Northern Pacific itself.

But there is an answer to the suggestion that the minority might compel the majority owners to observe the law of Congress which goes deeper. It is this: That the enforcement of a governmental policy can not be made to depend upon the desire and ability of minority stockholders. As the suppression of competition is usually a great financial advantage to the stockholders of a railroad, it is not likely that a minority would be disposed to compel obedience to the law to their financial detriment. The practical impotence of a minority was well known to the parties to this transaction, and their contempt for minority power is disclosed by the facts in the case.

It is suggested that the minorities might be assisted under the laws of Minnesota and Wisconsin. With all respect to the laws of those great States and the high minded tribunals in which they are administered, I suggest that the United States is not relegated to them for the enforcement of its own laws.

THE REMEDY.

The act gives the court power to *prevent*, restrain, or otherwise prohibit violations of the law.

The power to enforce the policy declared by the statute was conferred in terms broad enough

to be adequate to any situation. As the law is not to be defeated by any degree of ingenuity in the devising of forms of combinations, neither is the jurisdiction of the courts to be frittered away by casuistry or resort to mediæval precedents.

The decree of the court below was molded to prevent and enjoin restraint upon interstate commerce by stripping the Securities Company of its power of control over the two railroads, through the very obvious method of preventing it from exercising the power lodged in it by the defendants for the purpose of control. Care was taken that no hardship should come to any one by reason of the decree, since the full powers of ownership may be exercised by the beneficial owners through a restoration of the stocks to their original and lawful relations to the two roads respectively.

If it be asked what right the circuit court had to enjoin the voting of the stock of *both* roads, I reply that if this combination is illegal under Federal law, then the Securities Company, the means by which the combination was accomplished, is illegal—is an outlaw; and if it had committed a similar violation of the law of New Jersey the courts of that State could have caused its dissolution and the forfeiture of its property. But,

the existence of the Securities Company is not less illegal because it is the instrumentality whereby a Federal rather than a State law is violated. Certainly, therefore, it can not be heard to complain of the decree of the circuit court in this case, because that decree by no means goes the length which the courts of New Jersey might have gone if the Securities Company had violated the law and public policy of that State to the extent that it has violated the law and public policy of the United States. Or, to put it in another way, if it were not for technical difficulties growing out of the dual nature of our Government, the Securities Company would be liable to the penalty of corporate death and forfeiture of its property. Has it any ground for complaint, therefore, because the process of the circuit court is *less* drastic than a judgment in *quo warranto?*

As I said in opening this argument, specifically this suit was instituted to determine whether this device, which defendants employed to restrain interstate commerce by monopolizing the business of transportation, will prevail against a law making all devices to that end illegal. It is this particular device that is before the court and no other. In considering it, I have directed your Honors'

attention only to its legal aspects, and I agree that it must be judged upon these alone. The possible effects of such a judgment upon other devices alleged to have been employed to the same end, is not for present consideration.

The possibilities of a securities-holding company of this kind as a financial machine for manipulating railroad and other properties and concentrating their control in the hands of a powerful clique are, however, legitimate considerations, and I am safe in saying they are simply enormous. It has again and again been pointed out, since the organization of the Northern Securities Company, that in its simplest form it is possible for a group of men, by incorporating themselves as a securities-holding company, to control two railroad companies upon the holding of half the amount of stock that would be required in the hands of individuals. Individuals would need to hold 51 per cent of the stock of both railroads in order to control them, but if a particular group of men had the control of a securities-holding company that held 51 per cent of the stock of both roads, they would control both roads upon a holding of 51 per cent of the shares of the holding company, or practically one-fourth of the combined capital of the

two roads. This does violence to a simple rule of vulgar fractions, because it works out that a half of a half is equal to a half of a whole. Of course, it is a simple proposition to bring in a number of railroads under the same control without increasing the stock of the securities-holding company or without increasing the stock of the holders of the control of the securities-holding company, by employing the device resorted to by the defendants in the purchase of the Burlington road, namely, by having one of the railroads controlled by the Securities Company acquire the stock and pay for it with its own obligations secured by a pledge of the stock acquired. All the roads west of the Missouri River which were brought into temporary harmony under the Trans-Missouri arrangement could easily be brought into permanent harmony, without physical consolidation, under the arrangement I have described.

I can not think that a combination held together by a rope of sand comes within the prohibition of the law, and that one which is bound by links of steel may defy its wisdom and its power.

To prevent such a dangerous concentration of power, dangerous to commerce and a menace to our freedom, the people have done all that it is

possible for them to do under our system of government. They have legislated against it. If this law can be construed so as not to cover the situation, or if the court says yea to the proposition asserted in the last paragraph of Mr. Morgan's answer, namely, that Congress has no power to prevent such combinations, then indeed the Government's grave concern as to this litigation may be easily understood.

As we all know, the necessity for uniformity of commercial regulations throughout the States is the corner stone upon which the present structure of our Government was constructed. Although many high-minded and far-seeing patriots realized immediately upon the successful issue of the war of the Revolution that a more perfect union between the States was essential for many reasons and for some reasons possibly more necessary than those pertaining to the trade and commerce of the people, yet the call for the Annapolis convention limited its *expressed* purpose to the consideration of a proposition to vest in Congress the power to establish uniform commercial regulations. The Constitution, when adopted, lodged that power in Congress.

When the court first considered this delegation of power from the people of the United States to

the Federal Congress it explored its entire scope and purpose. This court's very first exposition of the power proclaimed that "the power is complete in itself, may be exercised to its *utmost* extent, and acknowledges no limitations other than are prescribed in the Constitution."

The complexities of modern commercial conditions have not developed any modification of this conception of the regulative power of Congress, although at times they have presented serious problems as to its application.

My contention that Congressional power extends to this device carries with it the proposition that in the exercise of the power Congress is at all times accountable to the people from whom it came.

The defendants' contention that no such power exists asserts their absolute unaccountability and is a request to your Honors to affirm their doctrine that men who own property may do with it as they like, notwithstanding its nature or the interests of the public.

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26418

Supreme Court of the United States.

No. 277.—October Term, 1903.

Northern Securities Company et al., Appellants, *vs.* The United States. } Appeal from the United States Circuit Court for the District of Minnesota.

Motion for leave to file brief as *amicus curiæ*.

[November 30, 1903.]

The Chief Justice: In support of this motion certain letters were presented showing that request was made of counsel for the respective parties for their consent to the application, and that they withheld direct consent, leaving the matter entirely to the court to determine. When the motion was submitted objection to the granting of leave was made by counsel for appellees.

Where in a pending case application to file briefs is made by counsel not employed therein, but interested in some other pending case involving similar questions, and consent is given, the court has always exercised great liberality in permitting this to be done. And doubtless it is within our discretion to allow it in any case when justified by the circumstances. *Green* v. *Biddle*, 8 Wheat. 17; *Florida* v. *Georgia*, 17 How. 491; *The Gray Jacket*, 5 Wall. 370. It does not appear that applicant is interested in any other case which will be affected by the decision of this case; as the parties are represented by competent counsel, the need of assistance cannot be assumed; and consent has not been given.

Leave to file must, therefore, be *Denied.*

True copy.

Test:

Clerk Supreme Court, U. S.

Supreme Court of the United States.

No. 277.—October Term, 1903.

Northern Securities Company et al., Appellants, vs. The United States. } Appeal from the Circuit Court of the United States for the District of Minnesota.

[March 14th 1904.]

Mr. Justice Harlan announced the affirmance of the decree of the Circuit Court, and delivered the following opinion.

This suit was brought by the United States against the Northern Securities Company, a corporation of New Jersey; the Great Northern Railway Company, a corporation of Minnesota; the Northern Pacific Railway Company, a corporation of Wisconsin; James J. Hill, a citizen of Minnesota; and William P. Clough, D. Willis James, John S. Kennedy, J. Pierpont Morgan, Robert Bacon, George F. Baker and Daniel S. Lamont, citizens of New York.

Its general object was to enforce, as against the defendants, the provisions of the Statute of July 2d 1890, commonly known as the Anti-Trust Act, and entitled "An act to protect trade and commerce against unlawful restraint and monopolies." 26 *Stat.* 209. By the decree below the United States was given substantially the relief asked by it in the bill.

As the act is not very long, and as the determination of the particular questions arising in this case may require a consideration of the scope and meaning of most of its provisions, the [illegible] is here given in full:

"§ 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

"§ 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or

by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

"§ 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with any foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

"§ 4. The several Circuit Courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and, pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

"§ 5. Whenever it shall appear to the court [illegible] proceeding under section four of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpœnas to that end may be served in any district by the marshal thereof.

"§ 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of this act, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

"§ 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any Circuit Court of the United States in the district in which the defendant resides or is

found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

"§ 8. That the word 'person,' or 'persons,' wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country."

Is the case as presented by the pleadings and the evidence one of a combination or a conspiracy in restraint of trade or commerce among the States, or with foreign states? Is it one in which the defendants are properly chargeable with monopolizing or attempting to monopolize any part of such trade or commerce? Let us see what are the facts disclosed by the record.

The Great Northern Railway Company and the Northern Pacific Railway Company owned, controlled and operated separate lines of railway—the former road extending from Superior, and from Duluth and St. Paul, to Everett, Seattle, and Portland, with a branch line to Helena; the latter, extending from Ashland, and from Duluth and St. Paul, to Helena, Spokane, Seattle, Tacoma and Portland. The two lines, main and branches, about 9,000 miles in length, were and are parallel and competing lines across the continent through the northern tier of States between the Great Lakes and the Pacific, and the two companies were engaged in active competition for freight and passenger traffic, each road connecting at its respective terminals with lines of railway, or with lake and river steamers, or with seagoing vessels.

Prior to 1893 the Northern Pacific system was owned or controlled and operated by the Northern Pacific Railroad Company, a corporation organized under certain acts and resolutions of Congress. That company becoming insolvent, its road and property passed into the hands of receivers appointed by courts of the United States. In advance of foreclosure and sale a majority of its bondholders made an arrangement with the Great Northern Railway Company for a virtual consolidation of the two systems, and for giving the practical control of the Northern Pacific to the Great Northern. That was the arrangement declared in *Pearsall* v. *The Great Northern Railway Company*, 161 *U. S.* 646, to be illegal under the statutes of Minnesota which forbade any railroad corporation or the purchasers or managers of any corporation, to consolidate the stock, property or franchises of such corporation, or to lease or purchase the works or franchises of, or in any way control, other railroad corporations owning or having under their control parallel or competing lines. *Gen. Laws, Minn.*, 1874, *c.* 29; *ch.* 1881.

Early in 1901 the Great Northern and Northern Pacific Railway Companies, having in view the ultimate placing of their two systems under a common control, united in the purchase of the capital stock of the Chicago,

Burlington and Quincy Railway Company, giving in payment, upon an agreed basis of exchange, the joint bonds of the Great Northern and Northern Pacific Railway Companies, payable in twenty years from date, with interest at 4 per cent. per annum. In this manner the two purchasing companies became the owners of $107,000,000 of the $112,000,000 total capital stock of the Chicago, Burlington and Quincy Railway Company, whose lines aggregated about 8,000 miles, and extended from St. Paul to Chicago, and from St. Paul and Chicago to Quincy, Burlington, Des Moines, St. Louis, Kansas City, St. Joseph, Omaha, Lincoln, Denver, Cheyenne and Billings, where it connected with the Northern Pacific railroad. By this purchase of stock the Great Northern and Northern Pacific acquired full control of the Chicago, Burlington and Quincy main line and branches.

Prior to November 13th 1901 defendant Hill and associate stockholders of the Great Northern Railway Company, and defendant Morgan and associate stockholders of the Northern Pacific Railway Company, entered into a combination to form, under the laws of New Jersey, a *holding* corporation, to be called the Northern Securities Company, with a capital stock of $400,000,000, and to which company, in exchange for its own capital stock upon a certain basis and at a certain rate, was to be turned over the capital stock, or a controlling interest in the capital stock, of each of the constituent railway companies, with power in the holding corporation to vote such stock and in all respects to act as the owner thereof, and to do whatever it might deem necessary in aid of such railway companies or to enhance the value of their stocks. In this manner the interest of individual stockholders in the property and franchises of the two independent and competing railway companies were to be converted into an interest in the property and franchises of the holding corporation. Thus, "by making the stockholders of each system jointly interested in both systems, and by practically pooling the earnings of both for the benefit of the former stockholders of each, and by vesting the selection of the directors and officers of each system in a common body, to wit, the holding corporation, with not only the power but the duty to pursue a policy which would promote the interests, not of one system at the expense of the other, but of both at the expense of the public, all inducement for competition between the two systems was to be removed, a virtual consolidation effected, and a monopoly of the interstate and foreign commerce formerly carried on by the two systems as independent competitors established."

In pursuance of this combination and to effect its objects, the defendant, the Northern Securities Company, was organized November 13th 1901 under the laws of New Jersey.

Its certificate of incorporation stated that the objects for which the company was formed were: "1. To acquire by purchase, subscription or other-

wise, and to hold as investment, any bonds or other securities or evidences of indebtedness, or any shares of capital stock created or issued by any other corporation or corporations, association or associations, of the State of New Jersey, or of any other State, Territority or country. 2. To purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of any bonds or other securities or evidences of indebtedness created or issued by any other corporation or corporations, association or associations, of the State of New Jersey, or of any other State, Territory or country, and while owner thereof to exercise all the rights, powers and privileges of ownership. 3. To purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of shares of the capital stock of any other corporation or corporations, association or associations, of the State of New Jersey, or of any other State, Territory or country, and while owner of such stock to exercise all the rights, powers and privileges of ownership, including the right to vote thereon. 4. To aid in any manner any corporation or association of which any bonds or other securities or evidences of indebtedness or stock are held by the corporation, and to do any acts or things designed to protect, preserve, improve or enhance the value of any such bonds or other securities or evidences of indebtedness or stock. 5. To acquire, own and hold such real and personal property as may be necessary or convenient for the transaction of its business."

It was declared in the certificate that the business or purpose of the corporation was from time to time to do any one or more of such acts and things, and that the corporation should have power to conduct its business in other States and in foreign countries, and to have one or more offices, and hold, purchase, mortgage and convey real and personal property, out of New Jersey.

The total authorized capital stock of the corporation was fixed at $400,000,000, divided into 4,000,000 shares of the par value of $100 each. The amount of the capital stock with which the corporation should commence business was fixed at $30,000. The duration of the corporation was to be perpetual.

This charter having been obtained, Hill and his associate stockholders of the Great Northern Railway Company, and Morgan and associate stockholders of the Northern Pacific Railway Company, assigned to the Securities Company a controlling amount of the capital stock of the respective constituent companies upon an agreed basis of exchange of the capital stock of the Securities Company for each share of the capital stock of the other companies.

In further pursuance of the combination, the Securities Company acquired additional stock of the defendant railway companies, issuing in lieu thereof its own stock upon the above basis, and, at the time of the bringing of this suit, held, as owner and proprietor, substantially all the

capital stock of the Northern Pacific Railway Company, and, it is alleged, a controlling interest in the stock of the Great Northern Railway Company, "and is voting the same and is collecting the dividends thereon, and in all respects is acting as the owner thereof, in the organization, management and operation of said railway companies and in the receipt and control of their earnings."

No consideration whatever, the bill alleges, has existed or will exist, for the transfer of the stock of the defendant railway companies to the Northern Securities Company, other than the issue of the stock of the latter company for the purpose, after the manner, and upon the basis stated.

The Securities Company, the bill also alleges, was not organized in good faith to purchase and pay for the stocks of the Great Northern and Northern Pacific Railway Companies, but solely "to incorporate the pooling of the stocks of said companies," and carry into effect the above combination; that it is a mere depositary, custodian, holder or trustee of the stocks of the Great Northern and Northern Pacific Railway Companies; that its shares of stock are but beneficial certificates against said railroad stocks to designate the interest of the holders in the pool; that it does not have and never had any capital to warrant such an operation; that its subscribed capital was but $30,000, and its authorized capital stock of $400,000,000 was just sufficient, when all issued, to represent and cover the exchange value of substantially the entire stock of the Great Northern and Northern Pacific Railway Companies, upon the basis and at the rate agreed upon, which was about $122,000,000 in excess of the combined capital stock of the two railway companies taken at par; and that, unless prevented, the Securities Company would acquire as owner and proprietor substantially all the capital stock of the Great Northern and Northern Pacific Railway Companies, issuing in lieu thereof its own capital stock to the full extent of its authorized issue, of which, upon the agreed basis of exchange, the former stockholders of the Great Northern Railway Company have received or would receive and hold about fifty-five per cent, the balance going to the former stockholders of the Northern Pacific Railway Company.

The Government charges that if the combination was held not to be in violation of the act of Congress, then all efforts of the National Government to preserve to the people the benefits of free competition among carriers engaged in interstate commerce will be wholly unavailing, and all transcontinental lines, indeed the entire railway systems of the country, may be absorbed, merged and consolidated, thus placing the public at the absolute mercy of the holding corporation.

The several defendants denied all the allegations of the bill imputing to them a purpose to evade the provisions of the act of Congress, or to form a combination or conspiracy having for its object either to restrain or to monopolize commerce or trade among the States or with foreign nations.

They denied that any combination or conspiracy was formed in violation of the act.

In our judgment, the evidence fully sustains the material allegations of the bill, and shows a violation of the act of Congress, in so far as it declares illegal every combination or conspiracy in restraint of commerce among the several States and with foreign nations, and forbids attempts to monopolize such commerce or any part of it.

Summarizing the principal facts, it is indisputable upon this record that under the leadership of the defendants Hill and Morgan the stockholders of the Great Northern and Northern Pacific Railway corporations, having competing and substantially parallel lines from the Great Lakes and the Mississippi River to the Pacific Ocean at Puget Sound combined and conceived the scheme of organizing a corporation under the laws of New Jersey, which should *hold* the shares of the stock of the constitutent companies, such shareholders, in lieu of their shares in those companies, to receive, upon an agreed basis of value, shares in the holding corporation; that pursuant to such combination the Northern Securities Company was organized as the holding corporation through which the scheme should be executed; and under that scheme such holding corporation has become the holder—more properly speaking, the custodian—of more than nine-tenths of the stock of the Northern Pacific, and more than three-fourths of the stock of the Great Northern, the stockholders of the companies who delivered their stock receiving upon the agreed basis shares of stock in the holding corporatiton. The stockholders of these two competing companies disappeared, as such, for the moment, but immediately reappeared as stockholders of the holding company which was thereafter to guard the interests of both sets of stockholders as a unit, and to manage, or cause to be managed, both lines of railroad as if held *in one ownership*. Necessarily by this combination or arrangement the holding company in the fullest sense dominates the situation in the interest of those who were stockholders of the constituent companies; as much so, for every practical purpose, as if it had been itself a railroad corporation which had built, owned, and operated both lines for the exclusive benefit of its stockholders. Necessarily, also, the constituent companies ceased, under such a combination, to be in active competition for trade and commerce along their respective lines, and have become, practically, one powerful consolidated corporation, by the name of a holding corporation the principal, if not the sole, object for the formation of which was to carry out the purpose of the original combination under which competition between the constituent companies would cease. Those who were stockholders of the Great Northern and Northern Pacific and became stockholders in the holding company are now interested in preventing all competition between the two lines, and as owners of stock or of certificates of stock in the holding company, they will see to it that no competition is tolerated. They will

take care that no persons are chosen directors of the holding company who will permit competition between the constituent companies. The result of the combination is that all the earnings of the constituent companies make a common fund in the hands of the Northern Securities Company to be distributed, not upon the basis of the earnings of the respective constituent companies, each acting exclusively in its own interests, but upon the basis of the certificates of stock issued by the holding company. No scheme or device could more certainly come within the words of the act—"combination in the form of a trust or otherwise . . in restraint of commerce among the several States or with foreign nations,"—or could more effectively and certainly suppress free competition between the constituent companies. This combination is, within the meaning of the act, a "trust;" but if not, it is a *combination in restraint of interstate and international commerce;* and that is enough to bring it under the condemnation of the act. The mere existence of such a combination and the power acquired by the holding company as its trustee, constitute a menace to, and a restraint upon, that freedom of commerce which Congress intended to recognize and protect, and which the public is entitled to have protected. If such combination be not destroyed, all the advantages that would naturally come to the public under the operation of the general laws of competition, as between the Great Northern and Northern Pacific Railway Companies, will be lost, and the entire commerce of the immense territory in the northern part of the United States between the Great Lakes and the Pacific at Puget Sound will be at the mercy of a single holding corporation, organized in a State distant from the people of that territory.

The Circuit Court was undoubtedly right when it said—all the Judges of that court concurring—that the combination referred to "led inevitably to the following results: First, it placed the control of the two roads in the hands of a single person, to wit, the Securities Company, by virtue of its ownership of a large majority of the stock of both companies; second, it destroyed every motive for competition between two roads engaged in interstate traffic, which were natural competitors for business, by pooling the earnings of the two roads for the common benefit of the stockholders of both companies." 120 *Fed. Rep.* 721, 724.

Such being the case made by the record, what are the principles that must control the decision of the present case? Do former adjudications determine the controlling questions raised by the pleadings and proofs?

The contention of the Government is that, if regard be had to former adjudications, the present case must be determined in its favor. That view is contested and the defendants insist that a decision in their favor will not be inconsistent with anything heretofore decided and would be in harmony with the act of Congress.

Is the act to be construed as forbidding every combination or conspiracy in restraint of trade or commerce among the States or with foreign nations? Or, does it embrace only such restraints as are unreasonable in their nature? Is the motive with which a forbidden combination or conspiracy was formed at all material when it appears that the necessary tendency of the particular combination or conspiracy in question is to restrict or suppress the competition between competing railroads engaged in commerce among the States? Does the act of Congress prescribe as a rule for *interstate or international* commerce, that the operation of the natural laws of competition between those engaged in *such* commerce shall not be restricted or interfered with by any contract, combination or conspiracy? How far may Congress go in regulating the affairs or conduct of State corporations engaged as carriers in commerce among the States or of State corporations which, although not directly engaged themselves in such commerce, yet have control of the business of interstate carriers? If State corporations, or their stockholders, are found to be parties to a combination, in the form of a trust or otherwise, which restrains interstate or international commerce, may they not be compelled to respect any rule for such commerce that may be lawfully prescribed by Congress?

These questions were earnestly discussed at the bar by able counsel, and have received the full consideration which their importance demands.

The first case in this court arising under the Anti-Trust act was *United States* v. *E. C. Knight Co.*, 156 U. S. 1. The next case was that of *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290. That was followed by *United States* v. *Joint Traffic Association*, 171 U. S. 505, 569, 571; *Hopkins* v. *United States*, 171 U. S. 578; *Anderson* v. *United States*, 171 U. S. 604; *Addystone Pipe & Steel Co.* v. *United States*, 175 U. S. 211; and *Montague* v. *Lowry*, 193 U. S. *ante*. To these may be added *Pearsall* v. *Great Northern Railway*, 161 U. S. 646, which, although not arising under the Anti-Trust act, involved an agreement under which the Great Northern and Northern Pacific Railway Companies should be consolidated and by which competition between those companies was to cease. In *United States* v. *E. C. Knight Co.* it was held that the agreement or arrangement there involved had reference only to the *manufacture* or production of sugar by those engaged in the alleged combination, but if it had directly embraced interstate or international commerce it would have been covered by the Anti-Trust act and would have been illegal. In *United States* v. *Trans-Missouri Freight Association*, that an agreement between certain railroad companies providing for establishing and maintaining, for their mutual protection, reasonable rates, rules and regulations in respect of freight traffic, through and local, and by which free competition among those companies was restricted, was, by reason of such restriction, illegal under the Anti-Trust act; in *United States* v. *Joint Traffic Associa-*

tion, that an arrangement between certain railroad companies in reference to railroad traffic among the States, by which the railroads involved were not subjected to competition among themselves, was also forbidden by the act; in *Hopkins* v. *United States* and *Anderson* v. *United States*, that the act embraced only agreements that had direct connection with interstate commerce, and that such commerce comprehended intercourse for all the purposes of trade, in any and all its forms, including the transportation, purchase, sale and exchange of commodities between citizens of different States, and the power to regulate it embraced all the instrumentalities by which such commerce is conducted; in *Addystone Pipe & Steel Co.* v. *United States*, all the members of the court concurring, that the act of Congress made illegal an agreement between certain private companies or corporations engaged in different States in the manufacture, sale and transportation of iron pipe, whereby competition among them was avoided, was covered by the Anti-Trust act; and in *Montague* v. *Lowry*, all the members of the court again concurring, that a combination created by an agreement between certain private manufacturers and dealers in tiles, grates and mantels, in different States, whereby they controlled or sought to control the price of such articles in those States, was condemned by the act of Congress. In *Pearsall* v. *Great Northern Railway*, which, as already stated, involved the consolidation of the Great Northern and Northern Pacific Railway Companies, the court said: "The consolidation of these two great corporations will unavoidably result in giving to the defendant [the Great Northern] a monopoly of all traffic in the northern half of the State of Minnestota, as well as of all transcontinental traffic north of the line of the Union Pacific, against which public regulations will be but a feeble protection. The acts of the Minnesota Legislature of 1874 and 1881 undoubtedly reflected the general sentiment of the public, that their best security is in competition."

We will not incumber this opinion by extended extracts from the former opinions of this court. It is sufficient to say that from the decisions in the above cases certain propositions are plainly deducible and embrace the present case. Those propositions are:

That although the act of Congress known as the Anti-Trust act has no reference to the mere manufacture or production of articles or commodities within the limits of the several States, it does embrace and declare to be illegal every contract, combination or conspiracy, in whatever form, of whatever nature, and whoever may be parties to it, which directly or necessarily operates *in restraint* of trade or commerce *among the several States or with foreign nations*;

That the act is not limited to restraints of interstate and international trade or commerce that are unreasonable in their nature, but embraces *all* direct *restraints* imposed by any combination, conspiracy or monopoly upon such trade or commerce;

That railroad carriers engaged in interstate or international trade or commerce are embraced by the act;

That combinations even among *private* manufacturers or dealers whereby *interstate or international commerce* is restrained are equally embraced by the act;

That Congress has the power to establish *rules* by which *interstate and international* commerce shall be governed, and, by the Anti-Trust act, has prescribed the rule of free competition among those engaged in such commerce;

That *every* combination or conspiracy which would extinguish competition between otherwise competing railroads engaged in *interstate trade or commerce*, and which would *in that way* restrain *such* trade or commerce, is made illegal by the act;

That the natural effect of competition is to increase commerce, and an agreement whose direct effect is to prevent this play of competition restrains instead of promoting trade and commerce;

That to vitiate a combination, such as the act of Congress condemns, it need not be shown that the combination, in fact, results or will result in a total suppression of trade or in a complete monopoly, but it is only essential to show that by its necessary operation it tends to restrain interstate or international trade or commerce or tends to create a monopoly in such trade or commerce and to deprive the public of the advantages that flow from free competition;

That the constitutional guarantee of liberty of contract does not prevent Congress from prescribing the rule of free competition for those engaged in *interstate and international* commerce; and,

That under its power to regulate commerce among the several States and with foreign nations, Congress had authority to enact the statute in question.

No one, we assume, will deny that these propositions were distinctly announced in the former decisions of this court. They cannot be ignored or their effect avoided by the intimation that the court indulged in *obiter dicta*. What was said in those cases was within the limits of the issues made by the parties. In our opinion, the recognition of the principles announced in former cases must, under the conceded facts, lead to an affirmance of the decree below, unless the special objections, or some of them, which have been made to the application of the act of Congress to the present case are of a substantial character. We will now consider those objections.

Underlying the argument in behalf of the defendants is the idea that as the Northern Securities Company is a State corporation, and as its acquisition of the stock of the Great Northern and Northern Pacific Railway Companies is not inconsistent with the powers conferred by its charter, the

enforcement of the act of Congress, as against those corporations, will be an unauthorized interference by the national government with the internal commerce of the States creating those corporations. This suggestion does not at all impress us. There is no reason to suppose that Congress had any purpose to interfere with the internal affairs of the States, nor, in our opinion, is there any ground whatever for the contention that the Anti-Trust act regulates their domestic commerce. By its very terms the act regulates only commerce among the States and with foreign States. Viewed in that light, the act, if within the powers of Congress, must be respected; for, by the explicit words of the Constitution, that instrument and the laws enacted by Congress in pursuance of its provisions, are the Supreme Law of the Land, "anything in the constitution or laws of any State to the contrary notwithstanding"—supreme over the States, over the courts, and even over the People of the United States, the source of all power under our governmental system in respect of the objects for which the National Government was ordained. An act of Congress constitutionally passed under its power to regulate commerce among the States and with foreign nations is binding upon all; as much so as if it were embodied, in terms, in the Constitution itself. Every judicial officer, whether of a national or a State court, is under the obligations of an oath so to regard a lawful enactment of Congress. Not even a State, still less one of its artificial creatures, can stand in the way of its enforcement. If it were otherwise, the Government and its laws might be prostrated at the feet of local authority. *Cohens* v. *Virginia*, 6 *Wheat.* 264, 385, 414. These views have been often expressed by this court.

It is said that whatever may be the power of a State over such subjects Congress cannot forbid single individuals from disposing of their stock in a State corporation, even if such corporation be engaged in interstate and international commerce; that the holding or purchase by a State corporation, or the purchase by individuals, of the stock of another corporation, for whatever purpose, are matters in respect of which Congress has no authority under the Constitution; that, so far as the power of Congress is concerned, citizens or State corporations may dispose of their property and invest their money in any way they choose; and that in regard to all such matters, citizens and State corporations are subject, if to any authority, only to the lawful authority of the State in which such citizens reside, or under whose laws such corporations, are organized. It is unnecessary in this case to consider such abstract, general questions. The court need not now concern itself with them. They are not here to be examined and determined, and may well be left for consideration in some case necessarily involving their determination.

In this connection, it is suggested that the contention of the Government is that the acquisition and *ownership* of stock in a State railroad corporation is itself interstate commerce, if that corporation be engaged in inter-

state commerce. This suggestion is made in different ways, sometimes in express words, at other times by implication. For instance, it is said that the question here is whether the power of Congress over interstate commerce extends to the regulation of the ownership of the stock in State railroad companies, by reason of their being engaged in such commerce. Again, it is said that the only issue in this case is whether the Northern Securities Company can acquire and hold stock in other State corporations. Still further, it is asked, generally, whether the organization or ownership of railroads is not under the control of the States under whose laws they came into existence? Such statements as to the issues in this case are, we think, wholly unwarranted and are very wide of the mark; it is the setting up of mere men of straw to be easily stricken down. We do not understand that the Government makes any such contentions or takes any such positions as those statements imply. It does not contend that Congress may control the mere acquisition or the mere ownership of stock in a State corporation engaged in interstate commerce. Nor does it contend that Congress can control the organization of State corporations authorized by their charters to engage in interstate and international commerce. But it does contend that Congress may protect the freedom of interstate commerce by any means that are appropriate and that are lawful and not prohibited by the Constitution. It does contend that no State corporation can stand in the way of the enforcement of the national will, legally expressed. What the Government particularly complains of, indeed, all that it complains of here, is the existence of a combination among the stockholders of competing railroad companies which in violation of the act of Congress restrains interstate and international commerce through the agency of a common corporate trustee designated to act for both companies in repressing free competition between them. Independently of any question of the mere ownership of stock or of the organization of a State corporation, can it in reason be said that such a combination is not embraced by the very terms of the Anti-Trust act? May not Congress declare that *combination* to be illegal? If Congress legislates for the protection of the public, may it not proceed on the ground that wrongs when effected by a powerful combination are more dangerous and require more stringent supervision than when they are to be effected by a single person? *Callan* v. *Wilson*, 127 *U. S.* 540, 556. How far may the courts go in order to give effect to the act of Congress, and remedy the evils it was designed by that act to suppress? These are confessedly questions of great moment, and they will now be considered.

By the express words of the Constitution, Congress has power to "regulate commerce with foreign nations and among the several States, and with the Indian tribes." In view of the numerous decisions of this court there ought not, at this day, to be any doubt as to the general scope of such

power. In some circumstances regulation may properly take the form and have the effect of prohibition. *In re Rahrer*, 140 *U. S.* 545; *Lottery Case*, 188 *U. S.* 321, 355, *and authorities there cited.* Again and again this court has reaffirmed the doctrine announced in the great judgment rendered by Chief Justice Marshall for the court in *Gibbons* v. *Ogden*, 9 *Wheat.* 1, 196, 197, that the power of Congress to regulate commerce among the States and with foreign nations is the power "to prescribe the *rule* by which commerce *is to be governed;*" that such power "is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution;" that "if, as has always been understood, the sovereignty of Congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations and among the several States, is vested in Congress *as absolutely as it would be in a single government having in its constitution the same restrictions on the exercise of the power as are found in the Constitution of the United States;*" that a sound construction of the Constitution allows to Congress a large discretion, "with respect to the means by which the powers it confers are to be carried into execution, which enable that body to perform the high duties assigned to it, in the manner most beneficial to the people;" and that if the end to be accomplished is within the scope of the Constitution, "all means which are appropriate, which are plainly adapted to that end and which are not prohibited, are constitutional." *Brown* v. *Maryland*, 12 *Wheat.* 419; *Sinnot* v. *Davenport*, 22 *How.* 227, 238; *Henderson* v. *The Mayor*, 92 *U. S.* 259; *Railroad* v. *Husen*, 95 *U. S.* 465, 472; *Mobile* v. *Kimball*, 102 *U. S.* 691; *M., K. & Texas Ry. Co.* v. *Haber*, 169 *U. S.* 613, 626; *The Lottery Case*, 188 *U. S.* 321, 348. In *Cohens* v. *Virginia*, 6 *Wheat.* 264, 413, this court said that the United States were for many important purposes "a single nation," and that "in all commercial regulations we are one and the same people;" and it has since frequently declared that commerce among the several States was a *unit*, and subject to national control. Previously, in *McCulloch* v. *Maryland*, 4 *Wheat.* 316, 405, the court had said that the Government ordained and established by the Constitution was, within the limits of the powers granted to it, "the Government of all; its powers are delegated by all; it represents all, and acts for all," and was "supreme within its sphere of action." As late as the case of *In re Debs*, 158 *U. S.* 564, 582, this court, every member of it concurring, said: "The entire strength of the nation may be used to enforce in any part of the land the full and free exercise of all national powers and the security of all rights entrusted by the Constitution to its care. The strong arm of the National Government may be put forth to brush away all obstructions to the freedom of interstate commerce or the transportation of the mails. If the emergency arises,

the army of the Nation, and all its militia, are at the service of the Nation to compel obedience to its laws."

The means employed in respect of the combinations forbidden by the Anti-Trust act, and which Congress deemed germane to the end to be accomplished, was to prescribe as *a rule* for *interstate and international* commerce, (not for domestic commerce,) that it should not be vexed by combinations, conspiracies or monopolies which restrain commerce by destroying or restricting competition. We say that Congress has prescribed such a rule, because in all the prior cases in this court the Anti-Trust act has been construed as forbidding any combination which by its necessary operation destroys or restricts free competition among those engaged in interstate commerce; in other words, that to destroy or restrict free competition in interstate commerce was to restrain such commerce. Now, can this court say that such a rule is prohibited by the Constitution or is not one that Congress could appropriately prescribe when exerting its power under the commerce clause of the Constitution? Whether the free operation of the normal laws of competition is a wise and wholesome rule for trade and commerce is an economic question which this court need not consider or determine. Undoubtedly, there are those who think that the general business interests and prosperity of the country will be best promoted if the rule of competition is not applied. But there are others who believe that such a rule is more necessary in these days of enormous wealth than it ever was in any former period of our history. Be all this as it may, Congress has, in effect, recognized the rule of free competition by declaring illegal every combination or conspiracy in restraint of interstate and international commerce. As in the judgment of Congress the public convenience and the general welfare will be best subserved when the natural laws of competition are left undisturbed by those engaged in interstate commerce, and as Congress has embodied that rule in a statute, that must be, for all, the end of the matter, if this is to remain a government of laws, and not of men.

It is said that railroad corporations created under the laws of a State can only be consolidated with the authority of the State. Why that suggestion is made in this case we cannot understand, for there is no pretence that the combination here in question was under the authority of the States under whose laws these railroad corporations were created. But even if the State allowed consolidation it would not follow that the stockholders of two or more State railroad corporations, having *competing lines and engaged in interstate commerce,* could lawfully combine and form a distinct corporation to hold the stock of the constituent corporations, and, by destroying competition between them, in violation of the act of Congress, restrain commerce among the States and with foreign nations?

The rule of competition, prescribed by Congress, was not at all new in trade and commerce. And we cannot be in any doubt as to the reason that moved Congress to the incorporation of that rule into a statute. That reason was thus stated in *United States* v. *Joint Traffic Association:* "Has not Congress with regard to interstate commerce and in the course of regulating it, in the case of railroad corporations, the power to say that no contract or combination shall be legal which shall restrain trade and commerce by shutting out the operation of the general law of competition? We think it has. . . It is the combination of these large and powerful corporations, covering vast sections of territory and influencing trade throughout the whole extent thereof, and acting *as one body* in all the matters over which the combination extends, that constitutes the alleged evil, and in regard to which, *so far as the combination operates upon and restrains interstate commerce*, Congress has power to legislate and to prohibit." (*pp.* 569, 571.) That such a rule was applied to interstate commerce should not have surprised any one. Indeed, when Congress declared contracts, combinations and conspiracies in restraint of trade or commerce to be illegal, it did nothing more than apply to interstate commerce a rule that had been long applied by the several States when dealing with combinations that were in restraint of their domestic commerce. The decisions in State courts upon this general subject are not only numerous and instructive but they show the circumstances under which the Anti-Trust act was passed. It may well be assumed that Congress, when enacting that statute, shared the general apprehension that a few powerful corporations or combinations sought to obtain, and, unless restrained, would obtain such absolute control of the entire trade and commerce of the country as would be detrimental to the general welfare.

In *Morris Run Coal Co.* v. *Barclay Coal Co.*, 68 *Penn. St.* 173, 186, the Supreme Court of Pennsylvania dealt with a combination of coal companies seeking the control within a large territory of the entire market for bituminous coal. The court, observing that the combination was wide in its scope, general in its influence, and injurious in its effects, said: "When competition is left free, individual error or folly will generally find a correction in the conduct of others. But here is a combination of all the companies operating in the Blossburg and Barclay mining regions, and controlling their entire productions. They have combined together to govern the supply and the price of coal in all the markets from the Hudson to the Mississippi Rivers, and from Pennsylvania to the Lakes. This combination has a power in its confederated form which no individual action can confer. The public interest must succumb to it, for it has left no competition free to correct its baleful influence. When the supply of coal is suspended the demand for it becomes importunate, and prices must rise. Or if the supply goes forward, the prices fixed by the confederates

must accompany it. The domestic hearth, the furnaces of the iron master and the fires of the manufacturer all feel the restraint, while many dependent hands are paralyzed and hungry mouths are stinted. The influence of a lack of supply or a rise in the price of an article of such prime necessity cannot be measured. It permeates the entire mass of the community, and leaves few of its members untouched by its withering blight. Such a combination is more than a contract; it is an offense. . . In all such combinations where the purpose is injurious or unlawful, the gist of the offense is the conspiracy. Men can often do by the *combination* of many what severally no one could accomplish, and even what when done by one would be innocent. . . *There is a potency in numbers when combined*, which the law cannot overlook, where injury is the consequence." The same principles were applied in *Arnot* v. *Pittston & Elmira Coal Co.*, 68 *N. Y.* 558, 565, which was the case of a combination of two coal companies, in order to give one of them a monopoly of coal in a particular region, the Court of Appeals of New York holding that "a combination to effect such a purpose is inimical to the interests of the public, and that all contracts designed to effect such an end are contrary to public policy, and therefore illegal." They were also applied by the Supreme Court of Ohio in *Central Ohio Salt Co.* v. *Guthrie*, 35 *O. St.* 666, 672, which was the case of a combination among manufacturers of salt in a large salt-producing territory, the court saying: "It is no answer to say that competition in the salt trade was not in fact destroyed, or that the price of the commodity was not unreasonably advanced. *Courts will not stop to inquire as to the degree of injury inflicted upon the public; it is enough to know that the inevitable tendency of such contracts is injurious to the public.*"

So, in *Craft* v. *McConoughy*, 79 *Ill.* 346, 350, which was the case of a combination among grain dealers by which competition was stifled, the court saying: "So long as competition was free, the interest of the public was safe. The laws of trade, in connection with the right of competition, were all the guaranty the public required, but the secret combination created by the contract destroyed all competition and created a monopoly against which the public interest had no protection." Again, in *People* v. *Chicago Gas Trust Co.*, 130 *Ill.* 269, 297, which involved the validity of the organization of a gas corporation which obtained a monopoly in the business of furnishing illuminating gas in the city of Chicago by buying the stock of four other gas companies, it was said: "Of what avail is it that any number of gas companies may be formed under the general incorporation law, if a giant trust company can be clothed with the power of buying up and holding the stock and property of such companies, and, through the control thereby attained, can direct all their operations and weld them into one huge combination?" To

the same effect are cases almost too numerous to be cited. But among them we refer to *Richardson* v. *Buhl*, 77 *Mich.* 632, which was the case of the organization of a corporation in Connecticut to unite in one corporation all the match manufacturers in the United States, and thus to obtain control of the business of manufacturing matches; *Santa Clara Mill & Lumber Co.* v. *Hayes*, 76 *Cal.* 387, 390, which was the case of a combination among manufacturers of lumber, by which it could control the business in certain localities; and *India Bagging Association* v. *Kock*, 14 *La. Ann.* 168, which was the case of a combination among various commerical firms to control the prices of bagging used by cotton planters.

The cases, just cited, it is true, relate to the domestic commerce of the States. But they serve to show the authority which the States possess to guard the public against *combinations* that repress individual enterprise and interfere with the operation of the natural laws of competition among those engaged in trade within its limits. They serve also to give point to the declaration of this court in *Gibbons* v. *Ogden*, 9 *Wheat.* 194—a principle never modified by any subsequent decision—that, subject to the limitations imposed by the Constitution upon the exercise of the powers granted by that instrument, "the power over commerce with foreign nations and among the several States is vested in Congress as absolutely as it would be in a single government having in its constitution the same restrictions on the exercise of power as are found in the Constitution of the United States." Is there, then, any escape from the conclusion that, subject only to such restrictions, the power of Congress over interstate and international commerce is as full and complete as is the power of any State over its domestic commerce? If a State may strike down combinations that restrain its domestic commerce by destroying free competition among those engaged in such commerce, what power, except that of Congress, is competent to protect the freedom of interstate and international commerce when assailed by a combination that restrains such commerce by stifling competition among those engaged in it?

Now, the court is asked to adjudge that, if held to embrace the case before us, the Anti-Trust act is repugnant to the Constitution of the United States. In this view we are unable to concur. The contention of the defendants could not be sustained without, in effect, overruling the prior decisions of this court as to the scope and validity of the Anti-Trust act. If, as the court has held, Congress can strike down a combination between private persons or private corporations that restrains trade among the States in iron pipe, (as in *Addystone Pipe & Steel Co.* v. *United States*,) or in tiles, grates and mantels, (as in *Montague* v. *Lowry*,) surely it ought not to be doubted that Congress has power to declare illegal a combination that restrains commerce among the States, and with foreign nations, as carried on over the lines of competing railroad companies exercising public franchises, and engaged in such commerce. We cannot agree that

Congress may strike down combinations among manufacturers and dealers in iron pipe, tiles, grates and mantels that restrain commerce among the States in such articles, but may not strike down combinations among stockholders of competing railroad carriers, which restrain commerce as involved in the transportation of passengers and property among the several States. If private parties may not, by combination among themselves, restrain interstate and international commerce in violation of an act of Congress, much less can such restraint be tolerated when imposed or attempted to be imposed upon commerce as carried on over public highways. Indeed, if the contentions of the defendants are sound why may not *all* the railway companies in the United States, that are engaged, under State charters, in interstate and international commerce, enter into a combination such as the one here in question, and by the device of a holding corporation obtain the absolute control throughout the entire country of rates for passengers and freight, beyond the power of Congress to protect the public against their exactions? The argument in behalf of the defendants necessarily leads to such results, and places Congress, although invested by the People of the United States with full authority to regulate interstate and international commerce, in a condition of utter helplessness, so far as the protection of the public against such combinations is concerned.

Will it be said that Congress can meet such emergencies by prescribing the rates by which interstate carriers shall be governed in the transportation of freight and passengers? If Congress has the power to fix such rates—and upon that question we express no opinion—it does not choose to exercise its power in that way or to that extent. It has, all will agree, a large discretion as to the means to be employed in the exercise of any power granted to it. For the present, it has determined to go no farther than to protect the freedom of commerce among the States and with foreign States by declaring illegal all contracts, combinations, conspiracies or monopolies in restraint of such commerce, and make it a public offense to violate the rule thus prescribed. How much further it may go, we do not now say. We need only at this time consider whether it has exceeded its powers in enacting the statute here in question.

Assuming, without further discussion, that the case before us is within the terms of the act, and that the act is not in excess of the powers of Congress, we recur to the question, how far may the courts go in reaching and suppressing the combination described in the bill? All will agree that if the Anti-Trust act be constitutional, and if the combination in question is in violation of its provisions, the courts may enforce the provisions of the statute by such orders and decrees as are necessary or appropriate to that end and as may be consistent with the fundamental rules of legal procedure. And all, we take it, will agree, as established firmly by the decisions of this court, that the power of Congress over com-

merce extends to all the instrumentalities of such commerce, and to every device that may be employed to interfere with the freedom of commerce among the States and with foreign nations. Equally, we assume, all will agree that the Constitution and the legal enactments of Congress are, by express words of the Constitution, the supreme law of the land, anything in the constitution and laws of any State to the contrary notwithstanding. Nevertheless, the defendants, strangely enough, invoke in their behalf the Tenth Amendment of the Constitution which declares that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the People;" and we are confronted with the suggestion that any order or decree of the Federal court which will prevent the Northern Securities Company from exercising the power it acquired in becoming the holder of the stocks of the Great Northern and Northern Pacific Railway Companies will be an invasion of the rights of the State under which the Securities Company was chartered, as well as of the rights of the States creating the other companies. In other words, if the State of New Jersey gives a charter to a corporation, and even if the obtaining of such charter is in fact pursuant to a combination under which it becomes the holder of the stocks of shareholders in two competing, parallel railroad companies engaged in interstate commerce in other States, whereby competition between the respective roads of those companies is to be destroyed and the enormous commerce carried on over them restrained by suppressing competition, Congress must stay its hands and allow such restraint to continue to the detriment of the public because, forsooth, the corporations concerned or some of them are State corporations. We cannot conceive how it is possible for any one to seriously contend for such a proposition. It means nothing less than that Congress, in regulating interstate commerce, must act in subordination to the will of the States when exerting their power to create corporations. No such view can be entertained for a moment.

It is proper to say in passing that nothing in the record tends to show that the State of New Jersey had any reason to suspect that those who took advantage of its liberal incorporation laws had in view, when organizing the Securities Company, to destroy competition between two great railway carriers engaged in interstate commerce in distant States of the Union. The purpose of the combination was concealed under very general words that gave no clue whatever to the real purposes of those who brought about the organization of the Securities Company. If the certificate of the incorporation of that company had expressly stated that the object of the company was to destroy competition between competing, parallel lines of interstate carriers, all would have seen, at the outset, that the scheme was in hostility to the national authority, and that there was a purpose to violate or evade the act of Congress.

We reject any such view of the relations of the National Government and the States composing the Union, as that for which the defendants contend. Such a view cannot be maintainedwithout destroying the just authority of the United States. It is inconsistent with all the decisions of this court as to the powers of the National Government over matters committed to it. No State can, by merely creating a corporation, or in any other mode, project its authority into other States, and across the continent, so as to prevent Congress from exerting the power it possesses under the Constitution over interstate and international commerce, or so as to exempt its corporation engaged in interstate commerce from obedience to any rule lawfully established by Congress for such commerce. It cannot be said that any State may give a corporation, created under its laws, authority to restrain interstate or international commerce against the will of the nation as lawfully expressed by Congress. Every corporation created by a State is necessarily subject to the Supreme Law of the Land. And yet the suggestion is made that to restrain a State corporation from interfering with the free course of trade and commerce among the States, in violation of an act of Congress, is hostile to the reserved rights of the States. The Federal court may not have power to forfeit the charter of the Securities Company; it may not declare how its shares of stock may be transferred on its books, nor prohibit it from acquiring real estate, nor diminish or increase its capital stock. All these and like matters are to be regulated by the State which created the company. But to the end that effect be given to the national will, lawfully expressed, Congress may prevent that company, in its capacity as a holding corporation and trustee, from carrying out the purposes of a combination formed in restraint of interstate commerce. The Securities Company is itself a part of the present combination; its head and front; its trustee. It would be extraordinary if the court, in executing the act of Congress, could not lay hands upon that company and prevent it from doing that which, if done, will defeat the act of Congress. Upon like grounds the court can, by appropriate orders, prevent the two competing railroad companies here involved from co-operating with the Securities Company in restraining commerce among the States. In short, the court may make any order necessary to bring about the dissolution or suppression of an illegal combination that restrains interstate commerce. All this can be done without infringing in any degree upon the just authority of the States. The affirmance of the judgment below will only mean that no combination, however powerful, is stronger than the law or will be permitted to avail itself of the pretext that to prevent it doing that which, if done, would defeat a legal enactment of Congress, is to attack the reserved rights of the States. It would mean that the Government which represents all, can, when acting within the limits of its powers, compel obedience to its authority. It would mean that no device in evasion of its provisions, however skillfully

such device may have been contrived, and no combination, by whomsoever formed, is beyond the reach of the supreme law of the land, if such device or combination by its operation directly restrains commerce among the States or with foreign nations in violation of the act of Congress.

The defendants rely, with some confidence, upon the case of the *Baltimore & Ohio R. R. Co.* v. *Maryland*, 21 *Wall.* 456, 473. But nothing we have said is inconsistent with any principle announced in that case. The court there recognized the principle that a State has plenary powers "over its own territory, its highways, its franchises, and its corporations," and observed that "we are bound to sustain the constitutional powers and prerogatives of the States, as well as those of the United States, whenever they are brought before us for adjudication, no matter what may be the consequences." Of course, every State has, in a general sense, plenary power over its corporations. But is it conceivable that a State, when exerting power over a corporation of its creation, may prevent or embarrass the exercise by Congress of any power with which it is invested by the Constitution? In the case just referred to the court does not say, and it is not to be supposed that it will ever say, that any power exists in a State to prevent the enforcement of a lawful enactment of Congress, or to invest any of its corporations, in whatever business engaged, with authority to disregard such enactment or defeat its legitimate operation. On the contrary, the court has steadily held to the doctrine, vital to the United States as well as to the States, that a State enactment, even if passed in the exercise of its acknowledged powers, must yield, in case of conflict, to the supremacy of the Constitution of the United States and the acts of Congress enacted in pursuance of its provisions. This results, the court has said, as well from the nature of the Government as from the words of the Constitution. *Gibbons* v. *Ogden*, 9 *Wheat.* 1, 210; *Sinnot* v. *Davenport*, 22 *How.* 227, 243; *In re Debs*, 158 *U. S.* 564; *Missouri, Kansas & Texas Railway* v. *Haber*, 169 *U. S.* 613, 626–7. In *Texas* v. *White*, 7 *Wall.* 700, 725, the court remarked "that 'the people of each State compose a State, having its own government, and endowed with all the functions essential to separate and independent existence,' and that 'without the States in union, there could be no such political body as the United States.' *County of Lane* v. *Oregon*, 7 *Wall.* 76. Not only, therefore, can there be no loss of separate and independent autonomy to the States, through their union under the Constitution, but it may be not unreasonably said that the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National Government." These doctrines are at the basis of our Constitutional Government, and cannot be disregarded with safety.

The defendants also rely on *Louisville & Nashville Ry.* v. *Kentucky*, 161 *U. S.* 677, 702. In that case it was contended by the railroad company that

the assumption of the State to forbid the consolidation of parallel and competing lines was an interference with the power of Congress over interstate commerce. The court observed that but little need be said in answer to such a proposition, for "it has never been supposed that the dominant power of Congress over interstate commerce took from the States the power of legislation with respect to the instruments of such commerce, so far as the legislation was within its ordinary police powers." But it has distinctly recognized that there was a division of power between Congress and the States in respect to interstate railways, and that Congress had the superior right to control that commerce and forbid interferences therewith, while to the States remained the power to create and to regulate the instruments of such commerce, so far as necessary to the conservation of the public interests. If there is anything in that case which even intimates that a State or a State corporation may in any way directly restrain interstate commerce, over which Congress has, by the Constitution, complete control, we have been unable to find it.

The question of the relations of the General Government with the States is again presented by the specific contention of each defendant that Congress did not intend "to limit the power of the several States to create corporations, define their purposes, fix the amount of their capital, and determine who may buy, own and sell their stock." All that is true, generally speaking, but the contention falls far short of meeting the controlling question in this case. To meet this contention we must repeat some things already said in this opinion. But if what we have said be found repetition will do no harm. So far as the Constitution of the United States is concerned, a State may, indeed, create a corporation, define its powers, prescribe the amount of its stock and the mode in which it may be transferred. It may even authorize one of its corporations to engage in commerce of every kind, domestic, interstate and international. The regulation or control of purely domestic commerce of a State is, of course, with the State, and Congress has no direct power over it so long as what is done by the State does not interfere with the operations of the General Government, or with the enactment of Congress. A State, if it chooses so to do, may even authorize the existence of combinations within its limits that restrain its internal trade. But neither a State corporation nor its stockholders can, by reason of the non-action of the State or by means of any combination among such stockholders, interfere with the complete enforcement of any rule lawfully devised by Congress for the conduct of commerce among the States or with foreign nations; for, as we have seen, interstate and international commerce is by the Constitution under the control of Congress and it belongs to the legislative department of the Government to prescribe rules for the conduct of that commerce. If it were otherwise the limitations in the Constitution of its supremacy, and of the supremacy of acts of the

laws made in pursuance of its provisions, was a waste of words. Whilst every instrumentality of domestic commerce is subject to State control, every instrumentality of interstate commerce may be reached and controlled by national authority, *so far as to compel it to respect the rules for such commerce lawfully established by Congress.* No corporate person can excuse a departure from or violation of that rule under the plea that that which it has done or omitted to do is permitted or not forbidden by the State under whose authority it came into existence. We repeat that no State can endow any of its corporations, or any combination of its citizens, with authority to restrain interstate or international commerce, or to disobey the national will as manifested in legal enactments of Congress. So long as Congress keeps within the limits of its authority as defined by the Constitution, infringing no rights recognized or secured by that instrument, its regulations of interstate and international commerce, whether founded in wisdom or not, must be submitted to by all. Harm and only harm can come from the failure of the courts to recognize this fundamental principle of constitutional construction. To depart from it because of the circumstances of special cases, or because the rule, in its operation, may possibly affect the interests of business, is to endanger the safety and integrity of our institutions and make the Constitution mean not what it says but what interested parties wish it to mean at a particular time and under particular circumstances. The supremacy of the law is the foundation rock upon which our institutions rest. The law, this court said in *United States* v. *Lee*, 106 *U. S.* 196, 220, is the only supreme power in our system of Government. And no higher duty rests upon this court than to enforce, by its decrees, the will of the legislative department of the Government, as expressed in a statute, unless such statute be plainly and unmistakably in violation of the Constitution. If the statute is beyond the constitutional power of Congress, the court would fail in the performance of a solemn duty if it did not so declare. But if nothing more can be said than that Congress has erred—and the court must not be understood as saying that it has or has not erred—the remedy for the error and the attendant mischief is the selection of new Senators and Representatives, who, by legislation, will make such changes in existing statutes, or adopt such new statutes, as may be demanded by their constituents and be consistent with law.

Many suggestions were made in argument based upon the thought that the Anti-Trust act would in the end prove to be mischievous in its consequences. Disaster to business and wide-spread financial ruin, it has been intimated, will follow the execution of its provisions. Such predictions were made in all the cases heretofore arising under that act. But they have not been verified. It is the history of monopolies in this country and in England that predictions of ruin are habitually made by them when it is attempted, by legislation, to restrain their operations and to protect the public against their exactions. In this, as in former cases, they seek shelter behind the

reserved rights of the States and even behind the constitutional guarantee of liberty of contract. But this court has heretofore adjudged that the act of Congress did not touch the rights of the States, and that liberty of contract did not involve a right to deprive the public of the advantages of free competition in trade and commerce. Liberty of contract does not imply liberty in a corporation or individuals to defy the national will, when legally expressed. Nor does the enforcement of a legal enactment of Congress infringe, in any proper sense, the general inherent right of every one to acquire and hold property. That right, like all other rights, must be exercised in subordination to the law.

But even if the court shared the gloomy forebodings in which the defendants indulge, it could not refuse to respect the action of the legislative branch of the Government if what it has done is within the limits of its constitutional power. The suggestions of disaster to business have, we apprehend, their origin in the zeal of parties who are opposed to the policy underlying the act of Congress or are interested in the result of this particular case; at any rate, the suggestions imply that the court may and ought to refuse the enforcement of the provisions of the act if, in its judgment, Congress was not wise in prescribing as a rule by which the conduct of interstate and international commerce is to be governed, that every combination, whatever its form, in restraint of such commerce and the monopolizing or attempting to monopolize such commerce shall be illegal. These, plainly, are questions as to the policy of legislation which belong to the ~~legislative~~ another department, and this court has no function to supervise such legislation from the standpoint of wisdom or policy. We need only say that Congress has authority to declare, and by the language of its act, as interpreted in prior cases, has, in effect declared, that the freedom of interstate and international commerce shall not be obstructed or disturbed by any combination, conspiracy or monopoly that will restrain such commerce, by preventing the free operation of competition among interstate carriers engaged in the transportation of passengers and freight. This court cannot disregard that declaration unless Congress, in passing the statute in question, be held to have transgressed the limits prescribed for its action by the Constitution. But, as already indicated, it cannot be so held consistently with the provisions of that instrument.

The combination here in question may have been for the pecuniary benefit of those who formed or caused it to be formed. But the interests of private persons and corporations cannot be made paramount to the interests of the general public. Under the Articles of Confederation commerce among the original States was subject to vexatious and local regulations that took no account of the general welfare. But it was for the protection of the general interests, as involved in interstate and international commerce, that Congress, representing the whole country, was given

by the Constitution full power to regulate commerce among the States and with foreign nations. In *Brown* v. *Maryland*, 12 *Wheat.* 419, 446, it was said: "Those who felt the injury arising from this state of things, and those who were capable of estimating the influence of commerce on the prosperity of nations, perceived the necessity of giving the control over this important subject to a single government. It may be doubted whether any of the evils proceeding from the feebleness of the Federal Government contributed more to that great revolution which introduced the present system than the deep and general conviction that commerce ought to be regulated by Congress." Railroad companies, we said in the *Trans-Missouri Freight Association case*, "are instruments of commerce, and their business is commerce itself." And such companies, it must be remembered, operate "public highways, established primarily for the convenience of the people, and therefore are subject to governmental control and regulation." *Cherokee Nation* v. *Kansas Railway Co.*, 135 *U. S.* 641, 657; *Chicago &c. R. R. Co.* v. *Pullman Car Co.*, 139 *U. S.* 79, 90; *Interstate Commerce Commission* v. *Brimson*, 154 *U. S.* 447, 475; *United States* v. *Freight Association*, 166 *U. S.* 290, 332; *Smyth* v. *Ames*, 169 *U. S.* 466, 544; *Lake Shore &c.* v. *Ohio*, 173 *U. S.* 285, 301. When such carriers, in the exercise of public franchises, engage in the transportation of passengers and freight among the States they become—even if they be State corporations—subject to such rules as Congress may lawfully establish for the conduct of interstate commerce.

It was said in argument that the circumstances under which the Northern Securities Company obtained the stock of the constituent companies imported simply an investment in the stock of other corporations, a purchase of that stock; which investment or purchase, it is contended, was not forbidden by the charter of the company and could not be made illegal by any act of Congress. This view is wholly fallacious, and does not comport with the actual transaction. There was no actual investment, in any substantial sense, by the Northern Securities Company in the stock of the two constituent companies. If it was, in form, such a transaction, it was not, in fact, one of that kind. However that company may have acquired for itself any stock in the Great Northern and Northern Pacific Railway Companies, no matter how it obtained the means to do so, all the stock it held or acquired in the constituent companies was acquired and held to be used in suppressing competition between those companies. It came into existence only for that purpose. If any one had full knowledge of what was designed to be accomplished, and as to what was actually accomplished, by the combination in question, it was the defendant Morgan. In his testimony he was asked, "Why put the stocks of *both* these [constituent companies] into one holding company?" He frankly answered: "In the first place, this holding company was simply

a question of *custodian*, because it had no other alliances." That disclosed the actual nature of the transaction, which was only to organize the Northern Securities Company as a *holding* company, in whose hands, not as a real purchaser or absolute owner, but simply as custodian, were to be placed the stocks of the constituent companies—such custodian to represent the combination formed between the shareholders of the constituent companies, the direct and necessary effect of such combination being, as already indicated, to restrain and monopolize interstate commerce by suppressing or (to use the words of this court in *United States* v. *Joint Traffic Association*) "smothering" competition between the lines of two railway carriers.

We will now inquire as to the nature and extent of the relief granted to the Government by the decree below.

By the decree in the Circuit Court it was found and adjudged that the defendants had entered into a combination or conspiracy in restraint of trade or commerce among the several States, such as the act of Congress denounced as illegal; and that all of the stocks of the Northern Pacific Railway Company and all the stock of the Great Northern Railway Company, claimed to be owned and held by the Northern Securities Company, was acquired, and is by it held, in virtue of such combination or conspiracy, in restraint of trade and commerce among the several States. It was therefore decreed as follows: "That the Northern Securities Company, its officers, agents, servants and employees, be and they are hereby enjoined from acquiring, or attempting to acquire, further stock of either of the aforesaid railway companies; that the Northern Securities Company be enjoined from voting the aforesaid stock which it now holds or may acquire, and from attempting to vote it, at any meeting of the stockholders of either of the aforesaid railway companies and from exercising or attempting to exercise any control, direction, supervision or influence whatsoever over the acts and doings of said railway companies, or either of them, by virtue of its holding such stock therein; that the Northern Pacific Railway Company and the Great Northern Railway Company, their officers, directors, servants and agents, be and they are hereby respectively and collectivly enjoined from permitting the stock aforesaid to be voted by the Northern Securities Company, or in its behalf, by its attorneys or agents, at any corporate election for directors or officers of either of the aforesaid railway companies; that they, together with their officers, directors, servants and agents, be likewise enjoined and respectively restrained from paying any dividends to the Northern Securities Company on account of stock in either of the aforesaid railway companies which it now claims to own and hold; and that the aforesaid railway companies, their officers, directors, servants and agents, be enjoined from permitting or suffering the Northern Securities Company or any of its officers

or agents, as such officers or agents, to exercise any control whatsoever over the corporate acts of either of the aforesaid railway companies. But nothing herein contained shall be construed as prohibiting the Northern Securities Company from returning and transferring to the Northern Pacific Railway Company and the Great Northern Railway Company, respectively, any and all shares of stock in either of said railway companies which said, The Northern Securities Company, may have heretofore received from such stockholders in exchange for its own stock; and nothing herein contained shall be construed as prohibiting the Northern Securities Company from making such transfer and assignments of the stock aforesaid to such person or persons as may now be the holders and owners of its own stock originally issued in exchange or in payment for the stock claimed to have been acquired by it in the aforesaid railway companies."

Subsequently, and before the appeal to this court was perfected, an order was made in the Circuit Court to this effect: "That upon the giving of an approved bond to the United States by or on behalf of the defendants in the sum of fifty thousand dollars conditioned to prosecute their appeal with effect and to pay all damages which may result to the United States from this order, that portion of the injunction contained in the final decree herein which forbids the Northern Pacific Railway Company and the Great Northern Railway Company, their officers, directors, servants and agents, from paying dividends to the Northern Securities Company on account of stock in either of the railway companies which the Securities Company claims to own and hold, is suspended during the pendency of the appeal allowed herein this day. All other portions of the decree and of the injunction it contains remain in force and are unaffected by this order."

No valid objection can be made to the decree below, in form or in substance. If there was a combination or conspiracy in violation of the act of Congress, between the stockholders of the Great Northern and the Northern Pacific Railway Companies, whereby the Northern Securities Company was formed as a holding corporation, and whereby interstate commerce over the lines of the constituent companies was restrained, it must follow that the court, in execution of that act, and to defeat the efforts to evade it, could prohibit the parties to the combination from doing the specific things which being done would affect the result denounced by the act. To say that the court could not go so far is to say that it is powerless to enforce the act or to suppress the illegal combination, and powerless to protect the rights of the public as against that combination.

It is here suggested that the alleged combination had accomplished its object before the commencement of this suit, in that the Securities Company had then organized, and had actually received a majority of the stock of the two constituent companies; *therefore*, it is argued, no effective relief can now be granted by the Government. This same view was

pressed upon the Circuit Court, and was rejected. It was completely answered by that court when it said: "Concerning the second contention, we observe that it would be a novel, not to say absurd, interpretation of the Anti-Trust act to hold that after an unlawful combination is formed and has acquired the power which it had no right to acquire, namely, to restrain commerce by suppressing competition, and is proceeding to use it and execute the purpose for which the combination was formed, it must be left in possession of the power that it has acquired, with full freedom to exercise it. Obviously the act, when fairly interpreted, will bear no such construction. Congress aimed to destroy the power to place any direct restraint on interstate trade or commerce, when by any combination or conspiracy, formed by either natural or artificial persons, such a power had been acquired; and the Government may intervene and demand relief as well after the combination is fully organized as while it is in process of formation. In this instance, as we have already said, the Securities Company made itself a party to a combination in restraint of interstate commerce that antedated its organization, as soon as it came into existence, doing so, of course, under the direction of the very individuals who promoted it." The Circuit Court has done only what the actual situation demanded. Its decree has done nothing more than to meet the requirements of the statute. It could not have done less without declaring its impotency in dealing with those who have violated the law. The decree, if executed, will destroy, not the property interests of the original stockholders of the constituent companies, but the power of the holding corporation as the instrument of an illegal combination of which it was the master spirit, to do that which, if done, would restrain interstate and international commerce. The exercise of that power being restrained, the object of Congress will be accomplished; left undisturbed, the act in question will be valueless for any practical purpose.

It is said that this statute contains criminal provisions and must therefore be strictly construed. The rule upon that subject is a very ancient and salutary one. It means only that we must not bring cases within the provisions of such a statute that are not clearly embraced by it, nor by narrow, technical or forced construction of words, exclude cases from it that are obviously within its provisions. What must be sought for always is the intention of the legislature, and the duty of the court is to give effect to that intention as disclosed by the words used.

As early as the case of *King* v. *Inhabitants of Hodnett*, 1 *T. R.* 96, 101, Mr. Justice Buller said: "It is not true that the courts in the exposition of penal statutes are to narrow the construction." In *United States* v. *Wiltberger*, 5 *Wheat.* 76, 95, Chief Justice Marshall, delivering the judgment of this court and referring to the rule that penal statutes are to be construed strictly, said: "It is a modification of the ancient maxim, and

amounts to this, that though penal laws are to be construed strictly, they are not to be construed so strictly as to defeat the obvious intention of the legislature. The maxim is not to be so applied as to narrow the words of the statute to the exclusion of cases which those words, in their ordinary acceptation, or in that sense in which the legislature has obviously used them, would comprehend. The intention of the legislature is to be collected from the words they employ. Where there is no ambiguity in the words, there is no room for construction." In *United States* v. *Morris*, 14 *Pet.* 464, 475, this court, speaking by Chief Justice Taney, said: "In expounding a penal statute the court certainly will not extend it beyond the plain meaning of its words; for it has been long and well settled that such statutes must be construed strictly. Yet the evident intention of the legislature ought not to be defeated by a forced and overstrict construction. 5 *Wheat.* 95." So, in *The Schooner Industry*, 1 *Gall.* 114, 117, Mr. Justice Story said: "We are undoubtedly bound to construe penal statutes strictly, and not to extend them beyond their obvious meaning by strained inferences. On the other hand, we are bound to interpret them according to the manifest import of the words, and to hold all cases which are within the words and the mischiefs to be within the remedial influence of the statute." In another case the same eminent jurist said: "I agree to that rule in its true and sober sense; and that is, that penal statutes are not to be enlarged by implication or extended to cases not obviously within their words and purport. . . In short, it appears to me that the proper course in all these cases is to search out and follow the true intent of the legislature, and to adopt that sense of the words which harmonizes the best with the context, and promotes in the fullest manner the apparent policy and objects of the legislature." *United States* v. *Winn*, 3 *Sumner*, 209, 211, 212. In *People* v. *Bartow*, 6 *Cowen*, 290, the highest court of New York said: "Although a penal statute is to be construed strictly, the court are not to disregard the plain intent of the legislature. It is well settled that a statute which is made for the good of the public, ought, although it be penal, to receive an equitable construction." So, in *Commonwealth* v. *Martin*, 17 *Mass.* 359, 362, the highest court of Massachusetts said: "If a statute, creating or increasing the penalty, be capable of two constructions, undoubtedly that construction which operates in favor of life or liberty is to be adopted; but it is not justifiable in this, any more than in any other case, to imagine ambiguities, merely that a lenient construction may be adopted. If such were the privilege of a court, it would be easy to obstruct the public will in almost every statute enacted; for it rarely happens that one is so precise and exact in its terms, as to preclude the exercise of ingenuity in raising doubts about its construction." There are cases almost without number in this country and in England to the same effect.

Guided by these long-established rules of construction, it is manifest that if the Anti-Trust act is held not to embrace a case such as is now before us, the plain intention of the legislative branch of the Government will be defeated. If Congress has not, by the words used in the act, described this and like cases, it would, we apprehend, be impossible to find words that would describe them. This, it must be remembered, is a suit in equity, instituted by authority of Congress "to prevent and restrain violations of the act," § 4; and the court, in virtue of a well settled rule governing proceedings in equity, may mould its decree so as to accomplish practical results—such results as law and justice demands. The defendants have no just cause to complain of the decree, in matter of law, and it should be affirmed.

The judgment of the court is that the decree below be and hereby is affirmed, with liberty to the Circuit Court to proceed in the execution of its decree as the circumstances may require.

Affirmed

True copy.

Test:

Clerk Supreme Court, U. S.

Supreme Court of the United States.

No. 277.—October Term, 1903.

Northern Securities Company et al., Appellants, *vs.* The United States. } Appeal from the Circuit Court of the United States for the District of Minnesota.

[March 14, 1904.]

Mr. Justice Brewer concurring:

I cannot assent to all that is said in the opinion just announced, and believe that the importance of the case and the questions involved justify a brief statement of my views.

First, let me say that while I was with the majority of the court in the decision in *United States* v. *Freight Association*, (166 U. S. 290,) followed by the cases of *United States* v. *Joint Traffic Association*, (171 U. S. 505,) *Addystone Pipe & Steel Company* v. *United States*, (175 U. S. 211,) and *Montague & Company* v. *Lowry*, decided at the present term, and while a further examination (which has been induced by the able and exhaustive arguments of counsel in the present case) has not disturbed the conviction that those cases were rightly decided, I think that in some respects the reasons given for the judgments cannot be sustained. Instead of holding that the Anti-Trust act included all contracts, reasonable or unreasonable, in restraint of interstate trade, the ruling should have been that the contracts there presented were unreasonable restraints of interstate trade, and as such within the scope of the act. That act, as appears from its title, was leveled at only "unlawful restraints and monopolies." Congress did not intend to reach and destroy those minor contracts in partial restraint of trade which the long course of decisions at common law had affirmed were reasonable and ought to be upheld. The purpose rather was to place a statutory prohibition with prescribed penalties and remedies upon those contracts which were in direct restraint of trade, unreasonable and against public policy. Whenever a departure from common law rules and definitions is claimed, the purpose to make the departure should be clearly shown. Such a purpose does not appear and such a departure was not intended.

Further, the general language of the act is also limited by the power which each individual has to manage his own property and determine the place and manner of its investment. Freedom of action in these respects is among the inalienable rights of every citizen. If, applying this thought to the

present case, it appeared that Mr. Hill was the owner of a majority of the stock in the Great Northern Railway Company he could not by any act of Congress be deprived of the right of investing his surplus means in the purchase of stock of the Northern Pacific Railway Company, although such purchase might tend to vest in him through that ownership a control over both companies. In other words, the right, which all other citizens had, of purchasing Northern Pacific stock could not be denied to him by Congress because of his ownership of stock in the Great Northern Company. Such was the ruling in *Pearsall* v. *Great Northern Railway*, (161 U. S. 646,) in which this court said (p. 671), in reference to the right of the stockholders of the Great Northern Company to purchase the stock of the Northern Pacific Railway Company: "Doubtless these stockholders could lawfully acquire by individual purchases a majority or even the whole of the stock of the reorganized company, and thus possibly obtain its ultimate control; but the companies would still remain separate corporations with no interests, as such, in common."

But no such investment by a single individual of his means is here presented. There was a combination by several individuals separately owning stock in two competing railroad companies to place the control of both in a single corporation. The purpose to combine and by combination destroy competition existed before the organization of the corporation, the Securities Company. That corporation, though nominally having a capital stock of $400,000,000, had no means of its own; $30,000 in cash was put into its treasury, but simply for the expenses of organization. The organizers might just as well have made the nominal stock a thousand millions as four hundred, and the corporation would have been no richer or poorer. A corporation, while by fiction of law recognized for some purpose as a person and for purposes of jurisdiction as a citizen, is not endowed with the inalienable rights of a natural person. It is an artificial person, created and existing only for the convenient transaction of business. In this case it was a mere instrumentality by which separate railroad properties were combined under one control. That combination is as direct a restraint of trade by destroying competition as the appointment of a committee to regulate rates. The prohibition of such a combination is not at all inconsistent with the right of an individual to purchase stock. The transfer of stock to the Securities Company was a mere incident, the manner in which the combination to destroy competition and thus unlawfully restrain trade was carried out.

If the parties interested in these two railroad companies can, through the instrumentality of a holding corporation, place both under one control, then in like manner, as was conceded on the argument by one of the counsel for the appellants, could the control of all the railroad companies in the country be placed in a single corporation. Nor need this

arrangement for control stop with what has already been done. The holders of $201,000,000 of stock in the Northern Securities Company might organize another corporation to hold their stock in that company, and the new corporation holding the majority of the stock in the Northern Securities Company and acting in obedience to the wishes of a majority of its stockholders would control the action of the Securities Company and through it the action of the two railroad companies, and this process might be extended until a single corporation whose stock was owned by three or four parties would be in practical control of both roads, or, having before us the possibilities of combination, the control of the whole transportation system of the country. I cannot believe that to be a reasonable or lawful restraint of trade.

Again, there is by this suit no interference with State control. It is a recognition rather than a disregard of its action. This merging of control and destruction of competition was not authorized, but specifically prohibited by the State which created one of the railroad companies, and within whose boundaries the lines of both were largely located and much of their business transacted. The purpose and policy of the State are therefore enforced by the decree. So far as the work of the two railroad companies was interstate commerce, it was subject to the control of Congress, and its purpose and policy were expressed in the act under which this suit was brought.

It must also be remembered that under present conditions a single railroad is, if not a legal, largely a practical monopoly, and the arrangement by which the control of these two competing roads was merged in a single corporation broadens and extends such monopoly. I cannot look upon it as other than an unreasonable combination in restraint of interstate commerce—one in conflict with State law and within the letter and spirit of the statute and the power of Congress. Therefore I concur in the judgment of affirmance.

I have felt constrained to make these observations for fear that the broad and sweeping language of the opinion of the court might tend to unsettle legitimate business enterprises, stifle or retard wholesome business activities, encourage improper disregard of reasonable contracts and invite unnecessary litigation.

True copy.

Test:

Clerk Supreme Court, U. S.

26437

Supreme Court of the United States.

No. 27.—October Term, 1903.

Northern Securities Company et al., Appellants, vs. The United States. | Appeal from the Circuit Court of the United States for the District of Minnesota.

[March 14, 1904.]

Mr. Justice White, with whom concur Mr. Chief Justice Fuller, Mr. Justice Peckham, and Mr. Justice Holmes, dissenting.

The Northern Securities Company is a New Jersey corporation; the Great Northern Railway Company, a Minnesota one; and the Northern Pacific Railway Company, a Wisconsin corporation. While in the argument at bar the government referred to the subject, nevertheless it expressly disclaimed predicating any claim for relief upon the fact that the predecessor in title of the Northern Pacific Railway Company was a corporation created by act of Congress. That fact, therefore, may be eliminated.

The facts essential to be borne in mind to understand my point of view, without going into details, are as follows: The lines of the Northern Pacific and the Great Northern Railway Companies are both transcontinental, that is, trunk lines to the Pacific Ocean, and in some aspects are competing. Mr. Morgan and Mr. Hill and a few persons immediately associated with them separately acquired and owned capital stock of the Northern Pacific Railway Company, aggregating a majority thereof. Mr. Hill and others associated with him owned, in the same manner, about one-third of the capital stock of the Great Northern Railway Company, the balance of the stock being distributed among about eighteen hundred stockholders. Although Mr. Hill and his immediate associates owned only one-third of the stock, the confidence reposed in Mr. Hill was such that, through proxies, his influence was dominant in the affairs of that company. Under these circumstances Mr. Morgan and Mr. Hill organized under the laws of New Jersey the Northern Securities Company. The purpose was that the company should become the holder of the stock of the two railroads. This was to be effected by having the Northern Securities Company give its stock in exchange for that of the two railroad companies. Whilst the purpose of the promoters was mainly to exchange the stock held by them in the two railroads for the Northern Securities Company stock, nevertheless the right of stockholders generally in the two railroads to make a similar exchange or to sell their stock to the Securities Com-

pany was provided for. Under the arrangement the Northern Securities Company came to be the registered holder of a majority of the stock of both the railroads. It is not denied that the charter, and the acts done under it, of the Northern Securities Company, were authorized by the laws of New Jersey, and, therefore, in so far as those laws were competent to sanction the transaction, the corporation held the stock in the two railroads secured by the law of the State of its domicil.

The government by its bill challenges the right of the Northern Securities Company to hold and own the stock in the two railroads. The grounds upon which the relief sought was based were, generally speaking, as follows: That as the two railroads were competing lines engaged in part in interstate commerce, the creation of the Northern Securities Company and the acquisition by it of a majority of the stock of both roads was contrary to the act of Congress known as the Anti-Trust act. (26 Stat. 209.) The clauses of the act which it was charged were violated were the first section, declaring illegal "every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations;" and the provisions of the second section making it a misdemeanor for any person to "monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States or with foreign nations." The court below sustained the contentions of the government. It, therefore, enjoined the two railroad companies from allowing the Northern Securities Company to vote the stock standing in its name or to pay to that company any dividends upon the stock by it held. On the giving, however, of a bond fixed by the court below the decree relating to the payment of dividends was suspended pending the appeal to this court.

The court recognized, however, the right of the Northern Securities Company to retransfer the stock in both railroads to the persons from whom it had been acquired. The correctness of the decree below is the question presented for decision.

Two questions arise. Does the Anti-Trust act, when rightly interpreted, apply to the acquisition and ownership by the Northern Securities Company of the stock in the two railroads, and, second, if it does, had Congress the power to regulate or control such acquisition and ownership? As the question of power lies at the root of the case, I come at once to consider that subject. Before doing so, however, in order to avoid being misled by false or irrelevant issues, it is essential to briefly consider two questions of fact. It is said, first, that the mere exchange by the Northern Securities Company of its stock for stock in the railroads did not make the Northern Securities Company the real owner of the stock in the railroads, since the effect of the transaction was

to cause the Securities Company to become merely the custodian or trustee of the stock in the railroads; second, that as the two railroads were both over-capitalized, stock in them furnished no sufficient consideration for the issue of the stock of the Northern Securities Company. It would suffice to point out, *a*, that the proof shows that nearly nine million dollars was paid by the Securities Company for a portion of the stock acquired by it, and that, moreover, nearly thirty-five million dollars was expended by the Securities Company in the purchase of bonds of the Northern Pacific Company, which have been converted by the Securities Company into the stock of that railroad, which the Securities Company now holds; and, *b*, that the market value of the railroad stocks is, moreover, indisputably shown by the proof to have been equal to the value fixed on them for the purpose of the exchange or purchase of such stock by the Northern Securities Company. Be this as it may, it is manifest that these considerations can have no possible influence on the question of the power of Congress in the premises; and therefore the suggestions can serve only to obscure the controversy. If the power was in Congress to legislate on the subject it becomes wholly immaterial what was the nature of the consideration paid by the company for the stock by it acquired and held if such acquisition and ownership, even if real, violated the act of Congress. If on the contrary the authority of Congress could not embrace the right of the Northern Securities Company to acquire and own the stock, the question of what consideration the Northern Securities Company paid for the stock or the method by which it was transferred must necessarily be beyond the scope of the act of Congress.

In testing the power of Congress I shall proceed upon the assumption that the act of Congress forbids the acquisition of a majority of the stock of two competing railroads engaged in part in interstate commerce by a corporation or any combination of persons.

The authority of Congress, it is conceded by all, must rest upon the power delegated by the eighth section of the first article of the Constitution, "to regulate Commerce with foreign Nations, and among the several States and with the Indian tribes." The proposition upon which the case for the government depends then is that the ownership of stock in railroad corporations created by a State is interstate commerce, wherever the railroads engage in interstate commerce.

At the outset, the absolute correctness is admitted of the declaration of Mr. Chief Justice Marshall in *Gibbons* v. *Ogden*, that the power of Congress to regulate commerce among the States and with foreign nations "is complete in itself and may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution;" and that if the end to be accomplished is within the scope of

the Constitution, "all means which are appropriate, which are plainly adapted to that end and which are not prohibited, are constitutional."

The plenary authority of Congress over interstate commerce, its right to regulate it to the fullest extent, to fix the rates to be charged for the movement of interstate commerce, to legislate concerning the ways and vehicles actually engaged in such traffic, and to exert any and every other power over such commerce which flows from the authority conferred by the Constitution, is thus conceded. But the concessions thus made do not concern the question in this case, which is not the scope of the power of Congress to regulate commerce, but whether the power extends to regulate the ownership of stock in railroads, which is not commerce at all. The confusion which results from failing to observe this distinction will appear from an accurate analysis of *Gibbons* v. *Ogden*, for in that case the great Chief Justice was careful to define the commerce, the power to regulate which was conferred upon Congress, and in the passages which I have previously quoted, simply pointed out the rule by which it was to be determined in any case whether Congress, in acting upon the subject, had gone beyond the limits of the power to regulate commerce as it was defined in the opinion. Accepting the test announced in *Gibbons* v. *Ogden* for determining whether a given exercise of the power to regulate commerce has in effect transcended the limits of regulation, it is essential to accept also the luminous definition of commerce announced in that case and approved so many times since, and hence to test the question for decision by that definition. The definition is this: "Commerce undoubtedly is traffic, but it is something more, it is intercourse. It describes the commercial intercourse between nations and parts of nations in all its branches, *and is regulated by prescribing rules for carrying on that intercourse.*" (Italics mine.)

Does the delegation of authority to Congress to regulate commerce among the States embrace the power to regulate the ownership of stock in State corporations, because such corporations may be in part engaged in interstate commerce? Certainly not, if such question is to be governed by the definition of commerce just quoted from *Gibbons* v. *Ogden*. Let me analyze the definition. "Commerce undoubtedly is traffic, but it is something more, it is intercourse;" that is, traffic between the States and intercourse between the States. I think the ownership of stock in a State corporation cannot be said to be in any sense traffic between the States or intercourse between them. The definition continues: "It describes the commercial intercourse between nations and parts of nations." Can the ownership of stock in a State corporation, by the most latitudinarian construction, be embraced by the words "commercial intercourse between nations and parts of nations?" And to remove all doubt, the definition points out the meaning of the delegation

of power to regulate, since it says that it is to be "regulated by prescribing rules for carrying on that intercourse." Can it in reason be maintained that to prescribe rules governing the ownership of stock within a State in a corporation created by it is within the power to prescribe rules for the regulation of intercourse between citizens of different States?

But if the question be looked at with reference to the powers of the Federal and State governments, the general nature of the one and the local character of the other, which it was the purpose of the Constitution to create and perpetuate, it seems to me evident that the contention that the authority of the National Government under the commerce clause gives the right to Congress to regulate the ownership of stock in railroads chartered by State authority, is absolutely destructive of the Tenth Amendment to the Constitution, which provides that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people." This must follow, since the authority of Congress to regulate on the subject can in reason alone rest upon the proposition that its power over commerce embraces the right to control the ownership of railroads doing in part an interstate commerce business. But power to control the ownership of all such railroads would necessarily embrace their organization. Hence it would result that it would be in the power of Congress to abrogate every such railroad charter granted by the States from the beginning if Congress deemed that the rights conferred by such State charters tended to restrain commerce between the States or to create a monopoly concerning the same.

Besides, if the principle be acceded to it must in reason be held to embrace every consolidation of State railroads which may do in part an interstate commerce business, even although such consolidation may have been expressly authorized by the laws of the States creating the corporations.

It would likewise overthrow every State law forbidding such consolidations, for if the ownership of stock in State corporations be within the regulating power of Congress under the commerce clause and can be prohibited by Congress, it would be within the power of that body to permit that which it had the right to prohibit.

But the principle that the ownership of property is embraced within the power of Congress to regulate commerce, whenever that body deems that a particular character of ownership, if allowed to continue, may restrain commerce between the States or create a monopoly thereof, is in my opinion in conflict with the most elementary conceptions of rights of property. For it would follow if Congress deemed that the acquisition by one or more individuals engaged in interstate commerce of more than a certain amount of property would be prejudicial to interstate commerce, the

amount of property held or the amount which could be employed in interstate commerce could be regulated.

In the argument at bar many of the consequences above indicated as necessarily resulting from the contention made were frankly admitted, since it was conceded that, even although the holding of the stock in the two railroads by the Northern Securities Company which is here assailed, was expressly authorized by the laws of both the States by which the railroad corporations were created, as it was by the law of the State of New Jersey, nevertheless as such authority, if exerted by the States, would be a regulation of interstate commerce, it would be repugnant to the Constitution as an attempt on the part of the States to interfere with the paramount authority of Congress on that subject. True, this assertion, made in the oral argument, in the printed argument is qualified by an intimation that the rule would not apply to State action taken before the adoption of the Anti-Trust act, since up to that time, in consequence of the inaction of Congress on the subject, the States were free to legislate as they pleased regarding the matter. But this suggestion is without foundation to rest on. It has long since been determined by this court that where a particular subject matter is national in its character and requires uniform regulation, the absence of legislation by Congress on the subject indicates the will of Congress that the subject should be free from State control. (*Mobile County* v. *Kimball*, 102 U. S. 691; *Robins* v. *Shelby Taxing District*, 120 U. S. 489, 493; *United States* v. *E. C. Knight Company*, 156 U. S. 1.)

It is said, moreover, that the decision of this case does not involve the consequences above pointed out, since the only issue in this case is the right of the Northern Securities Company to acquire and own the stock. The right of that company to do so, it is argued, is one thing; the power of individuals or corporations, when not merely organized to hold stock, an entirely different thing. My mind fails to seize the distinction. The only premise by which the power of Congress can be extended to the subject matter of the right of the Securities Company to own the stock must be the proposition that such ownership is within the legislative power of Congress, and if that proposition be admitted it is not perceived by what process of reasoning the power of Congress over the subject matter of ownership is to be limited to ownership by particular classes of corporations or persons. If the power embraces ownership, then the authority of Congress over all ownership which in its judgment may affect interstate commerce necessarily exists. In other words, the logical result of the asserted distinction amounts to one of two things. Either that nothing is decided or that a decree is to be entered having no foundation upon which to rest. This is said because if the control of the ownership of stock in competing roads by one and the same corporation is within the power of Congress, and creates a restraint of trade or

monopoly forbidden by Congress, it is not conceivable to me how exactly similar ownership by one or more individuals would not create the same restraint or monopoly, and be equally within the prohibition which it is decided Congress has imposed. Besides the incongruity of the conclusion, resulting from the alleged distinction to admit it would do violence to both the letter and spirit of the Constitution, since it would in effect hold that, although a particular act was a burden upon interstate commerce or a monopoly thereof, that individuals could lawfully do the act, provided only they did not use the instrumentality of a corporation. But this court long since declared that the power to regulate commerce, conferred upon Congress, was "general and includes alike commerce by individuals, partnerships, associations and corporations." (*Paul* v. *Virginia*, 8 Wall. 168, 183.)

Indeed, the natural reluctance of the mind to follow an erroneous principle to its necessary conclusion, and thus to give effect to a grievous wrong arising from the erroneous principle, is an admonition that the principle itself is wrong. That admonition, I submit, is conclusively afforded by the decree which is now affirmed. Without stopping to point out what seems to me to be the confusion, contradiction and denial of rights of property which the decree exemplifies, let me see if in effect it is not at war with itself and in conflict with the principle upon which it is assumed to be based.

Fundamentally considered, the evil sought to be remedied is the restraint of interstate commerce and the monopoly thereof, alleged to have been brought about, through the acquisition by Mr. Morgan and Mr. Hill and their friends and associates, of a controlling interest in the stock of both the roads. And yet the decree, whilst forbidding the use of the stock by the Northern Securities Company, authorizes its return to the alleged conspirators, and does not restrain them from exercising the control resulting from the ownership. If the conspiracy and combination existed and was illegal, my mind fails to perceive why it should be left to produce its full force and effect in the hands of the individuals by whom it was charged the conspiracy was entered into.

It may, however, be said that even if the results which I have indicated be held necessarily to arise from the principles contended for by the government, it does not follow that such power would ever be exerted by Congress, or, if exerted, would be enforced to the detriment of charters granted by the States to railroads or consolidations thereof, effected under State authority, or the ownership of stock in such railroads by individuals, or the rights of individuals to acquire property by purchase, lease or otherwise, and to make any and all contracts concerning property which may thereafter become the subject matter of interstate commerce. The first suggestion is at once met by the consideration that it has been decided by

this court that, as the Anti-Trust act forbids any restraint, it therefore embraces even reasonable contracts or agreements. If, then, the ownership of the stock of the two railroads by the Northern Securities Company is repugnant to the act it follows that ownership, whether by the individual or another corporation, would be equally within the prohibitions of the act. As to the second, true it is that by the terms of the Anti-Trust act the power to put its provisions in motion is, as to many particulars, confided to the highest law officer of the government, and if that officer did not invoke the aid of the courts to restrain the rights of the railroads previously charted by the States to enjoy the benefits conferred upon them by State legislation, or to prevent individuals from exercising their right of ownership and contract, the law in these respects would remain a dead letter. But to indulge in this assumption would be but to say that the law would not be enforced by the highest law officer of the government, a conclusion which, of course, could not be indulged in for a moment. In any view, such suggestion but involves the proposition that vast rights of property, instead of resting upon constitutional and legal sanction, must alone depend upon whether an executive officer might elect to enforce the law—a conclusion repugnant to every principle of liberty and justice.

Having thus by the light of reason sought to show the unsoundness of the proposition that the power of Congress to regulate commerce extends to controlling the acquisition and ownership of stock in State corporations, railroad or otherwise, because they may be doing an interstate commerce business, or to the consolidation of such companies under the sanction of State legislation, or to the right of the citizen to enjoy his freedom of contract and ownership, let me now endeavor to show, by a review of the practices of the governments, both State and National, from the beginning and the adjudications of this court, how wanting in merit is the proposition contended for. It may not be doubted that from the foundation of the government, at all events to the time of the adoption of the Anti-Trust act in 1890, there was an entire absence of any legislation by Congress even suggesting that it was deemed by any one that power was possessed by Congress to control the ownership of stock in railroad or other corporations, because such corporations engaged in interstate commerce. On the contrary, when Congress came to exert its authority to regulate interstate commerce as carried on by railroads, manifested by the adoption of the interstate commerce act, (24 Stat. 379,) it sedulously confined the provisions of that act to the carrying on of interstate commerce itself, including the reasonableness of the rates to be charged for carrying on such commerce and other matters undeniably concerning the fact of interstate commerce. The same conception was manifested subsequently in legislation concerning safety appliances to be used by railroads,

since the provisions of the act were confined to such appliances when actually employed in the business of interstate commerce. (27 Stat. 531.) It also may not be doubted that from the beginning the various States of the Union have treated the incorporation and organization of railroad companies and the ownership of stock therein as matters within their exclusive authority. Under this conception of power in the States, universally prevailing and always acted upon, the entire railroad system of the United States has been built up. Charters, leases and consolidations under the sanction of State laws lie at the basis of that enormous sum of property and those vast interests represented by the railroads of the United States. Extracts from the reports of the Interstate Commerce Commission and from a standard authority on the subject, which were received in evidence, demonstrate that in effect nearly every great railroad system in the United States is the result of the consolidation and unification of various roads, often competitive, such consolidation or unification of management having been brought about in every conceivable form, sometimes by lease under State authority, sometimes by such leases made where there was no prohibition against them, and by stock acquisitions made by persons or corporations in order to acquire a controlling interest in both roads. Without stopping to recite details on the subject, I content myself with merely mentioning a few of the instances where great systems of railroad have been formed by the unification of the management of competitive roads, by consolidation or otherwise, often by statutory authority. These instances embrace the Boston and Maine system, the New York, New Haven and Hartford, the New York Central, the Reading, and the Pennsylvania systems. One of the illustrations—as to the New York Central system—is the case of the Hudson River Railroad on one side of the Hudson River and the West Shore Railroad on the other, both parallel roads and directly competitive, and both united in one management by authority of a legislative act. It is indeed remarkable, if the whole subject was within the paramount power of Congress and not within the authority of the States, that there should have been a universal understanding to the contrary from the beginning. When it is borne in mind that such universal action related to interests of the most vital character, involving property of enormous amount concerning the welfare of the whole people, it is impossible in reason to deny the soundness of the assumption that it was the universal conviction that the States, and not Congress, had control of the subject matter of the organization and ownership of railroads created by the States. And the same inference is applicable to the condition of things which has existed since the adoption of the Anti-Trust act in 1890. Who can deny that from that date to this consolidations and unification of management, by means of leases, stock ownership by individuals or corporations, have

been carried on, when not prohibited by State laws, to a vast extent, and that during all this time, despite the energy of the government in invoking the Anti-Trust law, that no assertion of power in Congress under that act to control the ownership of stock was ever knowingly made until first asserted in this cause. Quite recently Congress has amended the interstate commerce act by provisions deemed essential to make its prohibitions more practically operative, and yet no one of such provisions lends itself even to the inference that it was deemed by any one that the power of Congress extended to the control of stock ownership. Certainly the States have not so considered it. As a matter of public history it is to be observed that not long since, by authority of the legislature of the State of Massachusetts, a controlling interest by lease of the Boston and Albany road passed to the New York Central system.

The decisions of this court to my mind leave no room for doubt on the subject. As I have already shown, the very definition of the power to regulate commerce, as announced in *Gibbons* v. *Ogden*, excludes the conception that it extends to stock ownership. I shall not stop to review a multitude of decisions of this court concerning interstate commerce, which, whilst upholding the paramount authority of Congress over that subject, at the same time treated it as elementary, that the effect of the power over commerce between the States was not to deprive the States of their right to legislate concerning the ownership of property of every character or to create railroad corporations and to endow them with such powers as were deemed appropriate, or to deprive the individual of his freedom to acquire, own and enjoy property by descent, contract or otherwise, because railroads or other property might become the subject of interstate commerce.

In *Paul* v. *Virginia*, (8 Wall. 168,) the question was as to the power of the State of Virginia to license a foreign insurance company, and one of the contentions considered was whether the contract of insurance, since it was related to commerce, was within the regulating power of Congress and not of the State of Virginia. The proposition was disposed of in the following language (p. 183):

"Issuing a policy of insurance is not a transaction of commerce. The policies are simply contracts of indemnity against loss by fire, entered into between the corporations and the assured, for a consideration paid by the latter. These contracts are not articles of commerce in any proper meaning of the word. They are not subjects of trade and barter offered in the market as something having an existence and value independent of the parties to them. They are not commodities to be shipped or forwarded from one State to another, and then put up for sale. They are like other personal contracts between parties which are completed by their signature and the transfer of the consideration. Such contracts are not interstate transactions, though the parties may be domiciled in different States. The policies do not take effect—are not executed contracts—until delivered by the agent in Virginia. They are, then, local transactions, and are

governed by the local law. They do not constitute a part of the commerce between the States any more than a contract for the purchase and sale of goods in Virginia by a citizen of New York, whilst in Virginia would constitute a portion of such commerce."

In other words, the court plainly pointed out the distinction between interstate commerce as such and the contracts concerning, or the ownership of property which might become the subjects of interstate commerce. And the authority of *Paul* v. *Virginia* has been repeatedly approved in subsequent cases, which are so familiar as not to require citation.

In *Railroad Co.* v. *Maryland*, (21 Wall. 456,) the question was this: The State of Maryland had chartered the Baltimore and Ohio Railroad Company, and in the charter had imposed upon it the duty of paying to the State a certain proportion of all its receipts from freight, which applied as well to interstate as domestic freight. The argument was that these provisions were repugnant to the commerce clause, because they necessarily increased the sum which the railroad would have to charge, and thereby constituted a regulation of commerce. The court held the law not to be repugnant to the Constitution, and in the course of the opinion said (p. 473):

"In view, however, of the very plenary powers which a State has always been conceded to have over its own territory, its highways, its franchises and its corporations, we cannot regard the stipulation in question as amounting to either of these unconstitutional acts."

True it is that some of the expressions used in the opinion in the case just cited, giving rise to the inference that there was power in the State to regulate the rates of freight on interstate commerce, may be considered as having been overruled by *Wabash Railroad Company* v. *Illinois*, (118 U. S. 557.) But that case also in the fullest manner pointed out the fact that the power to regulate commerce, conferred on Congress by the Constitution, related not to the mere ownership of property or to contracts concerning property, because such property might subsequently be used in interstate commerce or become the subject of it. For instance, the definition given of interstate commerce in *Gibbons* v. *Ogden*, previously referred to, was reiterated and in addition the definition expounded in *County of Mobile* v. *Kimball*, (102 U. S. 691,) was approvingly quoted. That definition was as follows (p. 574):

"Commerce with foreign countries and among the States, strictly construed, consists in intercourse and traffic, including in these terms navigation and the transportation and transit of persons and property, as well as the purchase, sale and exchange of commodities. For the regulation of commerce as thus defined there can be only one system of rules, applicable alike to the whole country; and the authority which can act for the whole country can alone adopt such a system. Action upon it by the separate

States is not therefore permissible. Language affirming the exclusiveness of the grant of power over commerce *as thus defined* may not be inaccurate when it would be so *when applied to legislation upon subjects which are merely auxiliary to commerce.*"

In *Ashley* v. *Ryan*, (153 U. S. 436,) this was the question: The property of various railroad corporations operating in the State of Ohio, Michigan, Indiana, Illinois and Missouri had been sold under decrees of foreclosure. The purchasers of the respective lines availed themselves of the Ohio statutes, and consolidated all the corporations into one so as to form a single system, the Wabash. On presenting the articles of consolidation to the Secretary of State of Ohio, that officer demanded a fee imposed by the Ohio statutes, predicated upon the sum total of the capital stock of the consolidated company. This was refused on the ground that the State of Ohio had no right to make the charge, and that its doing so was repugnant to the commerce clause of the Constitution of the United States and to the Fourteenth Amendment. This court decided against this contention. It held that, as the right to consolidate could alone arise from the Ohio law, the corporation could not avail of that law and avoid the condition which the law imposed. Speaking of the consolidation, the court said (p. 440):

"The rights thus sought could only be acquired by the grant of the State of Ohio, and depended for their existence upon the provisions of its laws. Without that State's consent they could not have been procured."

And, after a copious review of the authorities concerning the power of the State over the consolidation, the case was summed up by the court in the following passage (p. 446):

"Considering, as we do, that the payment of the charge was a condition imposed by the State of Ohio upon the taking of corporate being or the exercise of corporate franchises, *the right to which depended solely on the will of that State*," (italics mine,) "and hence that liability for the charge was entirely optional, we conclude that the exaction constituted no tax upon interstate commerce, or the right to carry on the same, or the instruments thereof, and that its enforcement involved no attempt on the part of the State to extend its taxing power beyond its territorial limits."

How a right which was thus decided to depend *solely* upon the authority of the States can now be said to depend solely upon the will of Congress, I do not perceive.

In *United States* v. *E. C. Knight Co.*, (156 U. S. 1), the facts and the relief based on them were thus stated by Mr. Chief Justice Fuller, delivering the opinion of the court (p. 9):

"By the purchase of the stock of the four Philadelphia refineries, with shares of its own stock, the American Sugar Refining Company acquired nearly complete control of the manufacture of refined sugar within the United States. The bill charged that the contracts under which these purchases were made constituted combinations in restraint of trade, and

that in entering into them the defendants combined and conspired to restrain trade and commerce in refined sugar among the several States and with foreign nations, contrary to the act of Congress of July 2, 1890."

After referring, in a general way, to what constituted a monopoly or restraint of trade at common law, the question for decision was thus stated (p. 11):

"The fundamental question is, whether conceding that the existence of a monopoly in manufacture is established by the evidence, that monopoly can be directly suppressed under the act of Congress in the mode attempted by this bill."

Examining this question as to the power of Congress, it was observed (p. 11):

"It cannot be denied that the power of a State to protect the lives, health and property of its citizens, and to preserve good order and the public morals, 'the power to govern men and things within the limits of its dominion,' is a power originally and always belonging to the States, not surrendered by them to the general government, nor directly restrained by the Constitution of the United States, and essentially exclusive."

Next, pointing out that the power of Congress over interstate commerce and the fact that its failure to legislate over subjects requiring uniform legislation expressed the will of Congress that the State should be without power to act on that subject, the court came to consider whether the power of Congress to regulate commerce embraced the authority to regulate and control the ownership of stock in the State sugar refining companies, because the products of such companies when manufactured might become the subject of interstate commerce. Elaborately passing upon that question and reaffirming the definition of Chief Justice Marshall of commerce, in the constitutional sense, it was held that, whilst the power of Congress extended to commerce as thus defined, it did not embrace the ownership of stock in State corporations, because the products of such manufacture might subsequently become the subjects of interstate commerce.

The parallel between the two cases is complete. The one corporation acquired the stock of other and competing corporations by exchange for its own. It was conceded, for the purposes of the case, that in doing so monopoly had been brought about in the refining of sugar, that the sugar to be produced was likely to become the subject of interstate commerce, and indeed that part of it would certainly become so. But the power of Congress was decided not to extend to the subject, because the ownership of the stock in the corporations was not itself commerce.

In *Pearsall* v. *The Great Northern Railway Company*, (161 U. S. 646,) the question was whether the acquisition by the Great Northern road of a controlling interest in the stock of the Northern Pacific Railway Company was a violation of a Minnesota statute prohibiting the consolidation of competing lines. It is at once evident that if the subject of consoli-

dation was within the authority of Congress, as Congress had not expressed its will upon the subject, the act of the legislature of Minnesota was void because repugnant to the Constitution of the United States. But the possibility of such a contention was not thought of by either party to the cause or by the court itself. Treating the power of the State as undoubted, the court, speaking through Mr. Justice Brown, decided that the Minnesota law should be enforced. It was pointed out in the opinion that, as the charter was one granted by the State, the railroad company and the ownership of stock therein was subject to the State law, and this was made the basis of the decision. Whilst, however, resting its conclusion upon the power of the State over the corporation by it created, the court was careful to recognize that the authority in the State was so complete, as the company was a State corporation, that the State had the right, *if it chose to do so, to authorize the consolidation, even although the lines were competing.*

In *Louisville & Nashville Railroad* v. *Kentucky,* (161 U. S. 677,) the power of the State to pass a law forbidding the consolidation of competing State railroad corporations doing in part an interstate commerce business was again considered, and a State statute in which the power was exercised was upheld. Here, again, it is to be observed that if the consolidation of State railroad corporations, because they did in part an interstate commerce business, was within the paramount authority of Congress, that authority was exclusive and the State regulation which the court upheld was void. And this question, vital to the consideration of the case, and without passing upon which it could not have been decided did not escape observation, since it was explicitly pressed upon the court and was directly determined. The court, speaking through Mr. Justice Brown, said (pp. 701, 702):

"But little need be said in answer to the final contention of the plaintiff in error, that the assumption of a right to forbid the consolidation of parallel and competing lines is an interference with the power of Congress over interstate commerce. The same remark may be made with respect to all police regulations of interstate railways.

* * * * * *

"It has never been supposed that the dominant power of Congress over interstate commerce took from the States the power of legislation with respect to the instruments of such commerce, so far as the legislation was within its ordinary police powers. Nearly all the railways in the country have been constructed under State authority, and it cannot be supposed that they intended to abandon their power over them as soon as they were finished. The power to construct them involves necessarily the power to impose such regulations upon their operation as a sound regard for the interests of the public may seem to render desirable. In the division of authority with respect to interstate railways Congress reserves to itself the superior right to control their commerce, and forbid interference therewith; while to the States remains the power to create and to regulate the instruments of such commerce, so far as necessary to the conservation of the public interests."

How one case could be more completely decisive of another than the ruling in the case just quoted is of this, I am unable to perceive.

The subject was considered at circuit in *In re Greene*, 52 Fed. Rep. 105.) The case was this: A person was indicted in one State for creating a monopoly in violation of the Anti-Trust act of Congress and was held in another State for extradition. The writ of *habeas corpus* was invoked, upon the contention that the face of the indictment did not state an offense against the United States, since the matters charged did not involve interstate commerce. The case is referred to, although it arose in circuit and was determined before the decisions of this court in the Pearsall and Louisville and Nashville cases, because it was decided by Mr. Justice Jackson, then a Circuit Judge, who subsequently became a member of this court. The opinion manifests that the case was considered by Judge Jackson with that care which was his conceded characteristic and was stated by him with that lucidity which was his wont. In discharging the accused on the grounds stated in the application for the writ, Judge Jackson said (p. 112):

"Congress may place restrictions and limitations upon the right of corporations created and organized under its authority to acquire, use and dispose of property. It may also impose such restrictions and limitations upon the citizen in respect to the exercise of a public privilege or franchise conferred by the United States. But Congress certainly has not the power or authority under the commerce clause, or any other provision of the Constitution, to limit and restrict the right of corporations created by the States, or the citizens of the States, in the acquisition, control and disposition of property. Neither can Congress regulate or prescribe the price or prices at which such property, or products thereof, shall be sold by the owner or owners, whether corporations or individuals. It is equally clear that Congress has no jurisdiction over, and cannot make criminal, the aims, purposes and intentions of persons in the acquisition and control of property, which the States of their residence or creation sanction and permit. It is not material that such property, or the products thereof, may become the subject of trade or commerce among the several States or with foreign nations. Commerce among the States, within the exclusive regulating power of Congress, 'consists of intercourse and traffic between their citizens, and includes the transportation of persons and property, as well as the purchase, sale and exchange of commodities.' *Coe and Hobbs v. Kimball*, 102 U. S. 691–702; *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S. 203, 5 Sup. Ct. Rep. 826. In the application of this comprehensive definition, it is settled by the decision of the Supreme Court that such commerce includes, not only the actual transportation of commodities and persons between the States, but also the instrumentalities and processes of such transportation.

* * * * * *

"That neither the production nor manufacture of articles or commodities which constitute subjects of commerce, and which are intended for trade and traffic with citizens of other States, nor the preparation for their transportation from the State where produced or manufactured, prior to the

commencement of the actual transfer, or transmission thereof to another State, constitutes that interstate commerce which comes within the regulating power of Congress; and, further, that after the termination of the transportation of commodities or articles of traffic from one State to another, and the mingling or merging thereof in the general mass of property in the State of destination, the sale, distribution and consumption thereof in the latter State forms no part of interstate commerce."

If this opinion had been written in the case now considered it could not more completely than its reasoning does have disposed of the contention that the ownership of stock by a corporation in competing railroads was commerce.

United States v. *Freight Association*, (166 U. S. 290,) was this: A large number of railway companies, who were made defendants in the cause, had formed themselves into an association, known as the Trans-Missouri Freight Association, and the companies had bound themselves by the provisions contained in the articles of agreement. Many stipulations relating to the carrying on of interstate commerce over the roads which were parties to the agreement were contained in it, and section 3 provided as follows:

"A committee shall be appointed to establish rates, rules and regulations on the traffic subject to this association, and to consider changes therein, and make rules for meeting the competition of outside lines. Their conclusions, when unanimous, shall be made effective when they so order, but if they differ the question at issue shall be referred to the managers of the lines parties hereto, and if they disagree it shall be arbitrated in the manner provided in article VII."

The government sought to dissolve the association on the ground that the agreement restrained commerce between the States, and therefore was in violation of the Anti-Trust act. On the hearing in this court, as the agreement directly related in many particulars to interstate transportation and the charge, to be made therefor, it was conceded on all hands that it embraced subjects which came within the power of Congress to regulate commerce. The contentions on behalf of the association were these: First. That the movement of interstate commerce by railroads was not within the Anti-Trust act, since Congress had regulated that subject by the interstate commerce act, and did not intend to amplify its provisions in any respect by the subsequent enactment of the Anti-Trust law. Second. That even if this were not the case, and the movment of interstate commerce by railroads was affected by the Anti-Trust statute, the particular agreement in question did not violate the act, because the agreement did not unreasonably restrain interstate commerce. Both these contentions were decided against the association, the court holding that the Anti-Trust act did embrace interstate carriage by railroad corporations, and as that act prohibited any contract in restraint of interstate commerce, it hence

embraced all contracts of that character, whether they were reasonable or unreasonable.

The same subject was considered in a subsequent case, *United States* v. *Joint Traffic Association*, (171 U. S. 505.) In that case also there was no question that the agreement between the railroads related to the movement of interstate commerce, but it was insisted that the particular agreement there involved did not seek to fix rates, but only to secure the continuation of just rates which had already been fixed, and hence was not within the Anti-Trust law. If this were held not to be true, a reconsideration of the questions decided in the Freight Association case was invoked. The court reviewed and reiterated the rulings made in the Freight Association case and held that the particular agreement in question came within them.

I mention these two last cases not because they are apposite to the case in hand, for they are not, since the contracts which were involved in them confessedly concerned interstate commerce, whilst in this case the sole question is whether the ownership of stock in competing railroads does involve interstate commerce. The cases are referred to in connection with the decisions previously cited, because, taken together, they illustrate the distinction which this court has always maintained between the power of Congress over interstate commerce and its want of authority to regulate subjects not embraced within that grant. The same distinction is aptly shown in subsequent cases.

Hopkins v. *United States*, (171 U. S. 578,) involved whether a particular agreement entered into between persons carrying on the business of selling cattle on commission, exclusively at the Kansas City stock yards. At those yards cattle were received in vast numbers through the channels of interstate commerce, and from thence were distributed through such channels. For these reasons the business of those engaged exclusively in the sale of cattle on the stock yards was asserted to be interstate commerce and within the power of Congress to regulate. In the opinion of the court, delivered by Mr. Justice Pecknam, it was at the outset said (p. 586):

"The relief sought in this case is based exclusively on the act of Congress approved July 2, 1890, c. 647, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' commonly spoken of as the Anti-Trust act. (26 Stat. 209.)

"The act has reference only to that trade or commerce which exists, or may exist, among the several States or with foreign nations, and has no application whatever to any other trade or commerce.

"The question meeting us at the threshold, therefore, in this case is, what is the nature of the business of the defendants, and are the by-laws, or any subdivision of them above referred to, in their direct effect in restraint of trade or commerce among the several States or with foreign nations; or does the case made by the bill and answer show that any one

of the above defendants has monopolized, or attempted to monopolize, or combined or conspired with other persons to monopolize, any part of the trade or commerce among the several States or with foreign nations?"

Proceeding, then, to consider the agreement, it was pointed out that the contention that the sale of cattle on the stock yards constituted interstate commerce was without merit. The distinction between interstate commerce as such and the power to make contracts and to buy and sell property was clearly stated, and because of that distinction the agreement was held not to be within the act of Congress, because that act could and did only relate to interstate commerce.

And on the day the decision just referred to was announced another case under the Anti-Trust act was decided. (*Anderson* v. *United States*, 171 U. S. 604.) The difference between that case and the Hopkins case was thus stated by Mr. Justice Peckham, in delivering the opinion of the court (p. 612):

"This case differs from that of *Hopkins* v. *United States*, *supra*, in the fact that these defendants are themselves purchasers of cattle on the market, while the defendants in the Hopkins case were only commission merchants who sold the cattle upon commission as a compensation for their services.

"Counsel for the government assert that any agreement or combination among buyers of cattle coming from other States, of the nature of the by-laws in question, is an agreement or combination in restraint of interstate trade or commerce."

The court, however, said it did not deem it necessary to decide whether the fact that the merchants who entered into the agreement bought cattle in other States and shipped them to other States, caused their business to be interstate commerce, because in any event the court was of opinion that the agreement which was assailed, even if it involved interstate commerce, was in violation of any of the provisions of the Anti-Trust act.

The Anderson case was followed by *Addyston Pipe & Steel Co.* v. *United States*, (175 U. S. 211.) The case involved deciding whether a particular combination of pipe manufacturers, looking to the control of the sale and transportation of such pipe over a large territory, embracing many States and a division of the territory between the members of the combination, was within the prohibitions of the Anti-Trust act. Coming to consider the subject, the court, through Mr. Justice Peckham, analyzed the contract and pointed out its monopolistic features. In answer to the argument that the matter complained of was not commerce, because it related only to a sale of pipe, and therefore was within the rule announced in the Knight and Hopkins cases, the Knight case was approvingly reviewed, and its doctrine in effect was reaffirmed, the court observing (p. 240):

"The direct purpose of the combination in the Knight case was the control of the manufacture of sugar. There was no combination or agreement, in terms, regarding the future disposition of the manufactured article; nothing looking to a transaction in the nature of interstate commerce.

* * * * * *

"We think the case now before us involves contracts of the nature last before mentioned, not incidentally or collaterally, but as a direct and immediate result of the combination engaged in by defendants. . . . *The [defendants by reason of this combination and agreement could only send their goods out of the State in which they were manufactured for sale and delivery in another State, upon the terms and pursuant to the provisions of such combination.* As pertinently asked by the court below, was not this a direct restraint upon interstate commerce in those goods?" (Italics mine.)

Having thus found that the agreement concerned interstate commerce, because it directly purported to control the movement of goods from one State to the other, and besides sought to prohibit that movement or restrict the same to particular individuals, it was held that the contract was, for these reasons, within the prohibitions of the act of Congress, and was therefore void. I do not pause to consider the case of *Montague* v. *Lowry*, decided at this term, since on the face of the opinion it is patent that the contract directly concerned the shipment of goods from one State to another, and this was the sole and exclusive basis of the decision.

Now, it is submited, that the decided cases just reviewed demonstrate that the acquisition and ownership of stock in competing railroads, organized under State law, by several persons or by corporations, is not interstate commerce, and, therefore, not subject to the control of Congress. It is, indeed, suggested that the cases establish a contrary doctrine. This is sought to be demonstrated by quoting passages from the opinions separated from their context apart from the questions which the cases involved. But as the issues which were decided in the Knight, in the Pearsall, in the Louisville and Nashville case and in the Hopkins case directly exclude the significance attributed to the passages from the opinions in those cases relied upon, it must follow that if such passages could, when separated from their context, have the meaning attributed to them the expressions would be mere *obiter*. And this consideration renders it unnecessary for me to analyze the passages to show that when they are read in connection with their context they have not the meaning now sought to be attached to them. But other considerations equally render it unnecessary to particularly review the sentences relied upon. There can be no doubt that it was expressly decided in the Knight case that the acquisition of stock by one corporation in other corporations so as to control them all was not interstate commerce, *although the goods of the manufacturing companies whose stock was acquired might become the*

subject of interstate commerce. If then the passage from the Knight case could be given the meaning sought to be affixed to it, the result would be but to say that that case overruled itself. And this would be the result in the Pearsall case, since in that case it was decided that the States had the power to forbid the consolidation of competing railroads, even by means of the acquisition of stock. Besides, as in the Louisville and Nashville case, immediately following the Pearsall, it was expressly decided that the interstate commerce power of Congress did not embrace such consolidation, and Congress, therefore, could not restrain a State from either forbidding or permitting it to take place, it would follow that if the sentences in the Pearsall case had the import now applied to them, that that case not only overruled itself, but was besides overruled by the Louisville and Nashville case, and this although the two cases were decided on the same day, the opinions in both cases having been delivered by the same Justice.

The same confusion and contradiction arises from separating from their context and citing as applicable to this case passages from the opinions in the Freight Association and Joint Traffic cases. Those cases, as I have previously stated, related exclusively to a contract admittedly involving interstate commerce, and it was decided that any restraint of such commerce was forbidden by the Anti-Trust act. Now in the Hopkins case, decided subsequent to the Freight Association and Joint Traffic cases, the contract considered unquestionably involved a restraint, but, as such restraint did not concern interstate commerce, it was held not to come within the power of Congress. It would follow then, if the sentences quoted from the opinions in the Freight Association and Joint Traffic cases, which cases concerned only that which was completely interstate commerce, applied to that which was not such commerce, that the Hopkins case overruled both these cases, although the opinions in all of the cases were delivered by the same Justice, and no intimation was suggested of such overruling. It would also result that, after having overruled those cases in the Hopkins case, the court, in expressing its opinion through the same Justice, proceeded in the Addyston Pipe case, which related only to interstate commerce, to overrule the Hopkins case and reaffirm the prior cases.

Of course, in my opinion, there is no ground for holding that the decided cases embody such extreme contradictions or produce such utter confusion. The cases are all consistent, if only the elementary distinction upon which they proceeded be not obscured, that is, the difference which arises from the power of Congress to regulate interstate commerce on the one hand, and its want of authority on the other, to regulate that which is not interstate commerce. Indeed, the confounding and treating as one, things which are wholly different, is the error permeating all the contentions for the government.

What has been previously said suffices to show the reasons which control my judgment, and I might well say nothing more. There were, however, three propositions so earnestly pressed by the government at bar upon the theory that they demonstrate that common ownership of a majority of the stock of competing railroads is subject to the regulating power of Congress that I propose to briefly give the reasons which cause me to conclude that the contentions relied upon are without merit.

1. This court, it is urged, has frequently declared that the power of Congress over interstate commerce includes the authority to regulate the instrumentalities of such commerce, and the following cases are cited: *Railroad Co.* v. *Fuller*, (17 Wall. 560;) *Welton* v. *Missouri*, (91 U. S. 275;) *Pensacola Telephone Co.* v. *Western Union Telegraph Co.*, (96 U. S. 1;) *Gloucester Ferry Co.* v. *Pennsylvania*, (114 U. S. 196.) To these cases might be added many others, including some of those which have been previously referred to by me. The argument now made is, as the power extends to instrumentalities, and railroads are such instrumentalities, therefore the acquisition and ownership of railroads, by persons or corporations, is commerce and subject to the power of Congress to regulate. But this involves a *non sequitur*, and a confusion of thought arising from again confounding as one, things which are wholly different. True, the instrumentalities of interstate commerce are subject to the power to regulate commerce, and therefore such instrumentalities when employed in interstate commerce may be regulated by Congress as to their use in such commerce. But this is entirely distinct from the power to regulate the acquisition and ownership of such instrumentalities, and the many forms of contracts from which such ownership may arise. The same distinction exists between the two which obtains between the power of Congress to regulate the movement of property in the channels of interstate commerce and its want of authority to regulate the acquisition and ownership of the same property. This difference was pointed out in the cases which have been referred to, and the distinction between the two has been from the beginning the dividing line, demarking the power of the national government on the one hand and of the States on the other. All the rights of ownership in railroads belonging to corporations organized under State law, the power to acquire the same, to mortgage, to foreclose mortgages, to lease, and the contract relations concerning them, have from the foundation had their sanction in the legislation of the several States. One may search in vain in the acts of Congress for any legislation even suggesting that the power over these subjects was deemed to be in Congress. On the contrary, the legislation of Congress concerning the instrumentalities of railroads under the interstate commerce power clearly refutes the contention, since that legislation relates only to such instrumentalities during their actual use in interstate commerce and not other-

wise. How, consistently with the proposition, can the great number of cases be explained which in both the Federal and State courts have dealt with the ownership of railroads and their instrumentalities by foreclosure and otherwise, under the assumption that the rights of the parties were controlled by State laws governing the subject? And here again it would follow, if the proposition was adopted, that all the vast body of State legislation on the subject would be void from the beginning and the enormous sum of property rights depending upon such legislation would be impaired and lost, since if the subject were within the power of Congress it was one requiring a uniform regulation, and therefore the inaction of Congress would signify an entire want of power in the States over the subject.

2. The court, it is urged, has in a number of cases declared that the several States were without power to directly burden interstate commerce. The acquiring and ownership by one person or corporation of a majority of the stock in competing railroads engaged in interstate commerce, it is argued, being a direct burden, therefore power to regulate the subject is in Congress and not in the States. Undoubtedly not only in the decisions referred to but in many others, including most of those which have been by me quoted, the absolute want of power in the States to legislate concerning interstate commerce or to burden it directly has been declared, and the doctrine in its fullest scope is too elementary to require citation of authority. But to decide this case upon the assumption that the acquisition and ownership of stock in competing railroads engaged in interstate commerce is a regulation of commerce, or, what is the same thing, a direct burden on it, would be but to assume the question arising for decision.

Where an authority is exerted by a State which is within its power, and that authority as exercised does not touch interstate commerce or its instrumentalities, and can only have an effect upon such commerce by reason of the reflex and remote results of the exertion of the lawful power, it cannot be said, without a contradiction in terms, that the power exercised is a regulation, because a direct burden upon commerce. *To say to the contrary would be to declare that no power on any subject, however local in its character, could be exercised by the States if it was deemed by Congress or the courts that there would be produced some effect upon interstate commerce.* The question whether a burden is direct and therefore constitutes a regulation of interstate commerce is to be determined by ascertaining whether the power exerted is lawful, generally speaking, and then by finding whether its exercise in the particular case was such as to cause it to be illegal, because directly burdening interstate commerce. If in a given case the power be lawful and the mode in which it is exercised be not such as to directly burden, there is no regulation of commerce, although as an indirect result of the exertion of the lawful

power some effect may be produced upon commerce. In other words, where the power is lawful but it is asserted that it has been so exerted as to amount to a direct burden, *there must be, so to speak, a privity between the manifestation of the power and the resulting burden.* The distinction is well illustrated by the cases which have been referred to, and was very lucidly pointed out by Judge Jackson in the Greene case. Take the Knight case. There as the contract merely concerned the purchase of stock in the refineries, and contained no condition relating to the movement in interstate commerce of the goods to be manufactured by the refining companies, the court held as the right to acquire was not within the commerce clause, the fact that the owners of the manufactured product might thereafter so act concerning the product as to burden commerce, there was no direct burden resulting from the mere acquisition and ownership. On the contrary, in the Addyston Pipe case, after stating in the fullest way the paramount authority of Congress concerning commerce, the court approached the terms of the contract in order to determine whether it related to interstate commerce, and if it did, whether it created a direct burden. In doing so, as it found that the contract both related to interstate commerce and directly burdened the same, the contract was held to be void. This case comes within the Knight case. It concerns the acquisition and ownership of stock. No contract is in question made by the owners of the stock controlling the railroads in the performance of their duties as carriers of interstate commerce. The sole contention is that as the result of the ownership of the stock there may arise, in the operation of the roads, a burden on interstate commerce. That is, that such burden may indirectly result from the acquisition and ownership. To maintain the contention, therefore, it must be decided that because ownership of property if acquired may be so used as to burden commerce, therefore to acquire and own is to burden. This, however, would be but to declare that that which was in its very nature and essence indirect is direct.

3. But, it is said, it may not be denied that the common ownership of stock in competing railroads endows the holders of the majority of the stock with a common interest in both railroads and with the authority, if they choose to exert it, to so unify the management of the roads as to suppress competition between them. This power, it is insisted, is within the regulating authority of Congress over interstate commerce. In other words, the contention broadly is that Congress has not only the authority to regulate the exercise of interstate commerce, but under that power has the right to regulate the ownership and possession of property, if the enjoyment of such rights would enable those who possessed them if they engaged in interstate commerce to exert a power over the same. But this proposition only asserts in another form that the right to acquire the stock was interstate commerce, and therefore was within the authority of

Congress, and is refuted by the reasons and authorities already advanced. That the proposition, if adopted, would extend the power of Congress to all subjects essentially local, as already stated in considering the previous proposition, is to my mind manifest. So clearly is this the result of the particular proposition now being considered, that, at the risk of repetition, I again illustrate the subject. Under this doctrine the sum of property to be acquired by individuals or by corporations, the contracts which they may make, would be within the regulating power of Congress. If it were judged by Congress that the farmer in sowing his crops should be limited to a certain production because overproduction would give power to affect commerce, Congress could regulate that subject. If the acquisition of a large amount of property by an individual was deemed by Congress to confer upon him the power to affect interstate commerce if he engaged in it, Congress could regulate that subject. If the wage-earner organized to better his condition and Congress believed that the existence of such organization would give power, if it were exerted, to affect interstate commerce, Congress could forbid the organization of all labor associations. Indeed, the doctrine must in reason lead to a concession of the right in Congress to regulate concerning the aptitude, the character and capacity of persons. If individuals were deemed by Congress to be possessed of such ability that participation in the management of two great competing railroad enterprises would endow them with the power to injuriously affect interstate commerce, Congress could forbid such participation. If the principle were adopted, and the power which would arise from so doing were exercised, the result would be not only to destroy the State and Federal governments, but by the implication of authority, from which the destruction would be brought about, there would be erected upon the ruins of both a government endowed with the arbitrary power to disregard the great guaranty of life, liberty and property and every other safeguard upon which organized civil society depends. I say the guaranty, because in my opinion the three are indissolubly united, and one cannot be destroyed without the other. Of course, to push propositions to the extreme to which they naturally lead is often an unsafe guide. But at the same time the conviction cannot be escaped by me that principles and conduct bear a relation one to the other, especially in matters of public concern. The fathers founded our government upon an enduring basis of right, principle and of limitation of power. Destroy the principles and the limitations which they impose, and I am unable to say that conduct may not, when unrestrained, give rise to action doing violence to the great truths which the destroyed principles embodied.

The fallacy of all the contentions of the government is, to my mind, illustrated by the summing up of the case for the government made in the argument at bar. The right to acquire and own the stock of compet-

ing railroads involves, says that summing up, the power of an individual "*to do*" (italics mine) absolutely as he pleases with his own, whilst the claim of the government is that the right of the owner of property "*to do*" (italics mine) as he pleases with his own may be controlled in the public interest by legitimate legislation. But the case involves the right to *acquire and own*, not the right "*to do*" (italics mine). Confusing the two gives rise to the errors which it has been my endeavor to point out. Undoubtedly the States possess power over corporations, created by them, to permit or forbid consolidation, whether accomplished by stock ownership or otherwise, to forbid one corporation from holding stock in another, and to impose on this or other subjects such regulations as may be deemed best. Generally speaking, however, the right to do these things springs alone from the fact that the corporation is created by the States, and holds its rights subject to the conditions attached to the grant, or to such regulations as the creator, the State, may lawfully impose upon its creature, the corporation. Moreover, irrespective of the relation of creator and creature, it is, of course, true in a general sense that government possesses the authority to regulate, within certain just limits, what an owner *may do* with his property. But the first power which arises from the authority of a grantor to exact conditions in making a grant or to regulate the conduct of the grantee gives no sanction to the proposition that a government, irrespective of its power to grant, has the general authority to limit the character and quantity of property which may be acquired and owned. And the second power, the general governmental one, to reasonably control the *use* of property, affords no foundation for the proposition that there exists in government a power to limit the quantity and character of property which may be acquired and owned. The difference between the two is that which exists between a free and constitutional government restrained by law and an absolute government unrestrained by any of the principles which are necessary for the perpetuation of society and the protection of life, liberty and property.

It cannot be denied that the sum of all just governmental power was enjoyed by the States and the people before the Constitution of the United States was formed. None of that power was abridged by that instrument except as restrained by constitutional safeguards, and hence none was lost by the adoption of the Constitution. The Constitution, whilst distributing the pre-existing authority, preserved it all. With the full power of the States over corporations created by them and with their authority in respect to local legislation, and with power in Congress over interstate commerce carried to its fullest degree, I cannot conceive that if these powers, admittedly possessed by both, be fully exerted a remedy cannot be provided fully adequate to suppress evils which may arise from combinations deemed to be injurious. This must be true unless it be concluded that by the effect of the

mere distribution of power made by the Constitution partial impotency of governmental authority has resulted. But if this be conceded, *arguendo*, the Constitution itself has pointed out the method by which, if changes are needed, they may be brought about. No remedy, in my opinion, for any supposed or real infirmity can be afforded by disregarding the Constitution, by destroying the lines which separate State and Federal authority, and by implying the existence of a power which is repugnant to all those fundamental rights of life, liberty and property, upon which just government must rest.

If, however, the question of the power of Congress be conceded, and the assumption as to the meaning of the Anti-Trust act which has been indulged in for the purpose of considering that power be put out of view, it would yet remain to be determined whether the Anti-Trust act embraced the acquisition and ownership of the stock in question by the Northern Securities Company. It is unnecessary for me, however, to state the reasons which have led me to the conclusion that the act, when properly interpreted, does not embrace the acquisition and ownership of such stock, since that subject is considered in an opinion of Mr. Justice Holmes, which explains the true interpretation of the statute, as it is understood by me, more clearly than I would be able to do.

Being of the opinion, for the reasons heretofore given, that Congress was without power to regulate the acquisition and ownership of the stock in question by the Northern Securities Company, and because I think even if there were such power in Congress, it has not been exercised by the Anti-Trust act, as is shown in the opinion of Mr. Justice Holmes, I dissent.

I am authorized to say that the CHIEF JUSTICE, Mr. Justice PECKHAM and Mr. Justice HOLMES concur in this dissent.

True copy.

Test:

Clerk Supreme Court, S. U.

Supreme Court of the United States.

No. 277.—October Term, 1903.

Northern Securities Company et al., Appellants, vs. The United States. | Appeal from the Circuit Court of the United States for the District of Minnesota.

[March 14, 1904.]

Mr. Justice Holmes, with whom concurred the Chief Justice, Mr. Justice White, and Mr. Justice Peckham, dissenting:

I am unable to agree with the judgment of the majority of the Court, and although I think it useless and undesirable, as a rule, to express dissent, I feel bound to do so in this case and to give my reasons for it.

Great cases like hard cases make bad law. For great cases are called great, not by reason of their real importance in shaping the law of the future, but because of some accident of immediate overwhelming interest which appeals to the feelings and distorts the judgment. These immediate interests exercise a kind of hydraulic pressure which makes what previously was clear seem doubtful, and before which even well settled principles of law will bend. What we have to do in this case is to find the meaning of some not very difficult words. We must try, I have tried, to do it with the same freedom of natural and spontaneous interpretation that one would be sure of if the same question arose upon an indictment for a similar act which excited no public attention, and was of importance only to a prisoner before the court. Furthermore, while at times judges need for their work the training of economists or statesmen, and must act in view of their foresight of consequences, yet when their task is to interpret and apply the words of a statute, their function is merely academic to begin with—to read English intelligently—and a consideration of consequences comes into play, if at all, only when the meaning of the words used is open to reasonable doubt.

The question to be decided is whether, under the act of July 2, 1890, c. 647, (26 Stat. 209,) it is unlawful, at any stage of the process, if several men unite to form a corporation for the purpose of buying more than half the stock of each of two competing interstate railroad companies, if they form the corporation, and the corporation buys the stock. I will suppose further that every step is taken, from the beginning, with the single intent of ending competition between the companies. I make this addition not because it may not be and is not disputed but because, as I shall try to

show, it is totally unimportant under any part of the statute with which we have to deal.

The statute of which we have to find the meaning is a criminal statute. The two sections on which the government relies both make certain acts crimes. That is their immediate purpose and that is what they say. It is vain to insist that this is not a criminal proceeding. The words cannot be read one way in a suit which is to end in fine and imprisonment and another way in one which seeks an injunction. The construction which is adopted in this case must be adopted in one of the other sort. I am no friend of artificial interpretations because a statute is of one kind rather than another, but all agree that before a statute is to be taken to punish that which always has been lawful it must express its intent in clear words. So I say we must read the words before us as if the question were whether two small exporting grocers should go to jail.

Again the statute is of a very sweeping and general character. It hits "every" contract or combination of the prohibited sort, great or small, and "every" person who shall monopolize or attempt to monopolize, in the sense of the act, "any part" of the trade or commerce among the several States. There is a natural inclination to assume that it was directed against certain great combinations and to read it in that light. It does not say so. On the contrary, it says "every," and "any part." Still less was it directed specially against railroads. There even was a reasonable doubt whether it included railroads until the point was decided by this Court.

Finally, the statute must be construed in such a way as not merely to save its constitutionality but, so far as is consistent with a fair interpretation, not to raise grave doubts on that score. I assume, for the purposes of discussion, although it would be a great and serious step to take, that in some case that seemed to it to need heroic measures, Congress might regulate not only commerce, but instruments of commerce or contracts the bearing of which upon commerce would be only indirect. But it is clear that the mere fact of an indirect effect upon commerce not shown to be certain and very great, would not justify such a law. The point decided in *United States* v. *E. C. Knight Co.*, 156 U. S. 1, 17, was that "the fact that trade or commerce might be indirectly affected was not enough to entitle complainant to a decree." Commerce depends upon population, but Congress could not, on that ground, undertake to regulate marriage and divorce. If the act before us is to be carried out according to what seems to me the logic of the argument for the government, which I do believe that it will be, I can see no part of the conduct of life with which on similar principles Congress might not interfere.

This act is construed by the government to affect the purchasers of shares in two railroad companies because of the effect it may have, or, if you like, is certain to have, upon the competition of these roads. If such

a remote result of the exercise of an ordinary incident of property and personal freedom is enough to make that exercise unlawful, there is hardly any transaction concerning commerce between the States that may not be made a crime by the finding of a jury or a court. The personal ascendency of one man may be such that it would give to his advice the effect of a command, if he owned but a single share in each road. The tendency of his presence in the stockholders' meetings might be certain to prevent competition, and thus his advice, if not his mere existence, become a crime.

I state these general considerations as matters which I should have to take into account before I could agree to affirm the decree appealed from, but I do not need them for my own opinion, because when I read the act I cannot feel sufficient doubt as to the meaning of the words to need to fortify my conclusion by any generalities. Their meaning seems to me plain on their face.

The first section makes "Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States, or with foreign nations" a misdemeanor, punishable by fine, imprisonment or both. Much trouble is made by substituting other phrases assumed to be equivalent, which then are removed from as if they were in the act. The court below argued as if maintaining competition were the expressed object of the act. The act says nothing about competition. I stick to the exact words used. The words hit two classes of cases, and only two—Contracts in restraint of trade and combinations or conspiracies in restraint of trade, and we have to consider what these respectively are. Contracts in restraint of trade are dealt with and defined by the common law. They are contracts with a stranger to the contractor's business, (although in some cases carrying on a similar one,) which wholly or partially restrict the freedom of the contractor in carrying on that business as otherwise he would. The objection of the common law to them was primarily on the contractor's own account. The notion of monopoly did not come in unless the contract covered the whole of England. *Mitchel* v. *Reynolds*, 1 P. Wms. 181. Of course this objection did not apply to partnerships or other forms, if there were any, of substituting a community of interest where there had been competition. There was no objection to such combinations merely as in restraint of trade, or otherwise unless they amounted to a monopoly. Contracts in restraint of trade, I repeat, were contracts with strangers to the contractor's business, and the trade restrained was the contractor's own.

Combinations or conspiracies in restraint of trade, on the other hand, were combinations to keep strangers to the agreement out of the business. The objection to them was not an objection to their effect upon the parties

making the contract, the members of the combination or firm, but an objection to their intended effect upon strangers to the firm and their supposed consequent effect upon the public at large. In other words, they were regarded as contrary to public policy because they monopolized or attempted to monopolize some portion of the trade or commerce of the realm. See *United States* v. *E. C. Knight Co.*, 156 U. S. 1. All that is added to the first section by § 2 is that like penalties are imposed upon every single person who, without combination, monopolizes or attempts to monopolize commerce among the States; and that the liability is extended to attempting to monopolize any part of such trade or commerce. It is more important as an aid to the construction of § 1 that it is on its own account. It shows that whatever is criminal when done by way of combination is equally criminal if done by a single man. That I am right in my interpretation of the words of § 1 is shown by the words "in the form of trust or otherwise." The prohibition was suggested by the trusts, the objection to which, as every one knows, was not the union of former competitors, but the sinister power exercised or supposed to be exercised by the combination in keeping rivals out of the business and ruining those who already were in. It was the ferocious extreme of competition with others, not the cessation of competition among the partners, that was the evil feared. Further proof is to be found in § 7, giving an action to any person injured in his business or property by the forbidden conduct. This cannot refer to the parties to the agreement and plainly means that outsiders who are injured in their attempt to compete with a trust or other similar combination may recover for it. *W. W. Montague & Co.* v. *Lowry*, — U. S. ——. How effective the section may be or how far it goes, is not material to my point. My general summary of the two classes of cases which the act affects is confirmed by the title, which is "An Act to protect Trade and Commerce against unlawful Restraints and Monopolies."

What I now ask is under which of the foregoing classes this case is supposed to come, and that question must be answered as definitely and precisely as if we were dealing with the indictments which logically ought to follow this decision. The provision of the statute against contracts in restraint of trade has been held to apply to contracts between railroads, otherwise remaining independent, by which they restricted their respective freedom as to rates. This restriction by contract with a stranger to the contractor's business is the ground of the decision in *United States* v. *Joint Traffic Association*, 171 U. S. 505, following and affirming *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290. I accept those decisions absolutely, not only as binding upon me, but as decisions which I have no desire to criticize or abridge. But the provision has not been decided, and, it seems to me, could not be decided without a perversion of

plain language, to apply to an arrangement by which competition is ended through community of interest—an arrangement which leaves the parties without external restriction. That provision, taken alone, does not require that all existing competitions shall be maintained. It does not look primarily, if at all, to competition. It simply requires that a party's freedom in trade between the States shall not be cut down by contract with a stranger. So far as that phrase goes, it is lawful to abolish competition by any form of union. It would seem to me impossible to say that the words "every contract in restraint of trade is a crime punishable with imprisonment," would send the members of a partnership between, or a consolidation of, two trading corporations to prison—still more impossible to say that it forbade one man or corporation to purchase as much stock as he liked in both. Yet those words would have that effect if this clause of § 1 applies to the defendants here. For it cannot be too carefully remembered that that clause applies to "every" contract of the forbidden kind—a consideration which was the turning point of the Trans-Missouri Freight Association's case.

If the statute applies to this case it must be because the parties, or some of them, have formed, or because the Northern Securities Company is, a combination in restraint of trade among the States, or, what comes to the same thing in my opinion, because the defendants, or some or one of them, are monopolizing or attempting to monopolize some part of the commerce between the States. But the mere reading of those words shows that they are used in a limited and accurate sense. According to popular speech, every concern monopolizes whatever business it does, and if that business is trade between two States it monopolizes a part of the trade among the States. Of course the statute does not forbid that. It does not mean that all business must cease. A single railroad down a narrow valley or through a mountain gorge monopolizes all the railroad transportation through that valley or gorge. Indeed every railroad monopolizes, in a popular sense, the trade of some area. Yet I suppose no one would say that the statute forbids a combination of men into a corporation to build and run such a railroad between the States.

I assume that the Minnesota charter of the Great Northern and the Wisconsin charter of the Northern Pacific both are valid. Suppose that, before either road was built, Minnesota, as part of a system of transportation between the States, had created a railroad company authorized singly to build all the lines in the States now actually built, owned or controlled by either of the two existing companies. I take it that that charter would have been just as good as the present one, even if the statutes which we are considering had been in force. In whatever sense it would have created a monopoly the present charter does. It would have been a large one, but the act of Congress makes no discrimination according to size.

Size has nothing to do with the matter. A monopoly of "any part" of commerce among the States is unlawful. The supposed company would have owned lines that might have been competing—probably the present one does. But the Act of Congress will not be construed to mean the universal disintegregation of society into single men, each at war with all the rest, or even the prevention of all further combinations for a common end.

There is a natural feeling that somehow or other the statute meant to strike at combinations great enough to cause just anxiety on the part of those who love their country more than money, while it viewed such little ones as I have supposed with just indifference. This notion, it may be said, somehow breathes from the pores of the act, although it seems to be contradicted in every way by the words in detail. And it has occurred to me that it might be that when a combination reached a certain size it might have attributed to it more of the character of a monopoly merely by virtue of its size than would be attributed to a smaller one. I am quite clear that it is only in connection with monopolies that size could play any part. But my answer has been indicated already. In the first place size in the case of railroads is an inevitable incident and if it were an objection under the act, the Great Northern and the Northern Pacific already were too great and encountered the law. In the next place in the case of railroads it is evident that the size of the combination is reached for other ends than those which would make them monopolies. The combinations are not formed for the purpose of excluding others from the field. Finally, even a small railroad will have the same tendency to exclude others from its narrow area that great ones have to exclude others from a greater one, and the statute attacks the small monopolies as well as the great. The very words of the act make such a distinction impossible in this case and it has not been attempted in express terms.

If the charter which I have imagined above would have been good notwithstanding the monopoly, in a popular sense, which it created, one next is led to ask whether and why a combination or consolidation of existing roads, although in actual competition, into one company of exactly the same powers and extent, would be any more obnoxious to the law. Although it was decided in *Louisville & Nashville Railroad Co.* v. *Kentucky*, 161 U. S. 677, 701, that since the statute, as before, the States have the power to regulate the matter, it was said, in the argument, that such a consolidation would be unlawful, and it seems to me that the Attorney General was compelled to say so in order to maintain his case. But I think that logic would not let him stop there, or short of denying the power of a State at the present time to authorize one company to construct and own two parallel lines that might compete. The monopoly

would be the same as if the roads were consolidated after they had begun to compete—and it is on the footing of monopoly that I now am supposing the objection made. But to meet the objection to the prevention of competition at the same time, I will suppose that three parties apply to a State for charters; one for each of ~~the~~ two new and possibly competing lines respectively, and one for both of these lines, and that the charter is granted to the last. I think that charter would be good, and I think the whole argument to the contrary rests on a popular instead of an accurate and legal conception of what the word "monopolize" in the statute means. I repeat, that in my opinion there is no attempt to monopolize, and what, as I have said, in my judgment amounts to the same thing, that there is no combination in restraint of trade, until something is done with the intent to exclude strangers to the combination from competing with it in some part of the business which it carries on.

Unless I am entirely wrong in my understanding of what a "combination in restraint of trade" means, then the same monopoly may be attempted and effected by an individual, and is made equally illegal in that case by § 2. But I do not expect to hear it maintained that Mr. Morgan could be sent to prison for buying as many shares as he liked of the Great Northern and the Northern Pacific, even if he bought them both at the same time and got more than half the stock of each road.

There is much that was mentioned in argument which I pass by. But in view of the great importance attached by both sides to the supposed attempt to suppress competition, I must say a word more about that. I said at the outset that I should assume, and I do assume, that one purpose of the purchase was to suppress competition between the two roads. I appreciate the force of the argument that there are independent stockholders in each; that it cannot be presumed that the respective boards of directors will propose any illegal act; that if they should they could be restrained, and that all that has been done as yet is too remote from the illegal result to be classed even as an attempt. Not every act done in furtherance of an unlawful end is an attempt or contrary to the law. There must be a certain nearness to the result. It is a question of proximity and degree. *Commonwealth* v. *Peaslee*, 177 Mass. 267, 272. So, as I have said, is the amenability of acts in furtherance of interference with commerce among the States to legislation by Congress. So, according to the intimation of this Court, is the question of liability under the present statute. *Hopkins* v. *United States*, 171 U. S. 578; *Anderson* v. *United States*, 171 U. S. 604. But I assume further, for the purposes of discussion, that what has been done is near enough to the result to fall under the law, if the law prohibits that result, although that assumption very nearly if not quite contradicts the decision in *United States* v. *E. C. Knight Co.*, 156 U. S. 1. But I say that the law does not prohibit the

result. If it does it must be because there is some further meaning than I have yet discovered in the words "combinations in restraint of trade." I think that I have exhausted the meaning of those words in what I already have said. But they certainly do not require all existing competitions to be kept on foot, and, on the principle of the Trans-Missouri Freight Association's case, invalidate the continuance of old contracts by which former competitors united in the past.

A partnership is not a contract or combination in restraint of trade between the partners unless the well known words are to be given a new meaning invented for the purposes of this act. It is true that the suppression of competition was referred to in *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290, but, as I have said, that was in connection with a contract with a stranger to the defendant's business—a true contract in restraint of trade. To suppress competition in that way is one thing, to suppress it by fusion is another. The law, I repeat, says nothing about competition, and only prevents its suppression by contracts or combinations in restraint of trade, and such contracts or combinations derive their character as restraining trade from other features than the suppression of competition alone. To see whether I am wrong, the illustrations put in the argument are of use. If I am, then a partnership between two stage drivers who had been competitors in driving across a State line, or two merchants once engaged in rival commerce among the States whether made after or before the act, if now continued, is a crime. For, again I repeat, if the restraint on the freedom of the members of a combination caused by their entering into partnership is a restraint of trade, every such combination, as well the small as the great, is within the act.

In view of my interpretation of the statute I do not go further into the question of the power of Congress. That has been dealt with by my brother White and I concur in the main with his views. I am happy to know that only a minority of my brethren adopt an interpretation of the law which in my opinion would make eternal the *bellum omnium contra omnes* and disintegrate society so far as it could into individual atoms. If that were its intent I should regard calling such a law a regulation of commerce as a mere pretence. It would be an attempt to reconstruct society. I am not concerned with the wisdom of such an attempt, but I believe that Congress was not entrusted by the Constitution with the power to make it and I am deeply persuaded that it has not tried.

I am authorized to say that the Chief Justice, Mr. Justice White and Mr. Justice Peckham concur in this dissent.

A true copy.
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